

- SUBJECT:** Restoring common-law standards for trustees of irrevocable trusts
- COMMITTEE:** Judiciary — favorable, without amendment
- VOTE:** 5 ayes — Hartnett, Homer, Alonzo, Gonzales, Goolsby
0 nays
4 absent — Hopson, R. Cook, Hughes, Krusee
- WITNESSES:** For — Dave Folz, Wealth Management and Trust Division, Texas Bankers Association; William Pergaman, Real Estate, Probate, and Trust Law Section, State Bar of Texas. (*Registered, but did not testify:* John Brigance, Wealth Management and Trust Division, Texas Bankers Association; Guy Herman, Statutory Probate Courts of Texas and Travis County Probate Court #1; Glen Karisch, Real Estate, Probate, and Trust Law Section, State Bar of Texas; Cyndi Taylor Krier, United Services Automobile Association; Nancy Sosa, Encore Trust Co.; Janice Torgeson, Frost National Bank)

Against — None
- BACKGROUND:** Property Code, secs. 111.0035(b)(5) and 113.060 together require that a trustee of an irrevocable trust keep the beneficiaries of the trust who are age 25 years or older reasonably informed concerning the
- administration of the trust; and
 - the material facts necessary for the beneficiaries to protect the beneficiaries' interests.
- DIGEST:** HB 336 would amend Property Code, sec. 111.0035(b) by repealing the trustee duties found in sec. 113.060 and restoring the common-law trustee duties that predated it. The bill would prohibit a trust from limiting any common-law duty to keep a beneficiary of an irrevocable trust who was age 25 years or older informed at any time during which the beneficiary:

- was entitled or permitted to receive distributions from the trust; or
- would receive a distribution from the trust if the trust were terminated.

The bill would specify that repeal of sec. 113.060 would not repeal any common-law duty to keep a beneficiary informed. The common-law duty to keep a beneficiary informed that existed immediately before January 1, 2006, would be continued in effect.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 336 would clarify existing law. When the Legislature enacted sec. 116.030 of the Property Code in 2005 as part of an omnibus revision of trust law (HB 1190 by Hartnett), it did not intend to repeal existing common-law duties to keep a beneficiary of a trust informed, but only to put those duties into statute.

Sec. 113.060 should be repealed because it is ambiguous and could lead to unnecessary and costly problems for trustees. HB 336 would clear up that ambiguity by replacing that section with the previously existing common law. Sec. 113.060 does not specify the full scope of the duties that a trustee of an irrevocable trust owes to beneficiaries, an ambiguity that could invite costly litigation. Sec. 113.060 also could result in onerous reporting requirements for trustees because it is unclear what facts would be material and thus necessary for beneficiaries to be sufficiently informed to protect their interests. A determination of those facts would have to be done case-by-case, which would create a burden on trustees that would outweigh any potential benefit.

The current code also is unclear as to when a trustee must report material facts to beneficiaries and whether a trustee must report to all potential beneficiaries. In general, trust legislation specifies what duties a trustee has toward the different tiers of beneficiaries addressed in trust law. Sec. 113.060 makes no such distinctions, which further clouds the duties owed by trustees.

HB 336 would address these concerns by reinstating the common law that requires a trustee of an irrevocable trust to keep beneficiaries who are age 25 years or older informed any time the beneficiary is entitled or permitted

to receive a distribution from the trust or when the beneficiary would receive a distribution from the trust if the trust were terminated.

The common-law requirements would more clear regarding who a beneficiary was, when a trustee must inform a beneficiary, and what information was to be conveyed. The common-law standard has been clarified by case law, while the standards in sec. 116.060 remain subject to interpretation.

Sec. 113.060 also could be construed as applying to revocable trusts as well as irrevocable ones. The bill would address this concern by specifically referencing irrevocable trusts.

OPPONENTS
SAY:

No apparent opposition.