



LAWS OF DELAWARE
VOLUME 85
CHAPTER 383
153rd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 297

AN ACT TO AMEND TITLES 12 AND 25 OF THE DELAWARE CODE RELATING TO DECEDENTS' ESTATES AND PROPERTY.

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

Section 1. Amend § 3323, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3323. Cofiduciaries and co-nonfiduciaries.

(a) Unless provided otherwise by the governing instrument, the following applies:

(1) Any power vested in 2 fiduciaries or nonfiduciaries by the governing instrument or by law must be exercised by both of the fiduciaries or nonfiduciaries.

(2) ~~any~~ Any power vested in 3 or more fiduciaries or nonfiduciaries by the governing instrument or by law ~~may~~ must be exercised by a majority of ~~such~~ the fiduciaries or ~~nonfiduciaries and~~ nonfiduciaries.

(3) A fiduciary or nonfiduciary that dissents from the action of the majority of the fiduciaries or nonfiduciaries is not liable with respect to the action to anyone having an interest in the fiduciary fund, or to the other fiduciaries or nonfiduciaries, if the fiduciary's or nonfiduciary's dissent is evidenced by a writing delivered to the majority.

(4) Unless otherwise provided in a governing instrument, when the governing instrument names 2 fiduciaries or nonfiduciaries, the fiduciaries or nonfiduciaries may designate 1 of the fiduciaries or nonfiduciaries to perform ministerial functions on behalf of both of the fiduciaries or nonfiduciaries.

(5) Unless otherwise provided in a governing instrument, when the governing instrument names 3 or more fiduciaries or nonfiduciaries, a majority of the fiduciaries or nonfiduciaries ~~named in a governing instrument~~ may designate 1 or more of ~~such~~ the fiduciaries or nonfiduciaries to perform ministerial functions on behalf of all ~~such of the~~ the fiduciaries or nonfiduciaries. ~~A fiduciary or nonfiduciary who dissents from the action of the majority is not liable to anyone having an interest in the fiduciary fund, or to the other fiduciaries or nonfiduciaries, if such dissent is evidenced by a writing delivered to the majority of the fiduciaries or nonfiduciaries.~~

(b) ~~This~~ Unless otherwise expressly provided by a governing instrument or other law of this State, this section
does not excuse a cofiduciary or co-nonfiduciary from liability for any of the following:

- (1) ~~failure~~ Failure to participate in the administration of the fiduciary ~~fund~~ fund.
- (2) ~~or for failure~~ Failure to attempt to prevent a breach of ~~trust~~, trust.
- (3) ~~or for failure~~ Failure to seek advice and guidance from the court in a recurring ~~situation, unless~~
~~otherwise expressly provided by the governing instrument.~~ situation.

Section 2. 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.

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

(29) Declare 1 or more new trusts for the purpose of merging all, or a portion, of the trust with or into
the new trust or trusts and merge all or a portion of the trust with or into any other trust or 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 and
administered in accordance with the terms of such governing instrument as the trustee shall select in connection
with such merger, which governing instrument may be the governing instrument of either the transferee trust (as
defined in § 3341 of this title) or the transferor trust (as defined in § 3341 of this title), so long as such a merger
would not result in a material change in the dispositive terms of the trust defining the nature and extent of any
trust beneficiary's interest in the principal or income of the trust;

Section 3. Amend § 3326, Title 12 of the Delaware Code by making deletions as shown by strike through
and insertions as shown by underline as follows:

§ 3326. Resignation of an officeholder.

(a) For purposes of this section and ~~§ 3327~~ §§ 3327 and 3327A of this title, ~~the term~~ "officeholder" includes
all of the following:

- (1) ~~a trustee~~, A trustee.
- (2) ~~an "adviser"~~ An adviser, as defined in § 3313 of this ~~title~~, title.
- (3) ~~a "designated representative"~~ A designated representative, as defined in § 3339 of this ~~title~~, and title.
- (4) ~~an~~ An enforcer under § 3556(3) of this title.

(5) A holder of a power to remove or appoint one or more fiduciaries or nonfiduciaries with respect to a trust.

Section 4. Amend Chapter 33 of Title 12 of the Delaware Code by transferring § 3336 of Title 12 of the Delaware Code to § 3327A of Title 12 of the Delaware Code and making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 3336.~~ § 3327A. Appointment of ~~successor trustee.~~ an officeholder.

(a) If a trust has no serving trustee trust's governing instrument does not include a provision that effectively can be used to appoint a successor officeholder, an officeholder or successor officeholder may be appointed as provided under this section when the trust does not have a serving officeholder in a given position for any reason, including the following:

(1) Due to the death, incapacity, ~~removal~~ removal, or resignation of the last serving trustee of the trust, officeholder in that position.

(2) ~~or due~~ Due to the renunciation or declination of the last named successor trustee of the trust officeholder in that position of its appointment as such, and if the provisions of the governing instrument do not include any provisions which can be effectively used to appoint a successor trustee, and such.

