

CHAPTER 278
FORMERLY
HOUSE BILL NO. 334

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO DECEDENTS' ESTATES AND FIDUCIARY RELATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33, Title 12 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 3330 Construction or interpretation affecting validity under rule against perpetuities, applicability of later-enacted laws, and class determination; effect of survivorship requirement [For application of this section, see 81 Del. Laws, c. 320, § 8]

(c) Notwithstanding Section 8 of Chapter 320 of Volume 81 of the Laws of Delaware, subsection (a) of this section applies as follows:

(1) To wills of decedents dying on or after August 1, 1984.

(2) To trusts becoming irrevocable, whether by the terms of the trust instrument, the death of a person having a power of revocation, or otherwise, on or after August 1, 1984.

(3) To any other governing instruments whenever created.

(d) Subsection (b) of this section applies to governing instruments whenever created.

§ 3338 Nonjudicial settlement agreements [For application of this section, see 79 Del. Laws, c. 172, § 6; 80 Del. Laws, c. 153, § 5; 80 Del. Laws, c. 340, § 2; 81 Del. Laws, c. 149, § 6; 81 Del. Laws, c. 320, § 8].

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the Court of Chancery. With respect to any nonjudicial settlement agreement regarding a trust, the term "interested persons" means all whose interest in the trust would be affected by the proposed nonjudicial settlement agreement, which may include:

(1) Trustees and other fiduciaries;

(2) Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust would vest, without regard to the exercise or nonexercise of any power of appointment, if the present interests in the trust terminated on the date of the nonjudicial settlement agreement; provided, however, that if the trustor is a party to the nonjudicial settlement agreement, and if the nonjudicial settlement agreement alters any beneficial interest in the trust, then the trust beneficiaries are all beneficiaries having an interest in the trust;

(3) The trustor of the trust, if living; and

(4) All other persons having an interest in the trust according to the express terms of the governing instrument (such as, but not limited to, holders of powers of appointment over trust property, holders of powers to remove or appoint fiduciaries or nonfiduciaries with respect to the trust, and persons having other rights, held in a nonfiduciary capacity, relating to trust property).

(d) If the trustor is a party to the nonjudicial settlement agreement, then unless the trustor, or a person acting on behalf of the trustor, confirms in writing that the transfer in trust is an incomplete gift for federal gift tax purposes, the trustor may not represent and bind any beneficiary (other than the trustor) with respect to the nonjudicial settlement agreement, notwithstanding any provision in the governing instrument, or applicable law, that provides that the trustor may represent or bind one or more beneficiaries.

(e) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) The interpretation or construction of the terms of the trust;
- (2) The approval of a trustee's report or accounting;
- (3) The direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) The resignation, removal, or appointment of a trustee and the determination of a trustee's compensation;
- (5) The transfer of a trust's principal place of administration; and
- (6) The liability of a trustee for an action relating to the trust.

~~(e)~~ (f) Any interested person may bring a proceeding in the Court of Chancery to interpret, apply, enforce, or determine the validity of a nonjudicial settlement agreement adopted under this section, including but not limited to determining whether the representation as provided in § 3547 of this title was adequate.

§ 3342 Modification of trust by consent while trustor is living [For application of this section, see 80 Del. Laws, c. 340, § 2; 81 Del. Laws, c. 149, § 6; 81 Del. Laws, c. 320, § 8].

(a) Notwithstanding any provision of law or the trust's governing instrument limiting or prohibiting amendment of the trust, an irrevocable trust may be modified by the addition of a new provision or the modification of any existing provision—so long as such provision could have been included in the governing instrument of a trust were such trust created upon the date of the modification—by written consent or written nonobjection of all of the trust's trustors, all then serving fiduciaries and all beneficiaries having an interest in the trust, regardless of whether the modification may violate a material purpose of the trust; provided, however, that unless the trustor, or a person acting on behalf of the trustor, confirms in writing that the transfer in trust is an incomplete gift for federal gift tax purposes, neither a trustor nor, on behalf of a trustor, a guardian or an agent under a power of attorney, may represent and bind any beneficiary (other than the trustor) with respect to the modification, notwithstanding any provision in the governing instrument, or applicable law, that provides that the trustor may represent or bind one or more beneficiaries. A trustor's power to provide a written consent or written nonobjection to a trust's modification may be exercised: (i) by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust's governing instrument; or (ii) if an agent under a power of attorney is not so authorized, by the guardian of the trustor's property (or similar court-appointed representative) with the approval of the court supervising the guardian (or similar representative).

§ 3343 Authority to allocate trustee duties among multiple trustees.

(a) The power to appoint a successor trustee under a governing instrument shall be deemed to include the power to appoint multiple successor trustees. A presently exercisable power to remove and replace a trustee under a governing instrument shall be deemed to include the power to appoint ~~multiple successor trustees and~~ additional trustees to serve with the current trustee. The power to appoint multiple successor trustees and the power to appoint additional trustees shall be deemed to include the power to allocate various trustee powers (which trustee powers may include the power to direct or prevent certain actions of the trustees) exclusively to 1 or some of the trustees serving from time to time.

