

CHAPTER 153
FORMERLY
HOUSE BILL NO. 164

AN ACT TO AMEND TITLES 10 AND 12 OF THE DELAWARE CODE RELATING TO DECEDENT'S ESTATES AND FIDUCIARY RELATIONS.

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

Section 1. Amend Chapter 49, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4915. Exemption of retirement plans.

(f) For purposes of this chapter, "Retirement retirement plan" means any retirement or profit sharing plan that is qualified under plan, trust, account, agreement or other arrangement described in § 401, § 403, § 408, § 408A, § 409, § 414 or § 457 of the Internal Revenue Code of 1986 [26 U.S.C. § 401, § 403, § 408, § 408A, § 409, § 414 or § 457], as amended, including any such plan, trust, account, agreement or other arrangement that a decedent, upon or by reason of the decedent's death, directly or indirectly transferred, conveyed, transmitted or otherwise left to, or for the benefit of, the owner or beneficiary by means of a will, trust, exercise of a power of appointment, beneficiary designation, transfer or payment on death designation, or any other method or procedure. The terms "life insurance contract" and "annuity contract" shall have the same meanings as under § 1035(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 1035(b)), as amended.

Section 2. Amend Chapter 13, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1311. Pre-Mortem will validation.

(a) No proceedings under § 1308 or § 1309 of this title may be commenced following the death of a testator, who resided in Delaware at the time of death, with respect to a will which has been validated pursuant to the pre-mortem will validation procedure of this § 1311 by any person who was duly notified pursuant to this section if the time period set forth in this section has expired as of the date of the death of the testator, and no such person may become a party to any such proceeding commenced by another person. If such time period has not expired as of the date of the death of the testator, the limitation of this § 1311 shall have no application to such testator's will. The preceding provisions of this subsection shall apply with respect to the exercise of a power of appointment in a will only if the testator has followed the provisions of subsection (c) of this section and shall apply with respect to the exercise of a power of appointment only to the extent of proceedings which challenge the exercise of the power of appointment on the basis that a proceeding could be brought challenging the will itself under § 1308 or § 1309 of this title.

(b) A testator may notify in writing any person named in a will as a beneficiary, any person who would be entitled to inherit under chapter 5 of this title if the testator had died intestate on the date of such notification, and/or any other person the testator wishes to be bound as to the validity of the testator's will. The notice shall include a copy of the testator's will, and shall state that a person who wishes to contest the validity of the will must do so within 120 days of receipt of such notice, unless the testator dies before such 120 day period has elapsed. A person receiving such written notice who wishes to contest the will shall file a proceeding in the Court of Chancery no later than 120 days following receipt of such notice. Such proceeding shall follow procedures comparable to those under § 1308 of this title for the caveat of a will.

(c) If the testator's will includes a provision exercising a power of appointment, then in addition to complying with the provisions of subsection (b) of this section, the testator may notify in writing any person named in the exercise of the power of appointment as a beneficiary, any person who would be entitled to receive property over which the testator exercises the power of appointment if the testator failed to validly exercise the power of appointment, the trustees of a trust holding property subject to the power of appointment, and/or any other person the testator wishes to be bound as to the validity of the exercise of the power of appointment under the testator's will. The notice shall include a copy of the testator's will, a copy of the trust or other instrument which contains the power of appointment which the testator is exercising, and shall state that a person who wishes to contest the

validity of the exercise of the power of appointment must do so within 120 days of receipt of such notice, unless the testator dies before such 120 day period has elapsed. A person receiving such written notice who wishes to contest the exercise of the power of appointment shall file a proceeding in the Court of Chancery no later than 120 days following receipt of such notice. Such proceeding shall follow procedures comparable to those under § 1308 of this title for the caveat of a will.

(d) The failure of a testator to use the provisions of this section shall not be construed as evidence that a will is not valid.

(e) Nothing in this section shall preclude a person who has provided notice under this section or with respect to whose will a proceeding has been commenced pursuant to subsection (b) of this section from executing a codicil to such person's will, or from executing a later will, but the notice under this section or proceedings under this section shall not be deemed to determine the validity of such later will or codicil.

