

PROPERTY CODE
CHAPTER 115. JURISDICTION, VENUE, AND PROCEEDINGS
SUBCHAPTER A. JURISDICTION AND VENUE

Sec. 115.001. JURISDICTION. (a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings concerning trusts, including proceedings to:

- (1) construe a trust instrument;
- (2) determine the law applicable to a trust instrument;
- (3) appoint or remove a trustee;
- (4) determine the powers, responsibilities, duties, and liability of a trustee;
- (5) ascertain beneficiaries;
- (6) make determinations of fact affecting the administration, distribution, or duration of a trust;
- (7) determine a question arising in the administration or distribution of a trust;
- (8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;
- (9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and
- (10) surcharge a trustee.

(b) The district court may exercise the powers of a court of equity in matters pertaining to trusts.

Text of subsec. (c) effective until January 1, 2006

(c) Unless specifically directed by a written order of the court, a proceeding does not result in continuing supervision by the court over the administration of the trust.

Text of subsec. (c) effective January 1, 2006

(c) The court may intervene in the administration of a trust to the extent that the court's jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.

Text of subsec. (d) effective until January 1, 2006

(d) The jurisdiction of the district court over proceedings concerning trusts is exclusive except for jurisdiction conferred by law on a statutory probate court or a court that creates a trust under Section 867, Texas Probate Code.

Text of subsec. (d) effective January 1, 2006

(d) The jurisdiction of the district court over proceedings concerning trusts is exclusive except for jurisdiction conferred by law on a statutory probate court, a court that creates a trust under Section 867, Texas Probate Code, or a court that creates a trust under Section 142.005.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 1997, 75th Leg., ch. 1375, Sec. 5, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 148, Sec. 22, eff. Jan. 1, 2006.

Sec. 115.002. VENUE. (a) The venue of an action under Section 115.001 of this Act is determined according to this section.

(b) If there is a single, noncorporate trustee, an action shall be brought in the county in which:

(1) the trustee resides or has resided at any time during the four-year period preceding the date the action is filed; or

(2) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed.

(c) If there are multiple trustees or a corporate trustee, an action shall be brought in the county in which the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed, provided that an action against a corporate trustee as defendant may be brought in the county in which the corporate trustee maintains its principal office in this state.

(d) For just and reasonable cause, including the location of the records and the convenience of the parties and witnesses, the court may transfer an action from a county of proper venue under this section to another county of proper venue:

(1) on motion of a defendant or joined party, filed concurrently with or before the filing of the answer or other

initial responsive pleading, and served in accordance with law; or
(2) on motion of an intervening party, filed not later than the 20th day after the court signs the order allowing the intervention, and served in accordance with law.

(e) Notwithstanding any other provision of this section, on agreement by all parties the court may transfer an action from a county of proper venue under this section to any other county.

(f) For the purposes of this section:

(1) "Corporate trustee" means an entity organized as a financial institution or a corporation with the authority to act in a fiduciary capacity.

(2) "Principal office" means an office of a corporate trustee in this state where the decision makers for the corporate trustee within this state conduct the daily affairs of the corporate trustee. The mere presence of an agent or representative of the corporate trustee does not establish a principal office. The principal office of the corporate trustee may also be but is not necessarily the same as the situs of administration of the trust.

(3) "Situs of administration" means the location in this state where the trustee maintains the office that is primarily responsible for dealing with the settlor and beneficiaries of the trust. The situs of administration may also be but is not necessarily the same as the principal office of a corporate trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 1999, 76th Leg., ch. 344, Sec. 4.026, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 933, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PARTIES, PROCEDURE, AND JUDGMENTS

Sec. 115.011. PARTIES. (a) Any interested person may bring an action under Section 115.001 of this Act.

Text of subsec. (b) effective until January 1, 2006

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001 of this Act. The only necessary parties to such an action are:

(1) a beneficiary on whose act or obligation the action is predicated;

(2) a person designated by name in the instrument creating the trust; and

(3) a person who is actually receiving distributions from the trust estate at the time the action is filed.

