



California Supreme Court Clarifies Trust Amendment Standards

A California litigator's framework for navigating exclusivity, delivery, and intent after Haggerty is presented.

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California Supreme Court's landmark decision in *Haggerty v. Thornton* has brought long-awaited clarity to the state's trust amendment procedures, while simultaneously opening new avenues for legal interpretation and dispute. By ruling that statutory amendment methods remain available unless a trust explicitly declares its own procedure exclusive, the court has resolved a longstanding split in California law.

California's trust law has long been unsettled on a deceptively simple question: When a revocable trust includes its own amendment procedure, must that method be followed to the letter, or may a settlor still rely on the statutory procedure in Probate Code [§15401](#) and [§15402](#)? That question divided the courts of appeal for years until the state Supreme Court answered it in *Haggerty v. Thornton*, (2024) [15 Cal.5th 729](#), 740–741, holding that the statutory procedure continues to apply unless the trust instrument unmistakably makes its own method the sole avenue for amendment. But while *Haggerty* brought long-needed clarity, it also left litigators with fresh battlegrounds: What counts as “exclusive,” how does “delivery” work when the settlor is also the trustee, and a court may ever uphold an amendment that reflects clear intent but is imperfect in compliance.

What *Haggerty* Decided

In *Haggerty v. Thornton*, the California Supreme Court resolved the split created by [King v. Lynch](#) and [Pena v. Dey](#) by siding with the flexible approach. The court held that, unless a trust instrument clearly displaces the statutory framework by declaring its own procedure *exclusive*, a settlor may amend a trust under Probate Code [§15401\(a\)\(2\)](#), as incorporated into [§15402](#). In other words, a

settlor may still rely on the statutory procedure—executing and delivering a signed writing to the trustee—unless the trust unmistakably restricts amendments to its own stated method.

Haggerty thus clarified three key points. First, where the trust expressly declares its method of amendment to be *exclusive*, that method must be strictly followed, consistent with *King v. Lynch*. Second, where no such exclusivity exists, a settlor may amend by any method permitted under §15401(a), consistent with *Pena v. Dey*'s more flexible reasoning. Third, both *King* and *Pena* were limited to their facts: *King* applies when exclusivity is explicit, while *Pena* applies when the clause is nonexclusive but the statutory formalities—particularly delivery—are satisfied.

The trust in *Haggerty* contained its own amendment clause requiring a signed, notarized writing delivered to the trustee. Because the settlor, who was also the acting trustee, executed a handwritten amendment that satisfied the statutory fallback (a signed writing delivered to the trustee) but not the notarization requirement, the court had to decide whether the statutory method remained available and concluded that it did. Because the trust did not declare its procedure to be the *exclusive* means of amendment, the statutory fallback remained valid. The court emphasized that unmistakable language such as “only by,” “exclusively,” or “no other method shall be effective” is required to displace the statutory alternative. Absent such exclusivity, a settlor may rely on §15401.

The *Haggerty* holding harmonizes California law with the Restatement (Third) of Trusts and the [Uniform Trust Code](#) (UTC), both of which preserve statutorily authorized methods of amendment unless the trust instrument expressly makes its own method exclusive.

Emerging Questions After *Haggerty*

Haggerty resolved California's long-standing split over trust-amendment procedures, confirming that statutory methods under Probate Code §15401 remain available unless the trust clearly makes its own procedure exclusive. Instead of resolving doctrinal uncertainty, *Haggerty* has opened a new frontier of evidentiary and

interpretive gray areas, issues that will shape the next generation of trust-amendment litigation. The following are likely to become recurring battlegrounds:

- **What counts as exclusivity?**

The court gave examples of explicit exclusivity (“only by,” “exclusive method”) but did not address whether mandatory language such as “shall” or “must” is sufficient to displace the statute. Many trusts drafted before *Haggerty* use precisely this kind of directive language without stating exclusivity outright, leaving trial courts to decide whether such wording rises to the level of exclusivity or merely prescribes a method without foreclosing alternatives.