(f) Nothing in this section shall be construed as abrogating the right or cutting short the period for a spouse to file an elective share petition under § 901 et. seq. of this title or to claim the surviving spouse's allowance. Nothing in this section shall be construed as abrogating the right or cutting short any time period for any person to claim an intestate share of a decedent's estate to the extent that a will results in a complete or partial intestacy.

(g) For purposes of this section, notice shall have been given when received by the person to whom the notice was given and, absent evidence to the contrary, it shall be presumed that notice mailed or delivered to the last known address of such person constitutes receipt by such person.

(h) For purposes of this section, a person is deemed to have been given any notice that has been given to any other person who under § 3547 of this title may represent and bind such person.

§ 1312. Limitation on action contesting validity of exercise of power of appointment.

(a) A judicial proceeding to contest whether an exercise of a power of appointment by any written instrument other than a will, under which property is transferred pursuant to the exercise of the power of appointment only as of the death of the person exercising the power of appointment (the "Exercisor") may not be initiated later than the first to occur of:

(1) One hundred twenty days after the date that the Exercisor notified in writing the person who is contesting the exercise of the existence of the instrument exercising the power of appointment, the name and address of the Exercisor, whether such person is a beneficiary, and of the time allowed under this section for initiating a judicial proceeding to contest the exercise of the power of appointment. The Exercisor shall also provide to the person who is contesting the exercise a copy of the instrument which creates the power of appointment. For purposes of this subsection, notice shall have been given when received by the person to whom the notice was given and, absent evidence to the contrary, it shall be presumed that notice mailed or delivered to the last known address of such person constitutes receipt by such person. This paragraph (1) shall be applicable only to a proceeding to contest whether an exercise of a power of appointment by any written instrument other than a will is valid to the extent that the basis for such contest is a failure to comply with formalities for the execution of the power of appointment, undue influence over the Exercisor, or lack of capacity of the Exercisor;

(2) Two years after the death of the Exercisor; or

(3) The date the person's right to contest was precluded by adjudication, consent, or other limitation.

(b) For purposes of subsection (a) of this section, a person is deemed to have been given any notice that has been given to any person who under § 3547 of this title may represent and bind such person.

Section 3. Amend Chapter 33, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3312. Investments in affiliated investments; transactions with affiliates.

(c) A fiduciary seeking compensation pursuant to subsection (b) of this section shall disclose to each principal in an agency relationship, and to all current recipients of account statements of any other fiduciary account, all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or such other dealing with an affiliate. The disclosure required under this subsection may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment

under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated (either as a percentage of the assets invested or by some other method). Such disclosure shall be made at least annually unless there has been no increase in the rate at which such fees or commissions are calculated since the most recent disclosure. Notwithstanding the foregoing provisions of this subsection, no such disclosure is required if (1) the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or otherwise deal with an affiliate or an interest in an affiliated investment; or (2) the fiduciary invests in an affiliated investment or otherwise deals with an affiliate or an interest in an affiliated investment at the direction of an adviser (who expressly directs the fiduciary to enter into a transaction that would otherwise require disclosure under this subsection and who is not an affiliate) pursuant to subsection (b) of § 3313 of this title.

§ 3313. Advisers.

(a) Where 1 or more persons are given authority by the terms of a governing instrument to direct, consent to or disapprove a fiduciary's actual or proposed investment decisions, distribution decisions or other decision of the fiduciary, such persons shall be considered to be advisers and fiduciaries when exercising such authority provided, however, that the governing instrument may provide that any such adviser (including a protector) shall act in a nonfiduciary capacity.

(b) If a governing instrument provides that a fiduciary is to follow the direction of an adviser or is not to take specified actions except at the direction of an adviser, and the fiduciary acts in accordance with such a direction, then except in cases of wilful misconduct on the part of the fiduciary so directed, the fiduciary shall not be liable for any loss resulting directly or indirectly from any such act.

(c) If a governing instrument provides that a fiduciary is to make decisions with the consent of an adviser, then except in cases of wilful misconduct or gross negligence on the part of the fiduciary, the fiduciary shall not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such adviser's objection to such act or failure to provide such consent after having been requested to do so by the fiduciary.

