

ACT No. 37

2022 Regular Session

HOUSE BILL NO. 172

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact R.S. 9:2061, relative to revocable trusts; to provide for the duties of the trustee to the settlor; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2061 is hereby amended and reenacted to read as follows:

§2061. General rule

The nature and extent of the duties and powers of a trustee are determined from the provisions of the trust instrument, except as otherwise expressly provided in this Code, and, in the absence of any provisions of the trust instrument, by the provisions of this Part and by law. Unless the trust instrument provides otherwise, the duties of the trustee are owed exclusively to the settlor while a trust is revocable.

Revision Comments - 2022

This revision is consistent with provisions of law in other states, which treat revocable trusts as substitutes for wills and which provide that the trustee's duties are owed not to the beneficiaries but to the settlor while the settlor is alive and the trust is revocable. The Uniform Trust Code provides that "[w]hile a trust is revocable..., rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor." Unif. Trust Code § 603(a); Restatement (Third) of Trusts § 74 cmt (e) (2003) ("For as long as, and to the extent that, the trust is revocable by the settlor and the settlor is legally competent, the settlor may enforce the trust on behalf of all the beneficiaries, and the trustee's duties are owed primarily to the settlor, or solely to the settlor insofar as the rights of other beneficiaries are preempted by the conduct of the settlor."). Other provisions of the Louisiana Trust Code contain specific examples of this principle. See, e.g., R.S. 9:2088(A) ("If the trust is revocable, the trustee has a duty to account to the settlor only.").

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____