(b) All of the provisions of a governing instrument generally applicable to the trustees (including, but not limited to, the provisions regarding trustee qualifications, resignation, removal, standard of care, indemnification, compensation, and the scope and nature of the restrictions, limitations, and immunities applicable when exercising powers and authority) shall apply to trustees appointed under this section so that, for example (but not by way of limitation):

(1) Provisions waiving certain duties when exercising certain investment powers shall apply equally to trustees appointed under this section;

(2) Provisions permitting the removal and replacement of a trustee subject to various limitations and conditions shall apply equally to trustees appointed under this section; and

(3) Provisions proscribing the trustor and trust beneficiaries and persons or entities related or subordinate to the trustor and any trust beneficiary from being eligible to serve as a trustee shall apply equally to proscribe all of those persons from serving as trustees appointed under this section.

(c) ~~Notwithstanding the provisions of subsection (b) of this section, in accordance with § 3313A of this title, a trustee to whom powers have been exclusively allocated under subsection (a) of this section shall be a fiduciary only if an appointment under this section confers upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the powers so allocated, and a trustee excluded from exercising powers shall have no liability for, nor any duty to monitor, the actions of any trustee to whom any such powers, duties, and responsibilities are so allocated.~~ trust, including the power to direct or prevent certain actions of the trustees, then:

(1) The duty and liability of the excluded trustee and the cotrustee holding the power, whether that be the powers of an excluded trustee or cotrustee described under Section 3313A(a)(1) or 3313A(a)(2) of this Title, shall be as set forth under Section 3313A of this Title; and

(2) The excluded trustee shall have the rights of a trustee that has been removed as trustee of the trust under applicable law and the terms of the governing instrument, to seek, with respect to the power and authority so excluded as a result of an appointment under this Section, a judicial proceeding or nonjudicial matter, as defined in Section 3303(e) of this Title.

(d) Any powers granted in subsection (a) to appoint additional trustees, which are exercised in such a manner as to modify the duties of an existing trustee, shall not become effective until thirty (30) days after the receipt by the existing trustee of a written notice—from the person or persons authorized to appoint additional trustees—detailing such changes. The thirty (30) day notice requirement may be waived by the existing trustee.

(e) Except as otherwise expressly provided by the terms of a governing instrument, this section shall be available to any trust that is administered in this State or otherwise governed by the laws of this State.

Section 2. Amend Chapter 35, Title 12 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 3528 Trustee's authority to invade principal or income in trust [For application of this section, see 80 Del. Laws, c. 153, § 5; 81 Del. Laws, c. 149, § 6; 81 Del. Laws, c. 320, § 8]

(a) Unless the terms of the instrument expressly provide otherwise, a trustee who has authority (whether acting at such trustee's discretion or at the direction or with the consent of an adviser), under the terms of a testamentary instrument or irrevocable inter vivos trust agreement (including a trust that, by its terms, is revocable but was created by a settlor who presently lacks the capacity to revoke the trust), to invade the principal or income or both of a trust (the "first trust") to make distributions to, or for the benefit of, 1 or more proper objects of the exercise of the power, may instead exercise such authority (whether acting at such trustee's discretion or at the direction or with the consent of an adviser, as the case may be) by appointing all or part of ~~the~~ such principal or income or both as is subject to the power in favor of a trustee of a second trust, which may be a separate trust or the first trust as modified after appointment under this section (the "second trust") under an instrument other than that under which the power to invade is created or under the same instrument, provided, however, that, except as otherwise provided in this subsection (a):

§ 3585 Limitation of action against trustee following trustee's report [For application of this section, see 81 Del. Laws, c. 149, § 6; 81 Del. Laws, c. 320, § 8].

(a) A person may initiate a proceeding against a trustee for breach of trust or other claim until the first to occur of:

(1) One year after the date the person was sent a report that adequately disclosed the facts constituting a claim provided, however, that if the governing instrument provides that claims shall survive for a period longer than 1 year after such date, then claims shall survive for the period specified in the governing instrument;

(2) In the case of any trustee who is resigning, has resigned, is being removed, has been removed, or is ceasing to serve, or has ceased to serve as trustee for any other reason (including on account of the termination of the trust by reason of liquidation or by reason of a merger or similar transaction described in § 3341 of this title), 120 days after the date the beneficiary was sent a report that: (i) notifies the beneficiary that the trustee is resigning, has resigned, is being removed, has been removed, is ceasing to serve, or has ceased to serve; (ii) adequately discloses the facts constituting a claim; and (iii) adequately discloses the time allowed under this section for initiating proceedings against the former trustee; ~~or provided that the trustee transfers the trust property to the appropriate successors in interest within a reasonable period of time following the expiration of the 120-day period; or~~

(3) The date the proceeding was otherwise precluded by adjudication, release, consent, limitation or pursuant to the terms of the governing instrument.

(e) This section does not preclude an action to recover for fraud or misrepresentation related to the report or an action related to a trustee's administration of assets during or following expiration of any period provided in this section.

Section 3. Amend Chapter 47, Title 12 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 4703 Standard of conduct in managing and investing institutional fund.

(c) In managing and investing an institutional fund, an institution:

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

b. Except as otherwise provided by a gift instrument, the following rules apply:

7. To the extent that sustainable investment strategies align with the charitable purposes of the institution, an institution managing and investing an institutional fund may take into account social, environmental or governance values.

Section 4. The provisions of section 1 of this Act amending section 3330 of Title 12—by adding subsections (c) and (d) to section 3330—are effective as specified in subsections (c) and (d) of section 3330. Otherwise, this Act shall be effective upon enactment and shall apply to trusts and institutional funds whenever created.

Approved August 6, 2020