(d) For purposes of this section, unless the terms of the governing instrument provide otherwise, "investment decision" means with respect to ~~any investment~~ all of the trust's investments (or, if applicable, to investments specified in the governing instrument), the retention, purchase, sale, exchange, tender or other transaction or decision affecting the ownership thereof or rights therein (including the powers to borrow and lend for investment purposes), all management, control and voting powers related directly or indirectly to such investments (including, without limitation, nonpublicly traded investments), the selection of custodians or sub-custodians other than the trustee, the selection and compensation of, and delegation to, investments advisers, managers or other investment providers, and with respect to nonpublicly traded investments, the valuation thereof, and an adviser with authority with respect to such decisions is an investment adviser.

(e) Whenever a governing instrument provides that a fiduciary is to follow the direction of an adviser with respect to investment decisions, distribution decisions, or other decisions of the fiduciary or shall not take specified actions except at the direction of an adviser, then, except to the extent that the governing instrument provides otherwise, the fiduciary shall have no duty to:

- (1) Monitor the conduct of the adviser;
- (2) Provide advice to the adviser or consult with the adviser; or
- (3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the fiduciary would or might have exercised the fiduciary's own discretion in a manner different from the manner directed by the adviser.

Absent clear and convincing evidence to the contrary, the actions of the fiduciary pertaining to matters within the scope of the adviser's authority (such as confirming that the adviser's directions have been carried out and recording and reporting actions taken at the adviser's direction), shall be presumed to be administrative actions taken by the fiduciary solely to allow the fiduciary to perform those duties assigned to the fiduciary under

the governing instrument and such administrative actions shall not be deemed to constitute an undertaking by the fiduciary to monitor the adviser or otherwise participate in actions within the scope of the adviser's authority.

(f) For purposes of this section, the term "adviser" shall include a "protector" who shall have all of the power and authority granted to the protector by the terms of the governing instrument, which may include but shall not be limited to:

(1) The power to remove and appoint trustees, advisers, trust committee members, and other protectors;

(2) The power to modify or amend the governing instrument to achieve favorable tax status or to facilitate the efficient administration of the trust; and

(3) The power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the governing instrument.

§ 3325. Specific powers of trustee.

Without limiting the authority conferred by § 3324 of this title, a trustee may:

(19) Make loans out of or guarantees based on trust property, including loans to or guarantees for the benefit of a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and subject to § 3536 of this title, the trustee has a lien on future distributions for repayment of those loans and for the repayment of an amount equal to any payment made or that might be made on account of such guarantee; provided further that any such loans or guarantees shall only be permitted to the extent the same are either:

a. Made for investment purposes;

b. Made in lieu of a distribution amount that could have been made currently to or for such beneficiary under the terms of the governing instrument, not made in excess of such amount, and the fiduciary creates a reserve for the potential liability; or

c. Made to or for the benefit of another trust of which such beneficiary is also a beneficiary, provided the requirements of paragraph (19)b. of this section are satisfied.

(29) ~~Merge~~ Declare one or more new trusts for the purpose of merging all, or a portion, of an existing trust or trusts with and into the new trust or trusts and to merge any 2 or more trusts, including statutory trusts and foreign statutory trusts as defined in § 3801 of this title, whether or not created by the same trustor and whether or not funded prior to the merger, to be held and administered as a single trust if such a merger would not result in a material change in the beneficial interests of the trust beneficiaries, or any of them, in the trust;

§ 3332. Governing law; change of situs.

(a) The duration of a trust and time of vesting of interests in the trust property shall not change merely because the place of administration of the trust is changed from some other jurisdiction to this State.

(b) Except as otherwise ~~expressly~~ expressly provided by the terms of a court order and notwithstanding a general choice of law provision in the governing instrument of a trust, such a provision to the effect that ~~or by court order,~~ the laws of a jurisdiction other than this State shall govern the trust or the administration of a the trust, the laws of this State shall govern the administration of the trust while the trust is administered in this State unless the governing instrument expressly provides that the laws of another jurisdiction govern the administration of the trust and further provides that the laws governing the administration of the trust shall not change on account of a change in the place of administration of the trust.

(c) Notwithstanding the foregoing, if a fiduciary takes or fails to take any action, based upon a good faith belief that the laws of a foreign jurisdiction govern the administration of a trust while the trust is administered in this State, the fiduciary's liability under the governing instrument for the action or inaction shall be determined in accordance with the laws of the foreign jurisdiction.

§ 3333. Retention of counsel by fiduciary.