(3) Due to the declination to appoint a successor officeholder by the holder or holders of the power to so appoint.

(b) Except as otherwise provided in a governing instrument, when the trust instrument expressly requires an officeholder to be appointed or when a trust has no trustee, the holder or holders of the power to appoint the successor trustee or other officeholder are deemed to have declined to do so if the holder or holders have not appointed a successor trustee or other officeholder within 60 days of being notified of the corresponding vacancy.

(c) ~~if~~ If the only remaining dispositive provisions of the trust governing instrument then require distribution of the remaining property of the trust to 1 or more beneficiaries (whether outright, or to 1 or more other trusts which do have a serving trustee), then the taking beneficiaries of the trust, by unanimous ~~vote~~, consent, may name a successor trustee or other officeholder of the trust without the approval of the Court of Chancery. For purposes of the preceding sentence, this subsection, the person entitled to ~~vote with respect to~~ consent on behalf of a beneficiary ~~which that is~~ another trust ~~which that~~ has a serving trustee is the trustee or trustees of such the other trust.

(d) If subsection (c) of this section does not apply, the current permissible beneficiaries and presumptive remainder beneficiaries of the trust, by unanimous consent, may name a successor trustee or other officeholder of the trust, subject to any conditions under the governing instrument with respect to such appointee, without the approval of the Court of Chancery.

(e) For purposes of subsections (c) and (d) of this section, unanimous consent may be achieved via representation by one or more designated representatives under § 3339 of this title or by one or more virtual representatives under § 3547 of this title.

(f) Except when a trustee vacancy is required by law to be filled, nothing in this section is to be construed to require a vacancy of a trustee or other officeholder to be filled when not expressly required by the governing instrument.

(g) Nothing in this section is to be construed to limit the appointment of a trustee or other officeholder by a modification of a trust under § 3342 of this title or by a nonjudicial settlement agreement under § 3338 of this title.

Section 5. Amend § 3341, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3341. Consequences of trust merger and similar transactions.

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. Except to the extent provided in paragraph (5) of this section, the terms of the governing instrument of either the transferor trust or the transferee trust ~~trust~~, as selected in accordance with § 3325(29) of this title, 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 or to the same trust as modified after such appointment, 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. This section is not intended, nor shall it be construed, to grant to any trustee a right or power to merge trusts but rather this section is intended only to describe certain consequences

of a trust merger in cases where the merger is authorized by other applicable law. Except as expressly provided in clause (ii) of paragraph (4) of this section, this section is not intended, nor shall it be construed, to address the validity or effect of any instrument in writing, executed prior to a trust merger, purporting to exercise a power of appointment over property of any trust participating in a trust merger.

Section 6. Amend § 3345, 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.

(c) The trustees ~~and advisers~~ of a beneficiary well-being trust shall provide (or if applicable, the advisers shall direct the trustees to provide or shall consent to the trustees' decision to 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 or adviser, as applicable, 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,~~ applicable fiduciary duties, the trustees ~~and advisers~~ of a beneficiary well-being trust shall pay (or if applicable, the advisers shall direct the trustees to pay or shall consent to the trustees' decision to 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 (or if applicable, the advisers may direct the trustee to provide or may consent to the trustee's decision to provide) beneficiary well-being programs, and may select, hire, retain, and pay (or if applicable, the advisers may direct the trustee to do so or may consent to the trustee's decision to do so) providers of beneficiary well-being programs whether or not the providers are third parties or affiliates of the trustee or adviser within the meaning of § 3312 of this title.

(3) ~~Each~~ If the governing instrument expressly so provides, each provider of beneficiary well-being programs is entitled to payment for providing a beneficiary well-being program, and a trustee (or if applicable, an adviser) is entitled to the full ~~fiduciary~~ compensation to which the trustee or adviser is otherwise entitled as trustee or adviser without diminution for the fees and costs of the beneficiary well-being program, without prior notice or prior disclosure to any beneficiary of the trust.

Section 7. Amend § 504, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 504. Certain powers of appointment.

(b) Subsection (a) of this section shall not apply to the exercise of a power of appointment (other than any such power of appointment created through the exercise of another power of appointment) over property held in a trust that is not subject to, or has an inclusion ratio of zero for purposes of, the tax on generation-skipping transfers imposed pursuant to Chapter 13 of the Internal Revenue Code (26 U.S.C. Ch. 13) or any successor provision thereto if the instrument of exercise of the power makes express reference to subsection (a) of this section and expressly states that subsection (a) of this section shall not apply to the exercise of the power or makes express reference to ~~§ 504~~ § 501(a) of this title and expressly states that ~~§ 504~~ § 501(a) of this title shall apply to the exercise of the power.

Section 8. This Act is effective upon enactment and applies to trusts whenever created.

Approved July 23, 2026