

ARTICLE VII

TRUST ADMINISTRATION

PART 1. TRUST REGISTRATION

§560:7-101 Duty to register trusts. The trustee of a trust having its principal place of administration in this State who is required to register the trust under section 560:1-108 shall register the trust in the court in the judicial circuit either of the principal place of administration of the trust, or, in the case of a trust relating only to land, of the place where the land is located. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise (3) the usual place of business or residence of any of the cotrustees as agreed upon by them. The duty to register under this Part does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release. [L 1976, c 200, pt of §1; am L 1977, c 144, §53; gen ch 1985]

HRS 0560-0007-0101 ANNOTATIONS

Cross References

Effect and transition of L 1996, c 288 amendments, see §560:8-201.

§560:7-102 Registration procedures. Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust:

(1) In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate;

(2) In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument.

If a trust has been registered elsewhere, registration in this State is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this State. [L 1976, c 200, pt of §1]

§560:7-103 Effect of registration. (a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 560:7-201 of this chapter relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee in the manner required for the service of process by rule of court or, in the absence of any such rule, by mailing it to the trustee by ordinary first class mail at the trustee's address as listed in the registration or as thereafter reported to the court and to the trustee's address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this State are subject to the jurisdiction of the court of registration for the purposes of proceedings under section 560:7-201, provided notice is given pursuant to section 560:1-401. [L 1976, c 200, pt of §1; gen ch 1985]

§560:7-104 Effect of failure to register. A trustee who fails to register a trust in a proper court as required by this Part, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this Part is subject to removal and denial of compensation or to surcharge as the court may direct. Except as provided in section 560:1-108, a provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust

or trustee shall not be subject to the jurisdiction of the court, is ineffective. [L 1976, c 200, pt of §1]

§560:7-105 [Reserved]

§560:7-106 Release of registration. Upon the termination and distribution of a registered trust, the trustee shall notify the court in which it is registered of such termination and distribution, whereupon the court may remove the record of the trust from its current registry of trusts. [L 1976, c 200, pt of §1]

PART 2. JURISDICTION OF COURT CONCERNING TRUSTS

§560:7-201 Court; jurisdiction of trusts. (a) The court has jurisdiction of proceedings initiated by trustees and interested persons concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

- (1) Appoint or remove a trustee;
- (2) Review trustees' fees and to review and settle interim or final accounts;
- (3) Ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right; and
- (4) Release registration of a trust.

(b) Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval

or other action of any court, subject to the jurisdiction of the court as invoked by interested persons or as otherwise exercised pursuant to law. [L 1976, c 200, pt of §1]

§560:7-202 Trust proceedings; venue. Venue for proceedings involving registered trusts is in the judicial circuit which is the place of registration. Venue for proceedings involving trusts not registered in this State is any place where the trust properly could have been registered, and as otherwise provided by the Hawaii Rules of Civil Procedure. [L 1976, c 200, pt of §1]

§560:7-203 Trust proceedings; dismissal of matters relating to foreign trusts. The court will not, over the objection of a party, entertain proceedings concerning the internal affairs of a trust registered or having its principal place of administration in another state, unless (1) all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration or (2) the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order. [L 1976, c 200, pt of §1]

§560:7-204 Court; concurrent jurisdiction of litigation involving trusts and third parties. The court of the judicial circuit in which the trust is required to be registered has concurrent jurisdiction with other courts of this State of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions. [L 1976, c 200, pt of §1]

§560:7-205 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust. On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, the reasonableness of the determination of trust estate value or income made by the trustee for the purpose of computing the fee

allowed by sections 607-18 and 607-20, and the reasonableness of any additional compensation for special services under sections 607-18 and 607-20. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds. [L 1976, c 200, pt of §1]

§560:7-206 Trust proceedings; initiation by notice; necessary parties. Proceedings under section 560:7-201 are initiated by filing a petition in the court and giving notice pursuant to section 560:1-401 to interested persons. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested persons are notified. [L 1976, c 200, pt of §1]