(a) In the case of a fiduciary that retains counsel in connection with any matter whether or not related to any claim that has been or might be asserted against the fiduciary and pays such counsel's fees and related expenses

entirely from such fiduciary's own funds, any communications with such counsel shall be deemed to be within the attorney-client privilege.

(b) Except as otherwise provided in the governing instrument, a fiduciary may retain counsel in connection with any matter that is or that might reasonably be believed to be one that will become the subject of or related to a claim ~~claim that has been or might be asserted~~ against the fiduciary, and the payment of counsel fees and related expenses from the fund with respect to which the fiduciary acts as such shall not cause the fiduciary to waive or to be deemed to have waived any right or privilege including, without limitation, the attorney-client privilege even if the communications with counsel had the effect of guiding the fiduciary in the performance of fiduciary duties. However, in the event that the fiduciary is found to determined by a court to have breached some a fiduciary duty related to such matter, the court may, in its discretion, deny such fiduciary the right to have all or some part ~~of all of~~ such fees and expenses of the fiduciary's counsel fees paid from such fund and may require the fiduciary to reimburse any such fees and expenses that have been previously ~~been~~ paid.

§ 3338. Nonjudicial settlements agreements.

(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 non-exercise of any power of appointment, if the present interests in the trust terminated on the date of the nonjudicial settlement agreement;

(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 and persons having other rights, held in a nonfiduciary capacity, relating to trust property).

§ 3340. Place of administration.

For purposes of this title, a trust shall be deemed to be administered in this State if (i) the sole trustee is an individual residing in this State or a corporation or other entity having an office for the conduct of trust business in this State; (ii) the trust has more than one trustee only one of which is a corporation or other entity and that corporation or other entity has an office for the conduct of trust business in this State; or (iii) the trust has more than one trustee all of whom are individuals and one-half or more of whom reside in this State.

§ 3341. Consequences of trust merger and similar transactions.

Whenever any trust (a "transferor trust") is merged with and into another trust (the "transferee trust"), (i) the separate existence of the transferor trust shall cease and the transferee trust shall possess all of the rights and privileges, and shall be subject to all of the obligations of, the transferor trust; (ii) all of the property (including title to any real property vested by deed or otherwise) and other interests of the transferor trust shall be thereafter as effectually the property and interests of the transferee trust as they were the property and interests of the transferor trust prior to the merger; and (iii) no such property or interests shall revert or be in any way impaired by reason of the merger. Furthermore, all rights of creditors and all liens upon the property of the transferor trust shall be preserved unimpaired and all debts, liabilities and duties of the transferor trust shall thenceforth attach to the transferee trust and may be enforced against the transferee trust to the same extent as if the transferor trust's debts, liabilities and duties had been incurred or contracted by the transferee trust. Notwithstanding anything herein to the contrary, the terms of the governing instrument of the transferee trust shall, following the merger, control the administration and disposition of the property of the transferee trust, including any such property obtained by the transferee trust by reason of the merger. Furthermore, any transaction in which all of the property of a trust is appointed or otherwise transferred to another trust, whether pursuant to § 3528 of this title, the terms of a governing instrument or otherwise, shall be treated as a merger within the meaning of this section with the appointing or

transferring trust and the recipient trust treated as a transferor trust and transferee trust, respectively, for purposes of applying the provisions of this section to the transaction.

Section 4. 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:

§ 3524. Trustees' accounts for other testamentary trusts.

(a) Trustees of a testamentary trust shall be required to file accounts as described in § 3525 of this title, except that:

(1) Trustees subject to § 3523 of this title shall file accounts only in accordance with such section.

(2) Trustees of a testamentary trust established under the will of a decedent dying after July 31, 2005, shall be required to file accounts as described in § 3525 of this title only in accordance with the express terms, if any, of any such trust or upon order of the Court of Chancery with respect to any such trust.

(b) Trustees of a testamentary trust established under a will probated on or after April 5, 1909, but of a decedent dying on or before July 31, 2005, shall be required to file accounts as described in § 3525 of this title unless waived by express provision in such will, in which case such trustees shall be required to file such accounts only in accordance with the express terms, if any, of such will or upon order of the Court of Chancery with respect to any such trust.

§ 3526. Release of obligation to file accounts.