- **Delivery when the settlor is also the trustee.**

Section 15401 requires that an amendment be “delivered to the trustee.” When the settlor and trustee are the same person, does possession of the amendment by the settlor suffice, or must there be an additional act evidencing delivery? *Haggerty* acknowledged the delivery requirement but did not provide a definitive answer. In *Cockerell v. Title Ins. & Trust Co.*(1954) [42 Cal.2d 284](#), the Supreme Court emphasized that delivery requires an objective act manifesting intent to transfer, not merely retention of the document by its maker. The case arose in the context of a deed of gift, but its reasoning—that delivery must be shown by conduct evidencing relinquishment of control—has been cited in trust and contract contexts alike. Older authority, such as *Cockerell* (1954) 42 Cal.2d 284, 292, suggested that mere possession might not be enough. Until the appellate courts weigh in, litigators should be prepared to argue both formality-based interpretations (strict delivery required) and intent-based interpretations (possession equals delivery).

- **Substantial compliance and settlor intent.**

The decision does not resolve whether a court may uphold an amendment that reflects clear intent but imperfect compliance with an exclusive clause. For example, if the trust requires notarization and delivery, and the settlor signs and notarizes the amendment but fails to “deliver” it to himself as

trustee, can a court still give effect to the amendment? *Haggerty* offers no guidance. Litigators may analogize the Probate Code's harmless-error doctrine for wills (§6110(c)(2)), but there is no statutory counterpart for trust amendments. Courts could import that reasoning, or they could insist on strict compliance when exclusivity is declared.

- **Interaction with pre-*Haggerty* case law.**

Opinions such as *King v. Lynch*, (5th Dist. 2012) 204 Cal.App.4th 1186, and *Pena v. Dey* (3d Dist. 2019), 39 Cal.App.5th 546, remain on the books, but their reasoning has been limited. *King v. Lynch* took a strict view of amendment formalities, holding that a trust amendment not executed in precise conformity with the method specified in the trust instrument was invalid. By contrast, *Pena v. Dey* adopted a more flexible approach, reasoning that where the trust's amendment clause is not expressly exclusive, a settlor may amend through any method permitted under Probate Code §15401(a), even if it does not strictly conform to the trust's own procedure. Nevertheless, the court ultimately found the amendment invalid because the settlor's handwritten interlineations, made while acting as both settlor and trustee, were never delivered to the trustee as required by statute, and mere possession of the altered document did not satisfy the delivery requirement. Litigators must be ready to distinguish or reconcile these precedents in trial briefs, particularly when facing judges familiar with older authority. Citing their district origin is especially important, as *Haggerty* explicitly resolved a district split.

Practical Drafting Notes

Although *Haggerty* is primarily a litigators' case, its consequences begin at the drafting table. The opinion underscored that clarity in language prevents later evidentiary fights over delivery and intent. Many amendment contests could be avoided if trust instruments stated more clearly whether their amendment procedures are exclusive. For litigators, understanding the difference is crucial: a single word like "only" can decide the case.

- **Exclusive Amendment Clause**

“This Trust may only be amended by an instrument in writing, signed by the settlor, acknowledged before a notary public, and delivered to the trustee. No other method shall be effective.” A clause like this forecloses application of the statutory alternative in Probate Code §15401. If the settlor fails to follow the prescribed steps, under the holding in *Haggerty*, the amendment is invalid even if intent is clear. Litigators should quote this language verbatim in pleadings and be prepared to argue strict compliance because courts will construe any ambiguity against exclusivity. Explicit words like ‘only’ or ‘no other method’ eliminate later factual disputes over intent or delivery.

- **Non-Exclusive Clause**

“This Trust may be amended by a written instrument signed by the settlor and delivered to the trustee.” Without exclusivity language, this clause does not eliminate the statutory fallback. A settlor may still amend by a signed writing delivered to the trustee under §15401(a)(2), even if the amendment does not track the instrument’s procedure. Litigators defending an amendment should highlight the absence of exclusivity and tie their argument directly to *Haggerty*. Such a clause minimizes litigation risk by channeling later disputes into questions of fact, proof of signing, delivery, and intent, rather than threshold issues of validity.

- **Challenging or Defending Clause**

When challenging or defending an amendment clause, always quote the clause verbatim in your petition or response. Do not paraphrase. Courts want to see the exact words whether they say “shall,” “must,” or “only” because a single modifier determines whether the statutory fallback survives.