PART 3. DUTIES AND LIABILITIES OF TRUSTEES

§560:7-301 General duties not limited. Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this chapter. [L 1976, c 200, pt of §1]

§560:7-302 Trustee's standard of care and performance. Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent person dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, the trustee is under a duty to use those skills. [L 1976, c 200, pt of §1; gen ch 1985, 1993]

§560:7-303 Duty to inform and account to beneficiaries. The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration; provided, however, during the life of the settlor, the trustee of a revocable inter vivos trust shall not be required to register the trust, reveal the terms to beneficiaries, or account to beneficiaries, unless otherwise directed by the settlor. In addition:

(1) Within thirty days after the trustee's acceptance of the trust, the trustee shall inform in writing the persons currently entitled to benefits from the trust, and if possible, one or more persons who under section 560:1-403 may represent beneficiaries with future interests, of the court in which the trust is registered and of the trustee's name and address.

(2) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect the beneficiary's interest and with information about the assets of the trust and the particulars relating to the administration.

(3) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee. [L 1976, c 200, pt of §1; gen ch 1985; am L 1997, c 244, §13]

§560:7-304 Duty to provide bond. A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections 560:3-604 and 560:3-606 relating to bonds of personal representatives. [L 1976, c 200, pt of §1; gen ch 1993]

§560:7-305 Trustee's duties; appropriate place of administration; deviation. A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate the court may for good cause enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, designation of administration in another state, and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight pursuant to section 554-2, in determining the suitability of the trustee and the place of administration. [L 1976, c 200, pt of §1]

§560:7-306 Personal liability of trustee to third parties. (a) Unless otherwise provided in the contract, a trustee is personally liable on contracts entered into in the trustee's fiduciary capacity in the course of administration of the trust estate.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate and for torts committed in the course of administration of the trust estate.

(c) Claims based on contracts entered into by a trustee in the trustee's fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) The question of liability as between the trust estate and the trustee personally may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding. [L 1976, c 200, pt of §1; gen ch 1985]

§560:7-307 Limitations on proceedings against trustees after final account. Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within two years after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for the beneficiary's examination is protected after three years. A beneficiary is deemed to have received a final account or statement if accorded notice pursuant to section 560:1-401. [L 1976, c 200, pt of §1; gen ch 1985]

PART 4. POWERS OF TRUSTEES

§560:7-401 Powers of trustees. Trustees shall have, in addition to the powers set out in the trust agreement, the powers as provided in chapter 554 and otherwise as provided by law. [L 1976, c 200, pt of §1]

ARTICLE VIII

EFFECTIVE DATE AND REPEALER

[PART 1. EFFECT OF ACT 200, SESSION LAWS OF HAWAII 1976]

§560:8-101 Time of taking effect; provisions for transition. (a) ~~This chapter takes effect on July 1, 1976, except that the provisions of Articles II, III and IV and the Hawaii Revised Statutes sections amended or repealed in this Article VIII on account of Articles II, III and IV take effect on July 1, 1977.~~

(b) ~~Except as provided elsewhere in this chapter, on the effective date of this chapter:~~

(1) ~~The chapter applies to any wills of decedents dying thereafter;~~

(2) ~~The chapter applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this chapter;~~

(3) ~~Every executor of a will admitted to a probate prior to July 1, 1977 in this State and every administrator appointed prior to July 1, 1977 by a court of this State shall be a supervised personal representative with respect to the estate, and every guardian of the property appointed prior to July 1, 1976 by a court of this State shall be a guardian of the property, with only the powers conferred by this chapter and subject to the duties imposed by this chapter with respect to any act occurring or done thereafter. Every guardian of a person holding an appointment on that date continues to hold the appointment but has only the powers conferred by this chapter and is subject to the duties imposed by this chapter with respect to any act occurring or done thereafter;~~

(4) The consequences of an act done before the applicable effective date in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1977, the provisions of such statute shall remain in force with respect to that right;

(5) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 1, 1976 unless there is a clear indication of a contrary intent;

(6) Notwithstanding any of the above, this chapter shall not affect any property or other rights accrued under the case and statutory law of this State, including but not limited to the law relating to intestacy, dower and curtesy (chapters 532 and 533), which became vested prior to July 1, 1977. [L 1976, c 200, pt of §1]

560:8-102 Specific repealer and amendments. [Omitted as functus].

