

SEPTEMBER 26, 2011

Governor Signs Amendment to California Professional Fiduciaries Act

California's Governor signed AB 997 into law on September 26, 2011. AB 997 amends the California Professional Fiduciaries Act (the "Act"), which provides for the licensing and regulation of professional fiduciaries via the Department of Consumer Affairs.

Prior law. The Act defined professional fiduciaries to include a person who serves as trustee for more than three individuals. Certain exemptions applied, under which trust companies, banks, attorneys, CPAs and others did not have to register. The Act had been interpreted as applying to charities who served as trustee of charitable remainder trusts and other planned giving trusts. As the charity itself could not register, the regulations implementing the Act required the individuals responsible for carrying out the trustee functions for the charity to register or qualify under one of the exemptions. Many charities struggled with determining whether their employees and agents who "perform the functions of" trusteeship qualified for an exemption or had to register.

Push for charity exemption. There has been a concerted effort to secure an exemption for charities, led by the Association of Independent California Colleges and Universities, the Northern California Planned Giving Council, and others. The effort ran into some resistance in 2010, but was renewed in 2011 with the introduction of AB 997.

Amendment excepting certain charities. The AB 997 amendment excludes from the definition of "professional fiduciary" any nonprofit corporation or charitable trust that is (a) described in Internal Revenue Code section 501(c)(3), (b) is a public charity, (c) has been in existence for at least five years, (d) has net assets of at least \$2 million, and (e) is acting as trustee for charitable remainder trusts, charitable lead trusts, pooled income funds, and/or certain pre-1969 trusts. The exemption also covers the employees and agents of qualifying charities.

This is great news. Note, however, that not all charities which act as trustee are exempted from registering – if the charity does not satisfy the criteria summarized in (a) through (d) above, or serves as trustee of more than three trusts not described in (e) above, it may still need to register.

The legislative update is posted [here](#).

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