

LAWS OF DELAWARE
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CHAPTER 391
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 268

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 § 801, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 801. Definitions.

In this chapter, unless the context otherwise requires:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Cash equivalents" means a security or other investment that is easily converted into cash, including treasury bills, treasury notes, money market funds, savings bonds, short-term instruments, and short-term obligations.

~~(2)~~(3) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

~~(3)~~(4) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

~~(4)~~(5) "Person" means an individual, a corporation, an ~~organization~~ organization, or other legal entity.

~~(5)~~(6) "Personal representative" includes executor, administrator, successor personal representative, special ~~administrator~~ administrator, and persons who perform substantially the same function under the law governing their status.

~~(6)~~(7) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

~~(7)~~(8) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated ~~security~~, security or a security account, to initiate or transfer an account showing ownership of securities.

~~(8)~~(9) "Registering entity" means a person who originates or transfers a security title by registration and includes a ~~broker~~ broker, a securities dealer, a bank, a savings bank, a trust company, an investment adviser, or any other financial institution maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

~~(9)~~(10)a. "Security" means a share, ~~participation~~ participation, or other interest in property, in a ~~business~~ business, or in an obligation of an enterprise or other ~~issuer~~ issuer.

b. "Security" includes all of the following:

1. Any share, stock, participation, or other interest in or obligation of any of the following:

A. A corporation.

B. A limited liability company or any series of a limited liability company.

C. A partnership, whether general or limited, or any series of a partnership.

D. A trust, including a common law trust, a voting trust, a business trust, or a statutory trust, or any series of a trust.

2. ~~and includes a~~ A certificated security, an uncertificated security security, and a security account.

~~(10)~~(11) "Security account" means:

a. A reinvestment account associated with a security, a securities account with a broker, a cash balance ~~in a brokerage~~ such an account, cash, cash equivalents, interest, earnings earnings, or dividends earned or declared on a security in such an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death, or

b. A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's ~~death.~~ death; or

c. An investment management account, securities account, custody account, or other agency account for the investment or custody of securities maintained with a bank, a savings bank, a trust company, a securities dealer, an

investment adviser, or other financial institution, including the securities in such account, a cash balance in such an account, cash, cash equivalents, interest, and earnings, dividends or distributions earned or declared on a security in such an account, whether or not credited to the account before the owner's death.

~~(11)~~(12) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

Section 2. Amend § 805, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 805. Form of registration in beneficiary form.

(a) Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD" or by the words "pay on death" or the abbreviation "POD" after the name of the registered owner and before the name of a beneficiary.

(b) Registration in beneficiary form for an uncertificated security or a security account may be shown by the words "transfer on death" or the abbreviation "TOD" or by the words "pay on death" or the abbreviation "POD" after the name of the registered owner, and need not include the names of beneficiaries if the names of all beneficiaries are otherwise maintained by the registering entity.

Section 3. Amend § 3301, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3301. Application of chapter; definitions [For application of this section, see 79 Del. Laws, c. 172, § 6].

(g) The term "letter of wishes" shall mean any separate writing created by a trustor that makes specific reference to a governing instrument of a trustor and contains statements regarding the trustor's intent regarding the governing instrument, but is not itself a governing instrument.

~~(g)~~(h) The term "wilful misconduct" shall mean intentional wrongdoing, not mere negligence, gross negligence or recklessness and "wrongdoing" means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

~~(h)~~(i) For purposes of construing a governing instrument, unless a contrary statement appears in such governing instrument:

(1) The term "fiduciary fund" means the trust, estate, guardianship account, or account established under a Uniform Transfers to Minors Act [Chapter 45 of this title] that is being administered by a fiduciary.

(2) The term "interested person" means any living person who:

- a. Is an income beneficiary or remainder beneficiary of a trust;
- b. Has a vested interest in a decedent's estate;
- c. Receives benefits as a ward from a guardianship account; or

d. Is the minor with respect to an account established under a Uniform Transfers to Minors Act [Chapter 45 of this title].

(3) The term "issue" shall denote a distribution per stirpes, such that the children of the person whose issue is referred to shall be taken to be the heads of the respective stocks of issue and a person legally adopted, whether under or over the age of 18 years at adoption, shall thereafter be considered to be a child and issue of the adopting person and an issue of the ascendants of the adopting person, and the issue of the person so adopted shall be considered to be issue of the adopting person and the adopting person's ascendants.

(4) The term "published fee schedule" and other terms of similar import mean the schedule or formula described in § 3561(b)(1) of this title in the case of any trustee required to file such a schedule or formula under that section.