PART 2. EFFECT OF ACT 288, SESSION LAWS OF HAWAII 1996]

§560:8-201 Effect and transition. (a) The amendments made by [Act 288, Session Laws of Hawaii 1996, hereinafter referred to as this Act,] shall take effect on January 1, 1997.

(b) Except as provided elsewhere in this Act, on January 1, 1997:

(1) The amendments made by this Act apply to any governing instruments executed by decedents dying thereafter;

(2) The amendments made by this Act apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except:

(A) Parts 1 and 2 of Article II (relating to intestate succession and elective share) shall apply only to the estates of decedents dying after January 1, 1997; and

(B) To the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Act;

(3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Act and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) An act done before the effective date in any proceeding and any accrued right is not impaired by this Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and

(5) Any rule of construction or presumption provided in this Act applies to instruments executed before the effective date unless there is a clear indication of a contrary intent. [L 1996, c 288, §5; am L 1997, c 244, §16]

TRUSTEES' FEES:

§607-18 Fees and expenses of trustees. (a) Upon all moneys and other property received in the nature of revenue or income of the estate, such as rents, interest, dividends, and general

profits, trustees, except trustees of a charitable trust, shall be allowed as commissions payable out of the income received during each year, seven per cent for the first \$5,000 and five per cent for all over \$5,000 the commissions to be payable as and when the income is received, but not more often than once a year.

(b) Upon the principal of the estate, trustees shall be allowed as commissions one per cent on the value at the inception of the trust payable at the inception out of the principal, one per cent on the value of all or any part of the estate upon final distribution payable at the termination out of the principal, and two and one-half per cent upon all cash principal received after the inception of the trust and neither being nor representing principal upon which the two and one-half per cent has previously at any time been charged, payable at the receipt out of the principal, and two and one-half per cent upon the final payment of any cash principal prior to the termination of the trust, payable at the final payment out of the principal, and in addition thereto five-tenths of one per cent on the value at the expiration of each year during the continuance of the trust payable annually out of the principal; provided that such five-tenths of one per cent on the principal shall not apply to charitable trusts, nor to the extent the trustee has employed others to perform bookkeeping and clerical services at the expense of the estate as permitted by the trust document or as provided in section 554A-3.

(c) Such further allowances may be made as the court deems just and reasonable for services performed in connection with sales or leases of real estate, contested or litigated claims against the estate, the adjustment and payment of extensive or complicated estate or inheritance taxes, the preparation of estate and income tax returns, the carrying on of the decedent's business pursuant to an order of court or under the provisions of any will, litigation in regard to the property of the estate, and such other special services as may be necessary for the trustee to perform, prosecute, or defend. All contracts between a trustee and a beneficiary other than the creator of the trust, for higher compensation than is allowed in this section shall be void.

(d) This section shall apply as well to future accounting in existing estates as to new estates. [RL 1935, pt of §3793; am L 1935, c 124, §1; am L 1943, c 88, §1 and c 149, §1; RL 1945, §9757; am L 1947, c 100, §1; am L 1951, c 170, §1; RL 1955, §219-17; am L 1959, c 169, §1; HRS §607-18; am L 1976, c 200, pt

of §1; am L 1988, c 362, §1; am L 1992, c 85, §1; am L 1993, c 34, §2]

§607-20 Charitable trusts, special provisions. (a)

Notwithstanding any other provisions, in the case of a charitable trust, the compensation of the trustees shall be limited to an amount that is reasonable under the circumstances.

(b) This section shall apply to existing and new charitable trusts established after January 1, 1999; provided that any provisions in existing trust agreements regarding trustees' compensation shall supersede this section. [L 1943, c 149, §§1, 2; RL 1945, §9758; RL 1955, §219-19; am L 1959, c 169, §2; HRS §607-20; am L 1998, c 310, §2