- **Discovery Strategy**

If the case turns on exclusivity, request drafting history from the estate planning attorney’s file. Some practitioners used boilerplate forms that were never intended to foreclose statutory methods. Showing that the language was routine or ambiguous may help persuade a court not to treat it as

exclusive.

- **Settlement Leverage**

Ambiguity over exclusivity can create settlement pressure. If both sides face risk on whether the clause forecloses statutory methods, raising *Haggerty*'s emphasis on "express" exclusivity can drive compromise before trial.

- **Boilerplate Language**

Older trusts often contain amendment clauses copied verbatim from form books or drafting software. These clauses may look mandatory but lack words of exclusivity. Litigators should always investigate whether the same drafting attorney or firm used identical language in other instruments; if so, that history can support an argument that the clause was never intended to foreclose statutory methods. Because such comparisons often raise work product or privilege concerns, litigators should tailor discovery requests carefully. Useful sources include public probate filings involving the same drafting attorney, subpoenas to third-party custodians such as financial institutions or notaries, and deposition questioning of witnesses familiar with the drafting practices (rather than seeking privileged client files). Requests can also target exemplars or templates maintained by the drafting firm, which may be discoverable if used across clients as standard form language rather than individualized legal advice.

Cross-Jurisdictional Spotter's Guide

California is not alone in balancing statutory flexibility against trust-instrument formalities. A comparison with neighboring states highlights both parallels and contrasts, giving litigators persuasive authority and cautionary lessons. As California practitioners navigate the evidentiary nuances left open by *Haggerty*, a look at neighboring jurisdictions reveals how other states balance the same tension between procedural formality and proof of intent.

Arizona. Arizona's statute, [A.R.S. §14-10602\(C\)](#), closely mirrors California's post-*Haggerty* rule. It provides that a settlor may amend or revoke a trust by substantial compliance with a method stated in the trust. If the trust does not make its method exclusive, other

signed writings that clearly manifest intent are also effective. In practice, Arizona courts, like California courts after *Haggerty*, permit the statutory fallback unless exclusivity is unmistakably expressed. For litigators, Arizona offers persuasive authority that modern trust law favors settlor intent over technical formality.

Nevada. Nevada takes a more formalistic approach. Under [Nevada Revised Statutes Chapter 163](#), particularly §163.540, amendments often require judicial involvement when the trust does not expressly authorize amendment or when reserved power is imperfectly exercised. In such cases, the settlor (or beneficiaries after death) may need to petition the court, with notice and a hearing. This regime illustrates what California avoided: a system where settlor intent can be frustrated by procedural hurdles and court approval requirements, even when the intent to amend is plain.

Restatement and UTC. Both the Restatement (Third) of Trusts and the UTC (§602(c)) adopt essentially the same rule endorsed in *Haggerty*: Statutory procedures remain in force unless the trust unmistakably forecloses them by prescribing an exclusive method. California's Supreme Court thus aligned the state with national authority, modernizing its law and reinforcing settlor intent as the guiding principle.

Taken together, these comparisons underscore California's middle ground. Like Arizona and the UTC, California preserves the statutory fallback unless exclusivity is unmistakably declared. Unlike Nevada, it avoids channeling routine amendments into judicial proceedings. For practitioners, the message is clear: *Haggerty* was not simply a local clarification but a step toward national consistency while still leaving exclusivity clauses as decisive battlegrounds.

Takeaways

Haggerty v. Thornton brought long-needed clarity to an area of California trust law riddled with inconsistency. By holding that the statutory procedure for amendment remains available unless the trust expressly makes its own method exclusive, the California Supreme Court aligned the state with the Restatement and the UTC, while rejecting rigid readings that invalidated amendments on

purely technical grounds.

But *Haggerty* is not the last word. It leaves unresolved questions about what language truly constitutes exclusivity, whether delivery to oneself as trustee is sufficient, and whether obvious settlor intent can ever overcome imperfect compliance with an exclusive clause. These gray areas are where future litigation will unfold, and where skilled advocacy will shape the law.