Text of subsec. (b) effective January 1, 2006

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:

(1) a beneficiary on whose act or obligation the action is predicated;

(2) a beneficiary designated by name in the instrument creating the trust;

(3) a person who is actually receiving distributions from the trust estate at the time the action is filed; and

(4) the trustee, if a trustee is serving at the time the action is filed.

(c) The attorney general shall be given notice of any proceeding involving a charitable trust as provided by Chapter 123 of this code.

(d) A beneficiary of a trust may intervene and contest the right of the plaintiff to recover in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration or on a contract executed by the trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 1995, 74th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1995; Acts 2005, 79th Leg., ch. 148, Sec. 23, eff. Jan. 1, 2006.

Sec. 115.012. RULES OF PROCEDURE. Except as otherwise provided, all actions instituted under this subtitle are governed by the Texas Rules of Civil Procedure and the other statutes and rules that are applicable to civil actions generally.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 115.013. PLEADINGS AND JUDGMENTS. (a) Actions and proceedings involving trusts are governed by this section.

(b) An affected interest shall be described in pleadings that give reasonable information to an owner by name or class, by reference to the instrument creating the interest, or in other

appropriate manner.

(c) A person is bound by an order binding another in the following cases:

(1) an order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests, as objects, takers in default, or otherwise are subject to the power;

(2) to the extent there is no conflict of interest between them or among persons represented:

(A) an order binding a guardian of the estate or a guardian ad litem binds the ward; and

(B) an order binding a trustee binds beneficiaries of the trust in proceedings to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties;

(3) if there is no conflict of interest and no guardian of the estate or guardian ad litem has been appointed, a parent may represent his minor child as guardian ad litem or as next friend; and

(4) an unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(d) Notice under Section 115.014 of this Act shall be given either to a person who will be bound by the judgment or to one who can bind that person under this section, and notice may be given to both. Notice may be given to unborn or unascertained persons who are not represented under Subdivision (1) or (2) of Subsection (c) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 115.014. GUARDIAN AD LITEM. (a) At any point in a proceeding a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If there is not a conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

(b) A court shall appoint a guardian ad litem to defend an action under Section 114.083 of this Act for a beneficiary of the trust who is a minor or who has been adjudged incompetent.

Text of subsec. (c) effective January 1, 2006

(c) A guardian ad litem may consider general benefit accruing to the living members of a person's family.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 2005, 79th Leg., ch. 148, Sec. 24, eff. Jan. 1, 2006.

Sec. 115.015. NOTICE TO BENEFICIARIES OF TORT OR CONTRACT PROCEEDING. (a) A court may not render judgment in favor of a plaintiff in an action on a contract executed by the trustee or in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration unless the plaintiff proves that before the 31st day after the date the action began or within any other period fixed by the court that is more than 30 days before the date of the judgment, the plaintiff gave notice of the existence and nature of the action to:

(1) each beneficiary known to the trustee who then had a present or contingent interest; or

(2) in an action on a contract involving a charitable trust, the attorney general and any corporation that is a beneficiary or agency in the performance of the trust.

(b) The plaintiff shall give the notice required by Subsection (a) of this section by registered mail or by certified mail, return receipt requested, addressed to the party to be notified at the party's last known address. The trustee shall give the plaintiff a list of the beneficiaries or persons having an interest in the trust estate and their addresses, if known to the trustee, before the 11th day after the date the plaintiff makes a written request for the information.

(c) The plaintiff satisfies the notice requirements of this section by notifying the persons on the list provided by the trustee.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 115.016. NOTICE. (a) If notice of hearing on a motion or other proceeding is required, the notice may be given in the manner prescribed by law or the Texas Rules of Civil Procedure, or, alternatively, notice may be given to any party or to his attorney if the party has appeared by attorney or requested that notice be sent to his attorney.

(b) If the address or identity of a party is not known and cannot be ascertained with reasonable diligence, on order of the court notice may be given by publishing a copy of the notice at least three times in a newspaper having general circulation in the county where the hearing is to be held. The first publication of the notice must be at least 10 days before the time set for the hearing. If there is no newspaper of general circulation in the county where the hearing is to be held, the publication shall be made in a newspaper of general circulation in an adjoining county. Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 115.017. WAIVER OF NOTICE. A person, including a guardian of the estate, a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or his attorney and filed in the proceedings.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.