
Longmeyer Exposes (or Creates) Uncertainty About the Duty to Inform Remainder Beneficiaries of a Revocable Trust

by Turney P. Berry, *Louisville, Kentucky*
David M. English, *Columbia, Missouri*, and
Dana G. Fitzsimons, Jr., *Richmond, Virginia**

Editor's Synopsis: This article discusses the surprising Longmeyer decision, handed down by the Supreme Court of Kentucky earlier this year, in which a predecessor trustee was held to have a duty to give certain notifications to former remainder beneficiaries of a revocable trust. The authors then examine how Longmeyer might have been decided in other states and under other statutory schemes. The article concludes with observations concerning when certain notices to trust beneficiaries may be conducive to effective trust administration and suggestions to those who administer trusts on how best to comply with beneficiary notice requirements.

The Decision

In *J. P. Morgan Chase Bank, N.A. v. Longmeyer*,¹ a trustee of a revoked trust, suspecting that a settlor may have been unduly influenced, informed certain charities that the settlor had revoked the trust under which they had been named as beneficiaries. The charities thereupon brought an action to invalidate the revocation and a new trust executed by the settlor on grounds of undue influence, which case was settled for a large cash payment. The trustee of the successor trust then sued the trustee of the predecessor trust, arguing that the predecessor trustee was personally liable for the settlement amount because the notification of the charitable beneficiaries was a breach of trust and that had the charitable beneficiaries not been notified, no settlement payment would have been necessary.

The Kentucky Supreme Court ruled in favor of the predecessor trustee. The court not only held that the predecessor was protected from liability for giving the notice, but more broadly ruled that the predecessor trustee had an affirmative duty to inform the remainder beneficiaries of their removal. Although the opinion

does not define “living trust,” the case concerned and the court’s opinion focused on the use of a revocable trust used as a will substitute. The court’s rationale was simple and direct—the Kentucky statute requiring a trustee to “keep the beneficiaries of the trust reasonably informed of the trust and its administration”² did not provide any limitations on that duty nor, contrary to the views of many if not the great majority of trust practitioners, any carve-out for revocable trusts.

In reaching its decision, the court recognized that its opinion was contrary to “modern trends” in the law, referring to various provisions of the Uniform Trust Code, which has not yet been enacted in Kentucky.³ The relevant Kentucky statute in this case had instead been selectively drawn from the much older trustee notice provision of the Uniform Probate Code.⁴ The Court was well-aware, although seemingly not at all concerned, that its ruling would come as a surprise to many and run contrary to the general understanding of trust law and revocable trusts:

In fact, many laypersons who create revocable living trusts as will substitutes might be shocked to learn that a trustee has a duty to inform contingent beneficiaries of their potential interests, given the understanding of many settlors that so long as they are living and competent the trust assets remain essentially under their control and that they may freely change their mind about beneficiaries’ interests. But if our trust statutes are out of touch with modern policy or with the expectations of today’s community, it is the legislature’s task to amend the statutes, not this Court’s role to re-write them.⁵

¹ 275 S.W.3d 697 (Ky. 2009).

² KY. REV. STAT. § 386.715.

³ 275 S.W.3d at 701-02 & n. 9

⁴ 275 S.W.3d at 701 n. 8 (discussing Unif. Prob. Code § 7-303).

⁵ 275 S.W.3d at 702 (footnote omitted).