(a) Without the approval of the Court of Chancery, a trustee or trustees (in either case hereafter referred to as "trustee") who would otherwise be required under §§ 3521-3524 of this title to file with the Register in Chancery just and true accounts for the approval of the Court of Chancery may be released from such obligation by the interested parties of the trust if the trustee sends a written notice and request for waiver and consent or nonobjection to the interested parties, which notice shall:

(1) Describe the obligation of the trustee under §§ 3521-3524 of this title and identify the alternative means by which the trustee will provide the beneficiaries with the information formerly set forth in the account;

(2) Request the interested person waive the obligations under ~~subsection (a) of this section~~ §§ 3521-3524 of this title with respect to the trust and consent, or signify such person's nonobjection, to the alternative means described in the notice for the dissemination of trust information; and

(3) Request that a waiver and consent or nonobjection be executed by:

a. The interested party personally;

b. The interested party's attorney ad litem;

c. A person authorized to represent the interested party under § 3547 of this title or any successor statute; or

~~d.~~(4) A person authorized by applicable law to represent the interested party in transactions involving the trust (such as, but not limited to, the interested party's attorney-in-fact or the Attorney General in the case of certain charitable beneficiaries).

In addition, such waiver and consent or nonobjection shall: (i) be acknowledged by a person authorized to notarize documents (or a similar official if a document is signed in a foreign jurisdiction) or witnessed by a person who is not an interested party; and (ii) affirm that the party executing the waiver and consent or nonobjection has read, understood, and been provided with an opportunity to consult with counsel regarding the waiver and consent or nonobjection and the information provided therein.

§ 3528. Trustee's authority to invade principal in trust.

(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 trust (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):

(1) The exercise of such authority is in favor of a second trust having only beneficiaries who are proper objects of the exercise of the power except that the governing instrument of the second trust may provide that, at a time or upon an event specified in the governing instrument, the remaining trust assets shall thereafter be held for the benefit of the beneficiaries of the first trust upon terms and conditions concerning the nature and extent of each such beneficiary's interest that are substantially identical to the first trust's terms and conditions concerning such beneficial interests;

(2) In the case of any trust, contributions to which have been treated as gifts qualifying for the exclusion from gift tax described in § 2503(b) (26 U.S.C. § 2503(b)) of the Internal Revenue Code of 1986 (26 U.S.C. § 1 et seq.) (hereinafter referred to in this section as the "I.R.C."), by reason of the application of I.R.C. § 2503(c) (26 U.S.C. § 2503(c)), the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest and become distributable no later than the date upon which such interest would have vested and become distributable under the terms of the governing instrument for the first trust;

(3) The exercise of such authority does not reduce any income or unitrust interest of any beneficiary of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 (26 U.S.C. § 2056 or § 2523) or for state tax purposes under any comparable provision of applicable state law; and

(4) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary who is the only trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions.

Notwithstanding the foregoing provisions of this subsection (a), the governing instrument for the second trust may grant a power of appointment (including a power to appoint trust property to the powerholder, the powerholder's creditors, the powerholder's estate, the creditors of the powerholder's estate or any other person, whether or not such person is a trust beneficiary) to 1 or more of the trust beneficiaries who are proper objects of the exercise of the power in the first trust. ~~Furthermore, notwithstanding the foregoing provisions of this subsection (a), the governing instrument of the second trust may provide that, at a time or upon an event specified in the governing instrument, the remaining trust assets shall thereafter be held for the benefit of the beneficiaries of the first trust upon terms and conditions concerning the nature and extent of each such beneficiary's interest that are substantially identical to the first trust's terms and conditions concerning such beneficial interests.~~ The exercise of a trustee's authority granted under this subsection (a) shall in all respects comply with any standard that limits the trustee's authority to make distributions from the first trust but may be exercised whether or not the trustee would have been permitted to exercise the power to make a current outright distribution of all of the trust assets in compliance with any such standard. For purposes of this subsection (a), an open class of beneficiaries identified in the governing instrument for the first trust (such as, but not limited to, a class comprised of the descendants of a person who is living or who has living descendants) is a proper object of the exercise of a power to make distributions and the exercise of such a power in favor of a second trust having only beneficiaries, including unborn future beneficiaries, who are among the members of the open class satisfies the requirement of paragraph (a)(1) of this section even if, pursuant to the terms of the governing instrument for the second trust, the class remains, or might remain, open beyond the time when the class would have closed pursuant to the terms of the governing instrument for the first trust; provided, however, that the governing instrument for the second trust shall not permit distributions to or among members of the open class sooner than when or in excess of the amounts permitted by the governing instrument for the first trust. A trustee's power, pursuant to this subsection (a), to appoint principal in favor of the trustee of a second trust shall include the power to create the second trust.

