



BUYNAK LAW FIRM

Modifications and Revocations of Revocable Trusts

The wording of your revocable Trust dictates the methods by which it can be modified or revoked. It is important that you follow your initial modification and revocation provisions in your Trust. If not, your change will not be effective.

This requirement to comply with your own Trust's dictates seems obvious but for decades, courts have allowed modifications and revocations even if they did not comply with a trust's provisions – usually these changes had to be notarized, and were not. This approach by the courts was called the “Statutory Method”. But Probate Code, Section 15401 has a sentence that states use the Statutory Method “**unless the Trust instrument provides otherwise**”. This means that the Statutory Method could not be used if the Trust itself required another method for modification and/or revocation of the Trust, even for the original Settlor. In spite of this sentence, numerous courts allowed everyone to rely upon the Statutory Method and discard any other requirement that the Trustee had imposed on himself/herself. Now, however, the California Supreme Court in *Haggerty v. Thorton* (2024) 15 Cal.5th 729 clarified this “deviation” and ruled that the Trust's language controls. If the Trust has certain requirements for modification or revocation, these requirements must be honored. After all, this is the Settlor's desire, even if the Settlor himself or herself did not follow their own instructions.

Takeaways:

(1) Initial Provisions. Pay attention to the modification and revocation provisions of your revocable trust – make sure that they are perfect for you; they are some procedures you want – dating the changes, having a notary or not, having other approvals (like the Special Trustees or other individuals close to you).

AND

(2) Follow Your Provisions. Review these provisions for modification and revocation of your revocable trust when you review your estate planning regularly. Our Estate Planning Review Program suggests a review every 2-3 years. We work with you, initially free of charge, to make sure your estate planning is accurate. And follow the provisions/procedures you set forth; in making changes OR change the procedure by doing a change under the way you previously elected.

AND

(3) Trustee's Requirements. Trustees administering a Trust are bound by **valid** provisions of their Trust – make sure that modifications and revocations are valid and follow the valid provisions in your distributions. Sometimes, you might consider court approvals if you, as Trustee, cannot adhere to the modification or revocation procedure that the Settlor was to follow, forgot, etc.

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