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It's None of Your Business…Or Is It? A Look at the Illinois Trust Code Accounting Provisions

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Having a trust allows for privacy, right? This may not be the case with Illinois' default accounting provisions in the recently enacted Illinois Trust Code.

If you practice in the trusts and estates area, it is no news that the new Illinois Trust Code ("ITC") became effective on January 1, 2020, which repealed and replaced the Trust and Trustees Act. By in large, the ITC codified much of the case law related to trusts in Illinois. On the other hand, significant changes the ITC brought were the duties of a trustee to inform and account. One thing that draws individuals to create a trust is the privacy it allows. Discussing money can be a taboo subject, and providing friends and loved ones with a detailed list of our assets can be the cause of unrest. Under the ITC, settlors of a trust may be giving up some of their privacy, as the beneficiaries could be entitled to additional information and accountings.

Sections 813.1 and 813.2 of the ITC governs a trustee's duty to inform and account.[1] When the trust became irrevocable and when a trustee accepts office is the determining factor in which section applies.[2] For revocable trusts: If the trustee began acting before January 1, 2020, section 813.2 applies.[3] If the trustee began acting after January 1, 2020, section 813.1 applies.[4] For irrevocable trusts: If the trust was irrevocable before January 1, 2020, section 813.2 applies.[5] If the trust became irrevocable after January 1, 2020, section 813.1 applies.[6] Section 813.2, by in large, mirrors the requirements of the Trust and Trustees Act. The significant changes come with section 813.1, as it expands the notice requirements of the trustee, as well as the class of beneficiaries entitled to such notice.[7]

As mentioned, the ITC expands the classes of beneficiaries entitled to receive notice. Under section 813.1(b)(1), a trustee is required to provide qualified beneficiaries with the following: notice of the trust's existence, the beneficiary's right to request a complete copy of the trust document, and whether the beneficiary has the right to receive or request trust accountings.[8] This notice must be provided within ninety (90) days of the trust becoming irrevocable.[9] Furthermore, upon the request of a qualified beneficiary, a trustee must provide the beneficiary with a complete copy of the trust.[10] A qualified beneficiary under the ITC is defined as: "A beneficiary who, on the date the beneficiary's qualification is determined and assuming nonexercised of powers of appointment: (1) is a Distributee or Permissible Distributee of trust income or principal; (2) would be a Distributee or Permissible Distributee of trust income or principal if the interests of the Distributees described in subparagraph (1) terminated on that date without causing the trust to terminate; or (3) would be a Distributee or Permissible Distributee of trust income or principal if the trust terminated on that date."[11] That definition can be difficult to digress, but in other words, and for practical purposes, qualified beneficiaries includes current beneficiaries and remainder beneficiaries (*not including presumptive remainder beneficiaries*).

Another default rule in the ITC is the duty of a trustee to send an annual accounting to all current beneficiaries, as well as presumptive remainder beneficiaries, which includes a list of the trust assets, as well as receipts and disbursements.[12] This is a significant change from the Trust and Trustees Act, as under prior Illinois law, remainder beneficiaries had no right to accountings until their interest in the trust was realized, and in my opinion is one of the most significant changes to from prior law.

In addition to the expansion of who may be entitled to accountings, the ITC expands the definition of accounting. Trust accounting is defined by the ITC in Section 103(38) as:

> "…[O]ne or more written communications from the trustee with respect to the accounting year that describe: (A) the trust property, liabilities, receipts, and disbursements, including the amount of the trustee's compensation; (B) the value of the trust assets on hand at the close of the accounting period, to the extent feasible; and (C) all other material facts related to the trustee's administration of the trust."[13]

Those who have executed a revocable living trust prior to January 1, 2020 are not "in the clear" when it comes to the notice requirements set out in section 813.1. For revocable living trusts executed prior to January 1, 2020, the section 813.2 standard applies until a new trustee accepts appointment at which time the successor trustee thereafter must follow the new ITC standard set out in section 813.1.

This means that unintended individuals will be required to receive accountings. Do you think your clients want their children or grandchildren to receive accountings throughout your client's lifetime? What about an ex-spouse? In my experience, the overwhelming response from clients is "no." The good news is that this is a requirement that can be drafted out of a trust. With the exception of the rules in section 105 of the ITC, which are mandatory rules, the terms of the trust will override the default rules ITC.[14] That being said, with the exception of the aforementioned mandatory rules, the ITC provisions only apply where the terms of the trust are silent. This presents a great opportunity to review client's existing estate planning documents and educate them on the implications of this new law.■

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1. See 760 ILCS 3/813.1, 813.2.
2. *Id.*
3. 760 ILCS 3/813.2(a).
4. 760 ILCS 3/813.1(a).
5. 760 ILCS 3/813.2(a).
6. 760 ILCS 3/813.1(a).
7. 760 ILCS 3/813.1(b).
8. 760 ILCS 3/813.1(b)(1)-(8).
9. 760 ILCS 3/813.1(b)(C)(i).
10. 760 ILCS 3/813.1(b)(1)(6).
11. 760 ILCS 3/105(30).
12. 760 ILCS 3/813.1(b)(2)-(4).
13. 60 ILCS 3/105(38).
14. See 760 ILCS 3/105.