(5) The term "wilful misconduct" means intentional wrongdoing, not mere negligence, gross negligence, or recklessness and "wrongdoing" means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

Section 4. Amend § 3315, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3315. Trustee's exercise of discretion; review by court; discretionary interests.

(a) Where discretion is conferred upon the fiduciary with respect to the exercise of a power, its exercise by the fiduciary shall be considered to be proper unless the court determines that the discretion has been abused within the meaning of § 187 of the Restatement (Second) of Trusts, not §§ 50 and 60 of the Restatement (Third) of Trusts.

(b) A beneficiary eligible to receive distributions from a trust in the discretion of a trustee or other fiduciary has a discretionary interest in the trust. Discretionary interest in a trust is a mere expectancy, not a property right. A beneficiary eligible to receive distributions from a trust in the discretion of a trustee or other fiduciary, even if subject to an ascertainable standard (as defined in Treas. Reg. § 20.2041-1(c)(2) (26 CFR § 20.2041-1(c)(2)) or any successor provision thereto), has a discretionary interest in the trust. An interest that includes mandatory distribution language such as “shall” but is qualified by discretionary distribution language is a discretionary interest. A creditor may not directly or indirectly compel the distribution of a discretionary interest except to the extent expressly granted by the terms of a governing instrument in accordance with § 3536(a) of this title. Nothing within this subsection shall be deemed to alter the standard of review of the discretion of the trustee or other fiduciary under subsection (a) of this section.

(c) In connection with the exercise of a discretionary power conferred on a trustee or other fiduciary of a trust in the trust’s governing instrument, the trustee’s or other fiduciary’s decision whether or not to consider one or more letters of wishes, as defined in § 3301(g) of this title, is subject to the standard of review of the discretion of the trustee or other fiduciary under subsection (a) of this section.

(1) The trustee or other fiduciary may consider one or more letters of wishes, whenever created, and whether or not the governing instrument is ambiguous, if the letter of wishes meets all of the following:

a. Has been delivered to a trustee of the trust by or on behalf of the trustor.

b. Reflects the trustor’s intent contemporaneous with the date of execution of the governing instrument, which intent may be reflected in facts and circumstances known to the trustor, or not known to or anticipated by the trustor, as of the date of execution of the governing instrument.

c. Is not inconsistent with any provision of the governing instrument.

(2) A trustee’s or other fiduciary’s decision not to consider a letter of wishes with respect to an unambiguous provision of a governing instrument is not an abuse of discretion under subsection (a) of this section.

(3) A trustee’s or other fiduciary’s decision not to consider a letter of wishes not meeting the requirements of paragraph (c)(1) of this section is not an abuse of discretion under subsection (a) of this section.

(4) A trustee’s or other fiduciary’s decision to consider a letter of wishes meeting the requirements of paragraph (c)(1) of this section, with respect to an ambiguous provision of a governing instrument, is not an abuse of discretion under subsection (a) of this section.

(5) A letter of wishes is not binding on a trustee or other fiduciary under the governing instrument. A trustee or other fiduciary does not have a duty to follow the letter of wishes, and the fact that a trustee or other fiduciary does or does not exercise a discretionary power in accordance with the letter of wishes does not create an inference that the trustee or other fiduciary improperly exercised the power or abused the trustee’s or other fiduciary’s discretion under subsection (a) of this section.

(6) Except as provided under the terms of the governing instrument or by court order, the trustee or other fiduciary does not have a duty to provide any beneficiary a copy of a letter of wishes.

Section 5. Amend § 3325, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3325. Specific powers of trustee [For application of this section, see 79 Del. Laws, c. 172, § 6; 80 Del. Laws, c. 153, § 5].

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

(32) Subject to any applicable limitations or standards under the governing instrument, provide financial education services to the beneficiaries either individually or as a group, regarding multi-generational estate and asset planning, inter-generational asset transfers, developing wealth management and money skills, financial literacy and acumen, business fundamentals, entrepreneurship, personal financial growth, knowledge of family businesses, and philanthropy.

a. Subject to the terms of the governing instrument, the trustee itself may provide the services under this paragraph (32), or may select, hire, retain, and compensate providers of the services, and pay for the services from the trust estate, whether or not the providers are third parties or affiliates of the trustee within the meaning of § 3312 of this title.

b. Each provider is entitled to payment for providing the services under this paragraph (32), and a trustee is entitled to the full fiduciary compensation to which the trustee is otherwise entitled as trustee without diminution for the fees and costs of these services, in accordance with Subchapter V of Chapter 35 of this title.

