

PROPERTY CODE
TITLE 9. TRUSTS
SUBTITLE C. MISCELLANEOUS TRUSTS
CHAPTER 123. ATTORNEY GENERAL PARTICIPATION IN PROCEEDINGS
INVOLVING CHARITABLE TRUSTS

Sec. 123.001. DEFINITIONS. In this chapter:

(1) "Charitable entity" means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

(2) "Charitable trust" means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.

(3) "Proceeding involving a charitable trust" means a suit or other judicial proceeding the object of which is to:

(A) terminate a charitable trust or distribute its assets to other than charitable donees;

(B) depart from the objects of the charitable trust stated in the instrument creating the trust, including a proceeding in which the doctrine of cy-pres is invoked;

(C) construe, nullify, or impair the provisions of a testamentary or other instrument creating or affecting a charitable trust;

(D) contest or set aside the probate of an alleged will under which money, property, or another thing of value is given for charitable purposes;

(E) allow a charitable trust to contest or set aside the probate of an alleged will;

(F) determine matters relating to the probate and administration of an estate involving a charitable trust; or

(G) obtain a declaratory judgment involving a charitable trust.

(4) "Fiduciary or managerial agent" means an individual, corporation, or other entity acting either as a

trustee, a member of the board of directors, an officer, an executor, or an administrator for a charitable trust.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987.

Amended by Acts 1995, 74th Leg., ch. 172, Sec. 2, eff. Sept. 1, 1995.

Sec. 123.002. ATTORNEY GENERAL'S PARTICIPATION. For and on behalf of the interest of the general public of this state in charitable trusts, the attorney general is a proper party and may intervene in a proceeding involving a charitable trust. The attorney general may join and enter into a compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987.

Sec. 123.003. NOTICE. (a) Any party initiating a proceeding involving a charitable trust shall give notice of the proceeding to the attorney general by sending to the attorney general, by registered or certified mail, a true copy of the petition or other instrument initiating the proceeding involving a charitable trust within 30 days of the filing of such petition or other instrument, but no less than 25 days prior to a hearing in such a proceeding. This subsection does not apply to a proceeding that is initiated by an application that exclusively seeks the admission of a will to probate, regardless of whether the application seeks the appointment of a personal representative, if the application:

(1) is uncontested; and

(2) is not subject to Subchapter C, Chapter 256, Estates Code.

(b) Notice shall be given to the attorney general of any pleading which adds new causes of action or additional parties to a proceeding involving a charitable trust in which the attorney general has previously waived participation or in which the attorney general has otherwise failed to intervene. Notice shall be given by sending to the attorney general by registered or certified mail a true copy of the pleading within 30 days of the

filing of the pleading, but no less than 25 days prior to a hearing in the proceeding.

(c) The party or the party's attorney shall execute and file in the proceeding an affidavit stating the facts of the notice and shall attach to the affidavit the customary postal receipts signed by the attorney general or an assistant attorney general.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987.

Amended by Acts 1995, 74th Leg., ch. 172, Sec. 3, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1017 (H.B. 934), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 15, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.061, eff. September 1, 2017.

Sec. 123.004. VOIDABLE JUDGMENT OR AGREEMENT. (a) A judgment in a proceeding involving a charitable trust is voidable if the attorney general is not given notice of the proceeding as required by this chapter. On motion of the attorney general after the judgment is rendered, the judgment shall be set aside.

(b) A compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust is voidable on motion of the attorney general if the attorney general is not given notice as required by this chapter unless the attorney general has:

(1) declined in writing to be a party to the proceeding; or

(2) approved and joined in the compromise, settlement agreement, contract, or judgment.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987.

Sec. 123.005. BREACH OF FIDUCIARY DUTY: VENUE; JURISDICTION. (a) Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust shall be a

court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. To the extent of a conflict between this subsection and any provision of the Estates Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this subsection controls.

(b) A statutory probate court of Travis County has concurrent jurisdiction with any other court on which jurisdiction is conferred by Section 32.001, Estates Code, in a proceeding brought by the attorney general alleging breach of a fiduciary duty with respect to a charitable trust created by a will that has been admitted to probate.

Added by Acts 1987, 70th Leg., ch. 147, Sec. 4, eff. Sept. 1, 1987.
Amended by Acts 1995, 74th Leg., ch. 172, Sec. 4, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 133 (S.B. 918), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 12(g), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 401 (S.B. 587), Sec. 1, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.062, eff. September 1, 2017.

Sec. 123.006. ATTORNEY'S FEES. (a) In a proceeding subject to Section 123.005, the attorney general, if successful in the proceeding, is entitled to recover from the charitable entity or fiduciary or managerial agent of the charitable trust actual costs incurred in bringing the suit and may recover reasonable attorney's fees.

(b) In a proceeding in which the attorney general intervenes under this chapter, other than a proceeding subject to Section 123.005, a court may award the attorney general court costs and reasonable and necessary attorney's fees as may seem equitable and just.

Added by Acts 2009, 81st Leg., R.S., Ch. 133 (S.B. 918), Sec. 2,

eff. September 1, 2009.