

CHAPTER 121

(HB 104)

AN ACT relating to trusts and estates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 386B.10-050 is amended to read as follows:

- (1) ***For the purposes of this section, a "report" is an account statement or other form of written disclosure made by the trustee to the beneficiary.***
- (2) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.
- ~~(3)(2)~~ A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.
- ~~(4)(3)~~ If subsection ~~(2)(1)~~ of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust shall be commenced within five (5) years ***of discovery of an injury by a trustee to the rights of the beneficiary***~~[after the first to occur of:]~~
 - ~~(a) — The removal, resignation, or death of the trustee;~~
 - ~~(b) — The termination of the beneficiary's interest in the trust; or~~
 - ~~(c) — The termination of the trust.~~

➔Section 2. KRS 386B.8-180 is amended to read as follows:

- (1) (a) When a trust terminates pursuant to the terms of the trust,~~[and within a reasonable amount of time after such termination,]~~ the trustee ***may follow the requirements for distribution upon termination as provided in KRS 386B.8-170 or, if proceeding under this section, within a reasonable amount of time after such termination, the trustee*** ~~;~~
 - ~~1. —]shall provide to the qualified beneficiaries a statement showing the fair market value of the net assets to be distributed, a trust accounting for the prior five (5) years and an estimate for any items reasonably anticipated but not yet received or disbursed, [and the] amount of any fees, including trustee fees, remaining to be paid, and notice that the trust is terminating. The trustee~~ ~~;~~ and
 - ~~2. —]may also provide such statement and notice to any other person whom the trustee reasonably believes may have an interest in the trust.~~
- (b) ***If, after receiving the notice and trust information described in paragraph (a) of this subsection, a qualified beneficiary objects to an action or omission disclosed, he or she shall provide written notice of the objection to the trustee within forty-five (45) days of the notice having been sent by the trustee. If no written objection is provided within the forty-five (45) day time period, the information provided pursuant to paragraph (a) of this subsection shall be considered approved by the recipient and the trustee shall, within a reasonable period of time following the expiration of such period, distribute the assets as provided in the trust. If the trustee receives a written objection within the applicable forty-five (45) day time period, [within forty five (45) days after sending the statement and notice unless within such time the trustee has received an objection in writing from a person receiving notice, in which case] the trustee may:***
 1. ***Submit the written objection to***~~[file an accounting with]~~ the District Court ***for resolution*** and charge the expense of ***commencing*** such a proceeding~~[accounting]~~ to the trust; ***or***
 2. ***Resolve the objection with the qualified beneficiary, whether by non-judicial settlement agreement or otherwise. Any agreement entered into pursuant to this paragraph may include a release, an indemnity clause, or both on the part of the beneficiary against the trustee relating to the trust. If the parties agree to a non-judicial settlement agreement, any related expenses shall be charged to the trust.***

Upon a resolution of an objection pursuant to subparagraph 1. or 2. of this paragraph, within a reasonable period of time thereafter the trustee shall distribute the remaining trust assets as provided in the trust.

- (c) The trustee may rely upon the written statement of a person receiving notice that such person does not object.
- (2) (a) When a trustee is removed or resigns pursuant to the terms of the trust, ~~and within a reasonable time after such removal or resignation,~~ the trustee *may follow the requirements for distribution upon termination as provided in KRS 386B.8-170 or, if proceeding under this section, the trustee, within a reasonable time after such removal or resignation, ~~;~~*

~~1.~~ shall provide to the successor trustee a statement showing the net assets to be distributed, *a trust accounting for the prior five (5) years, an estimate for any items reasonably anticipated but not yet received or disbursed, ~~and~~ the amount of any fees, including trustee fees, remaining to be paid, and notice that the trustee has *resigned or* been removed ~~;~~ ~~and~~*

~~1.~~ *The trustee*

~~2.~~ may *also* provide such statement and notice to any other person whom trustee reasonably believes may have an interest in the trust.