Section 6. Amend § 3339, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3339. Designated representatives of trusts.

(a) For purposes of this title, the term “designated representative” means a person who has delivered to the trustee such person’s written acceptance of the office of designated representative or who has otherwise agreed, through service or similar action, to serve as designated representative following such person’s appointment to act as a designated representative in the manner described in at least 1 of the following paragraphs of this subsection:

(4) To the extent that a designated representative is not appointed and serving in accordance with paragraphs (a)(1) through (a)(3) of this section, appointment by the trustor to act as designated representative for 1 or more ~~beneficiaries;~~ beneficiaries, including a minor beneficiary, a beneficiary who is incapacitated, an unborn beneficiary, or a beneficiary whose identity or location is unknown and not reasonably ascertainable; provided, however, when a trustor is appointing a designated representative for purposes of paragraph (b)(2) of this section:

a. The appointed designated representative shall serve in a fiduciary capacity, notwithstanding any provision to the contrary in the governing instrument;

b. The appointed designated representative must not be the trustor or related or subordinate to the trustor within the meaning of § 672(c) of the Internal Revenue Code of 1986 [26 U.S.C. § 672(c)], as amended; and

c. The trustor, within 30 days of appointment of the designated representative under this paragraph ~~(a)(4); (a)(4)~~ for a living, minor beneficiary or for an incapacitated beneficiary, must provide written notice to the surviving and competent parent or parents or custodial parent (in cases where 1 parent has sole custody of the beneficiary), or guardian of the property of the beneficiary who will be represented by the appointed designated representative; or

Section 7. 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:

§ 3345 Beneficiary Well-Being Trust.

(a) This section applies to any trust the governing instrument of which makes express reference to this section and states that this section, or any part of this section, shall apply. A trust that makes such a reference to this section is known as a “Beneficiary Well-Being Trust” and is deemed to include the powers, duties, rights, and interests of the beneficiaries, trustees, and advisers, within the meaning of “advisers” under § 3313 of this title, as provided in this section.

(b) As used in this section, “beneficiary well-being programs” means seminars, courses, programs, workshops, counselors, personal coaches, short-term university programs, group or one-on-one meetings, counseling, family meetings, family retreats, family reunions, and custom programs, all of which having one or more of the following purposes:

(1) Preparing each generation of beneficiaries for inheriting wealth by providing the beneficiaries individually or as a group with multi-generational estate and asset planning, assistance with navigating inter-generational asset transfers, developing wealth management and money skills, financial literacy and acumen, business fundamentals, entrepreneurship, knowledge of family businesses, and philanthropy.

(2) Educating beneficiaries about the beneficiaries’ family history, the family’s values, family governance, family dynamics, family mental health and well-being, and connection among family members.

(c) The trustees and advisers of a Beneficiary Well-Being Trust shall provide the beneficiaries individually or as a group with beneficiary well-being programs at such times and in such manner as set forth in the provisions of the governing instrument, or in the absence of such provisions, then at such times and in such manner as the trustee may determine is appropriate, in accordance with § 3315 of this title.

(d) Subject to the fiduciary duties and authority of the trustees and advisers under the governing instrument and applicable law, the trustees and advisers of a Beneficiary Well-Being Trust shall pay from the trust the costs and expenses of beneficiary well-being programs.

(1) The payments under this subsection are an expense of administration of the trust to the extent permitted by law.

(2) A trustee itself may provide beneficiary well-being programs, and may select, hire, retain, and pay providers of beneficiary well-being programs whether or not the providers are third parties or affiliates of the trustee within the meaning of § 3312 of this Title.

(3) Each provider of beneficiary well-being programs is entitled to payment for providing a beneficiary well-being program, and a trustee is entitled to the full fiduciary compensation to which the trustee is otherwise entitled as trustee without diminution for the fees and costs of the beneficiary well-being program, without prior notice or disclosure to any beneficiary of the trust.

(e) To effectuate this section, the governing instrument may provide for additional powers, duties, rights, and interests that may expand the purpose or scope of a beneficiary well-being program.

Section 8. Amend § 3547, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3547. Representation by person with a substantially identical interest [For application of this section, see 79 Del. Laws, c. 172, § 6].

(a)(1) Unless otherwise represented, a minor, person who is incapacitated, or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable (hereinafter referred to as an “unascertainable person”), may for all purposes be represented by and bound by another, or by the designated representative of another, who has a substantially identical interest with respect to the particular question or dispute but only to the extent that there is no material conflict of interest between the representative and the person represented with respect to the particular question or dispute.