§ 3542. Termination of small trusts.

(a) Unless otherwise provided by the terms of the trust instrument, and subject to the other subsections of this section, ~~a corporate trustee of a trust~~ trustee of a trust (other than a trustee who is a settlor or beneficiary of the trust or who may be removed as trustee, by action of one or more settlors or beneficiaries and replaced as trustee, by

action of the person or persons exercising the removal power, with a successor trustee who is either among the persons exercising the removal and replacement power or who is related or subordinate, within the meaning of § 672(c) of the Internal Revenue Code of 1986 [26 U.S.C. § 672(c)], as amended, to any such person exercising the removal and replacement power), who finds that the costs of administration thereof are such that the continuance of the trust would defeat or substantially impair the purpose of the trust, may, after written notice to all interested persons, or their legal or natural guardians, terminate the trust and distribute the trust property to 1 or more of the beneficiaries in the trustee's discretion. No court proceedings or approval is required to effect such a termination.

§ 3546. Limitation on action contesting validity of trusts.

(a) A judicial proceeding to contest whether a revocable trust or any amendment thereto, or an irrevocable trust was validly created may not be initiated later than the first to occur of:

(1) One hundred twenty days after the date that the trustee notified in writing the person who is contesting the trust of the trust's existence, of the trustee's name and address, of whether such person is a beneficiary, and of the time allowed under this section for initiating a judicial proceeding to contest the trust provided, however, that no trustee shall have any liability under the governing instrument or to any third party or otherwise for failure to provide any such written notice. For purposes of this paragraph, notice shall have been given when received by the person to whom the notice was given and, absent evidence to the contrary, it shall be presumed that delivery notice mailed or delivered to the last known address of such person constitutes receipt by such person.

(2) Two years after the trustor's death;

(3) If the trust was revocable at the trustor's death and the trust was specifically referred to in the trustor's last will, the time in which a petition for review of a will could be filed under this title; or

(4) The date the person's right to contest was precluded by adjudication, consent or other limitation.

§ 3570. Definitions.

As used in this subchapter:

(8) "Qualified trustee" means a person who meets the requirements of the following paragraphs (8)a. and b. of this section:

a. In the case of a natural person, is a resident of this State other than the transferor or, in all other cases, is authorized by the law of this State to act as a trustee and whose activities are subject to supervision by the Bank Commissioner of the State, the Federal Deposit Insurance Corporation, or the Comptroller of the Currency, ~~or the Office of Thrift Supervision or any successor thereto;~~ and

(11) "Trust instrument" means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:

a. Expressly incorporates the law of this State to govern the validity, construction and administration of the trust;

b. Is irrevocable, but a trust instrument shall not be deemed revocable on account of its inclusion of 1 or more of the following:

8. The transferor's possession and enjoyment of an interest in a qualified personal residence trust within the meaning of such term as described in Treasury Regulation § 25.2702-5(c) (26 C.F.R. 25.2702-5(c)) and any successor provision thereto or the transferor's possession and enjoyment of ~~a qualified annuity interest within the meaning of such term as described in Treasury Regulation § 25.2702-5(e)(8) (26 C.F.R. 25.2702-5(e)(8)) and any successor provision thereto~~ power to reacquire the trust corpus by substituting other property of an equivalent value within the meaning of § 675(4)(C) of the Internal Revenue Code of 1986 [26 U.S.C. § 675(4)(C)], as amended;

§ 3582. Damages against trustee for breach of trust.

A beneficiary may charge a trustee who commits a breach of trust with:

(1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred;

(2) The profit that the trustee made by reason of the breach; or

(3) Such other ~~relief amount~~ amount as may be ~~fashioned~~ determined by the court.

Section 5. The provisions of this Act shall become effective on August 1, 2015 and shall apply to retirement plans, within the meaning of Section 4915 of Title 10, trusts and powers of appointment whenever created.

Approved August 07, 2015