For litigators, the lesson is twofold. First, treat every amendment clause as a battleground: quote it verbatim, dissect its language, and build your case around whether exclusivity is clear or ambiguous. Second, anticipate evidentiary fights over delivery, drafting history, and settlor intent—issues that will determine outcomes where *Haggerty* itself provides no answer.

For drafters, the takeaway is simpler: say what you mean. If exclusivity is intended, use unmistakable words. If not, recognize that California law will preserve statutory flexibility. In the end, *Haggerty* resolved a split but preserved the debate. The court closed one chapter of uncertainty, but it also opened a new era in which litigators must navigate the fine line between formality and intent. That tension ensures trust amendment disputes will remain fertile ground for advocacy and that *Haggerty* will shape California probate litigation for years to come.

Relevant Cases and Laws:

- **Haggerty v. Thornton**(2024) 15 Cal.5th 729, 740–741 (confirming that a settlor may amend a trust under Probate Code §15401(a)(2), as incorporated into §15402, unless the trust instrument unmistakably makes its own procedure exclusive).
- **King v. Lynch**(5th Dist. 2012) 204 Cal.App.4th 1186 (adopted a more flexible approach, reasoning that where the trust’s amendment clause is not expressly exclusive, a settlor may amend through any method permitted under Probate Code §15401(a), even if it does not strictly conform to the trust’s own procedure. Nevertheless, the court ultimately found the amendment invalid because the settlor’s handwritten

interlineations, made while acting as both settlor and trustee, were never delivered to the trustee as required by statute, and mere possession of the altered document did not satisfy the delivery requirement. Reasoning in this case is now limited by *Haggerty*).

- **Pena v. Dey**(3d Dist. 2019) 39 Cal.App.5th 546 (invalidating handwritten interlineations where the settlor failed to sign them as required by the trust’s amendment clause. Reasoning limited by *Haggerty*).
- **Cockerell v. Title Ins. & Trust CO.**(1954) 42 Cal.2d 284, 292 (early authority suggesting that mere possession of an amendment by a settlor who is also serving as trustee may not satisfy the delivery requirement).
- **Probate Code §15401(a)(1)** (allows revocation of a trust by the method provided in the trust instrument itself; gives primacy to the instrument’s stated procedure, but only when it is drafted to be exclusive).
- **Probate Code §15401(a)(2)** (provides a statutory default method of revocation: a signed writing delivered to the trustee; this “fallback” procedure remains available unless the trust clearly forecloses it by declaring its own method exclusive).
- **Probate Code §15402** (authorizes modification of a revocable trust by the same methods available for revocation under §15401, unless the trust instrument expressly provides otherwise; this section is the hinge point between statutory flexibility and trust-instrument formalities).
- **Probate Code §6110(c)(2)** (establishes California’s “harmless error” rule for wills, permitting probate courts to excuse defects in execution if intent is clear. No parallel provision applies to trusts, but litigators often analogize to this section when arguing for intent-based enforcement of defective amendments).
- **Restatement (Third) of Trusts §63**(recognizes that a settlor may amend or revoke a trust by following either the method provided in the trust or a statutory method, unless the trust clearly makes its own procedure exclusive. Establishes the

modern default rule later adopted in the UTC and affirmed in *Haggerty*).

- **Uniform Trust Code §602(c)**(provides that a settlor may amend or revoke a trust by substantial compliance with a method stated in the trust but also preserves statutory methods unless the trust expressly makes its own procedure exclusive. Mirrors the approach taken in the Restatement and in *Haggerty*).
- **A.R.S. §14-10602(C)**(Arizona statute providing that a settlor may amend or revoke a trust by substantial compliance with a method set out in the trust, while also allowing other written instruments that clearly manifest intent to be effective. Preserves statutory methods unless the trust expressly makes its own procedure exclusive, closely aligning Arizona with California's post-*Haggerty* rule).
- **NRS §163.540**(Nevada statute requiring judicial involvement when a trust does not clearly authorize amendment or when a settlor's reserved power is not properly exercised. In practice, this means settlors or beneficiaries may need to petition the court for approval, making Nevada's regime more formalistic than California's post-*Haggerty* framework).

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