(2) Notwithstanding paragraph (a)(1) of this section, a designated representative of another may not represent or bind a minor, person who is incapacitated, unborn person, or unascertainable person if there is a material conflict of interest with respect to the particular question or dispute between the designated representative and the minor, person who is incapacitated, unborn person, or unascertainable person.

(b)(1) A presumptive remainder beneficiary, the designated representative of a presumptive remainder beneficiary, or the person or persons authorized to represent the a presumptive remainder beneficiary under any other subsection of this section may represent and bind contingent successor remainder beneficiaries for the same purposes, in the same circumstances, and to the same extent as an ascertainable competent beneficiary may represent and bind a minor or person who is incapacitated, unborn or unascertainable. In addition, a contingent successor remainder beneficiary, the designated representative of a contingent successor remainder beneficiary, or the person or persons authorized to represent the a contingent successor remainder beneficiary under any other subsection of this section may represent and bind more remote contingent successor remainder beneficiaries for the same purposes, in the same circumstances, and to the same extent as an ascertainable competent beneficiary may represent and bind a minor or person who is incapacitated, unborn or unascertainable.

(2) Notwithstanding paragraph (b)(1) of this section, a designated representative of a presumptive remainder beneficiary or a contingent successor remainder beneficiary may not represent or bind a contingent successor remainder beneficiary or a more remote contingent successor remainder beneficiary, as applicable, with respect to a particular question or dispute if there is a material conflict of interest with respect to the particular question or dispute between the designated representative and the contingent successor remainder beneficiary or the more remote contingent successor remainder beneficiary, as applicable.

(3) As used in this subsection:

(1)a. A “presumptive remainder beneficiary” means as of any date, a beneficiary who, as of any date and but for the exercise of any power of appointment, would receive income or principal of the trust if the trust were to terminate as of that date (without regard to the exercise of any power of appointment) or, if the trust does not provide for its termination, a beneficiary who would receive or be eligible to receive distributions of income or principal of the trust if all of the beneficiaries currently receiving or eligible to receive distributions of income or principal were deceased;

(2)b. A “contingent successor remainder beneficiary” means a beneficiary who would succeed to the interest of a presumptive remainder beneficiary in the circumstances described in paragraph ~~(b)(1)~~(b)(3)a. of this section above if the presumptive remainder beneficiary and all of the trust's other beneficiaries, if any, failed to take such interest; and

(3)c. A contingent successor remainder beneficiary shall be considered “more remote” than any other beneficiary whose interest must fail in order for such contingent successor remainder beneficiary to take the interest.

(c)(1) The holder of a general testamentary or inter vivos power of appointment—or a nongeneral testamentary or inter vivos power of appointment that is expressly exercisable in favor of any person or persons, excepting such holder, ~~his or her~~ the holder's estate, his or her the holder's creditors, or the creditors of his or her the holder's estate—or the designated representative of any such holder, may, with the consent of any person whose consent would be required for the valid exercise of the power, represent and bind persons whose interests, as takers in default, are subject to the power, but, in the case of any such nongeneral power of appointment, only to the extent that there is no material conflict of interest between the holder and the persons represented with respect to the particular question or dispute.

(2) Notwithstanding paragraph (c)(1) of this section, a designated representative of a holder of a nongeneral testamentary or inter vivos power of appointment that is expressly exercisable in favor of any person or persons, excepting such holder, the holder's estate, the holder's creditors, or the creditors of the holder's estate, may not represent or bind, with respect to the particular question or dispute, persons whose interests, as takers in default, are subject to the power, if there is a material conflict of interest with respect to the particular question or dispute between the designated representative and the persons whose interests, as takers in default, are subject to the power.

(g) For purposes of this section, when a trust (the “beneficiary trust”) is a beneficiary of another trust, the beneficiary trust shall be represented and bound by its trustee or, if the beneficiary trust is not in existence, the beneficiary trust shall be represented and bound by those persons who would be beneficiaries of the beneficiary trust if the beneficiary trust were then in existence. ~~existence.~~ existence, the designated representatives of the persons who would be beneficiaries of the beneficiary trust if the beneficiary trust were then in existence, or the person authorized to represent the persons who would be beneficiaries of the beneficiary trust if the beneficiary trust were then in existence under any other subsection of this section.

(h) For purposes of this section, “designated representative” means a designated representative appointed under § 3339 of this title.

Section 9. This Act is effective on enactment and applies to trusts whenever created.

Approved August 29, 2024