- (b) *Any person provided notice and trust information as described in paragraph (a) of this subsection who objects to an action or omission disclosed, shall provide written notice of the objection to the trustee within forty-five (45) days of the notice having been sent by the trustee. If no written objection is provided within the forty-five (45) day time period, the information provided pursuant to paragraph (a) of this subsection will be considered approved, and the trustee shall, within a reasonable period following the expiration of such forty-five (45) day period, ~~The trustee shall~~ distribute the assets to the successor trustee. *If the trustee receives a written objection within the applicable forty-five (45) day time period, the* ~~within forty five (45) days after sending the statement and notice unless within such time the trustee has received an objection in writing from a person receiving notice, in which case~~ trustee may: ~~;~~*

1. *Submit the written objection to* ~~file an accounting with~~ the District Court *for resolution* and charge the expense of *commencing* such a *proceeding* ~~accounting~~ to the trust; *or*
2. *Resolve the objection with the opposing party, whether by non-judicial settlement agreement or otherwise. Any agreement entered into pursuant to this paragraph, may include a release, an indemnity clause, or both on the part of the opposing party against the trustee relating to the trust. If the parties agree to a non-judicial settlement agreement, any related expenses shall be charged to the trust.*

Upon a resolution of any objection raised by an opposing party pursuant to subparagraphs 1. or 2. of this paragraph, within a reasonable period of time thereafter the trustee shall distribute the remaining trust assets as provided in the trust.

- (c) The trustee may rely upon the written statement of a person receiving notice that such person does not object.
- (3) When a trustee distributes assets of the trust pursuant to subsection (1) or (2) of this section, the limitations in KRS 386B.6-040 and 386B.10-050 are waived by each person who received notice and either consented or failed to object *pursuant to* ~~the under~~ this section, and any such person is barred from bringing a claim against the trustee for breach of trust *or challenging the validity of the trust, to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account.*
- (4) Notice provided under subsection (1) or (2) of this section shall clearly warn of the impending bar of claims against a trustee under KRS 386B.6-040 and 386B.10-050 that will result if an objection is not timely made.
- (5) *No trustee trust shall request that any beneficiary indemnify the trustee against loss in exchange for the trustee forgoing a request to the court to approve its accounts at the time the trust terminates or at the time the trustee is removed or resigns, except as agreed upon by the parties pursuant to paragraph (b)1. or 2. of subsections (1) and (2) of this section.*
- ~~(6)(5)~~ The District Court shall have exclusive jurisdiction over matters under this section.

➔ Section 3. KRS 413.120 is amended to read as follows:

The following actions shall be commenced within five (5) years after the cause of action accrued:

- (1) An action upon a contract not in writing, express or implied.
- (2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.
- (3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.
- (4) An action for trespass on real or personal property.
- (5) An action for the profits of or damages for withholding real or personal property.
- ~~(6) An action for an injury by a trustee to the rights of a beneficiary of a trust.~~
- ~~(6)(7)~~ An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.
- ~~(7)(8)~~ An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.
- ~~(8)(9)~~ An action to enforce the liability of a steamboat or other vessel.
- ~~(9)(10)~~ An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.
- ~~(10)(11)~~ An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.
- ~~(11)(12)~~ An action for relief or damages on the ground of fraud or mistake.
- ~~(12)(13)~~ An action to enforce the liability of bail.
- ~~(13)(14)~~ An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

➔Section 4. KRS 413.130 is amended to read as follows:

- (1) In every action upon a merchants' account as described in subsection ~~(9)(10)~~ of KRS 413.120, the limitation shall be computed from January 1 next succeeding the respective dates of the delivery of the several articles charged in the account. Judgment shall be rendered for no more than the amount of articles actually charged or delivered within five (5) years preceding that in which the action was brought. If any merchant willfully postdates any article charged in such account, or the receipt for the delivery of it, he shall forfeit ten (10) times the amount of the article postdated, to be credited against the account. This credit shall be allowed in an action on the account, without any written pleadings setting it up.
- (2) In an action to recover a balance due upon a mutual open and current account concerning the trade of merchandise between merchant and merchant or their agents, as described in subsection ~~(10)(11)~~ of KRS 413.120, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.
- (3) In an action for relief or damages for fraud or mistake, referred to in subsection ~~(11)(12)~~ of KRS 413.120, the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake. However, the action shall be commenced within ten (10) years after the time of making the contract or the perpetration of the fraud.

➔Section 5. The following KRS section is repealed:

413.340 Exceptions as to chapter.

Signed by Governor April 3, 2015.