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DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

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:

1 Section 1. Amend § 801, Title 12 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 801. Definitions.

4 In this chapter, unless the context otherwise requires:

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

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

9 ~~(2)~~(3) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

10 ~~(3)~~(4) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of  
11 intestate succession to the property of a decedent.

12 ~~(4)~~(5) "Person" means an individual, a corporation, an ~~organization~~ organization, or other legal entity.

13 ~~(5)~~(6) "Personal representative" includes executor, administrator, successor personal representative, special  
14 ~~administrator~~ administrator, and persons who perform substantially the same function under the law governing their  
15 status.

16 ~~(6)~~(7) "Property" includes both real and personal property or any interest therein and means anything that may  
17 be the subject of ownership.

18 ~~(7)~~(8) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated  
19 security or, in the case of an uncertificated ~~security~~, security or a security account, to initiate or transfer an account  
20 showing ownership of securities.

21 (8)(9) "Registering entity" means a person who originates or transfers a security title by registration and  
22 includes a ~~broker~~ broker, a securities dealer, a bank, a savings bank, a trust company, an investment adviser, or any  
23 other financial institution maintaining security accounts for customers and a transfer agent or other person acting for or  
24 as an issuer of securities.

25 (9)(10)a. "Security" means a share, ~~participation~~ participation, or other interest in property, in a ~~business~~  
26 business, or in an obligation of an enterprise or other ~~issuer~~ issuer.

27 b. "Security" includes all of the following:

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

29 A. A corporation.

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

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

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

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

35 (10)(11) "Security account" means:

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

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

42 c. An investment management account, securities account, custody account, or other agency account for  
43 the investment or custody of securities maintained with a bank, a savings bank, a trust company, a securities  
44 dealer, an investment adviser, or other financial institution, including the securities in such account, a cash balance  
45 in such an account, cash, cash equivalents, interest, and earnings, dividends or distributions earned or declared on  
46 a security in such an account, whether or not credited to the account before the owner's death.

47 (11)(12) "State" includes any state of the United States, the District of Columbia, the Commonwealth of  
48 Puerto Rico and any territory or possession subject to the legislative authority of the United States.

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

51 § 805. Form of registration in beneficiary form.

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

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

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

61 § 3301. Application of chapter; definitions [For application of this section, see 79 Del. Laws, c. 172, § 6].

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

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

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

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

72 (2) The term “interested person” means any living person who:

73 a. Is an income beneficiary or remainder beneficiary of a trust;

74 b. Has a vested interest in a decedent’s estate;

75 c. Receives benefits as a ward from a guardianship account; or

76 d. Is the minor with respect to an account established under a Uniform Transfers to Minors Act [Chapter  
77 45 of this title].

78 (3) The term “issue” shall denote a distribution per stirpes, such that the children of the person whose issue is  
79 referred to shall be taken to be the heads of the respective stocks of issue and a person legally adopted, whether under  
80 or over the age of 18 years at adoption, shall thereafter be considered to be a child and issue of the adopting person and

81 an issue of the ascendants of the adopting person, and the issue of the person so adopted shall be considered to be issue  
82 of the adopting person and the adopting person's ascendants.

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

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

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

91 § 3315. Trustee's exercise of discretion; review by court; discretionary interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

131 § 3325. Specific powers of trustee [For application of this section, see 79 Del. Laws, c. 172, § 6; 80 Del. Laws, c.  
132 153, § 5].

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

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

139 a. Subject to the terms of the governing instrument, the trustee itself may provide the services under this  
140 paragraph (32), or may select, hire, retain, and compensate providers of the services, and pay for the services from

141 the trust estate, whether or not the providers are third parties or affiliates of the trustee within the meaning of §  
142 3312 of this title.

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

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

148 § 3339. Designated representatives of trusts.

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

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

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

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

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

167 Section 7. Amend Chapter 33, Title 12 of the Delaware Code by making deletions as shown by strike through and  
168 insertions as shown by underline as follows:

169 § 3345 Beneficiary Well-Being Trust.

170 (a) This section applies to any trust the governing instrument of which makes express reference to this section and  
171 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  
172 a “Beneficiary Well-Being Trust” and is deemed to include the powers, duties, rights, and interests of the beneficiaries,  
173 trustees, and advisers, within the meaning of “advisers” under § 3313 of this title, as provided in this section.

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

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

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

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

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

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

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

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

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

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

203 § 3547. Representation by person with a substantially identical interest [For application of this section, see 79 Del.  
204 Laws, c. 172, § 6].

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

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

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

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



229 between the designated representative and the contingent successor remainder beneficiary or the more remote  
230 contingent successor remainder beneficiary, as applicable.

231 (3) As used in this subsection:

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

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

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

245 (c)(1) The holder of a general testamentary or inter vivos power of appointment—or a nongeneral testamentary or  
246 inter vivos power of appointment that is expressly exercisable in favor of any person or persons, excepting such holder, ~~his~~  
247 ~~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  
248 designated representative of any such holder, may, with the consent of any person whose consent would be required for the  
249 valid exercise of the power, represent and bind persons whose interests, as takers in default, are subject to the power, but, in  
250 the case of any such nongeneral power of appointment, only to the extent that there is no material conflict of interest  
251 between the holder and the persons represented with respect to the particular question or dispute.

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

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

265 (h) For purposes of this section, “designated representative” means a designated representative appointed under §  
266 3339 of this title.

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

#### SYNOPSIS

Sections 1 and 2 of this Act update Chapter 8 of Title 12, the Uniform TOD Security Registration Act. Section 1 of this Act does the following:

(1) Adds a new definition to § 801 of Title 12 to define “cash equivalents”.

(2) Amends the definition of “registering entity” in § 801 of Title 12 to confirm that registering entities may include securities dealers, banks, savings banks, trust companies, investment advisers, and other financial institutions that maintain securities accounts for customers.

(3) Amends the definition of “security” in § 801 of Title 12 to confirm that interests in or obligations of a corporation; a limited liability company or any series of a limited liability company; a partnership, whether general or limited, or any series of a partnership; and a trust, including a common law trust, a voting trust, a business trust, or a statutory trust, or any series of a trust, constitute a “security” for purposes of the Uniform TOD Security Registration Act.

(4) Amends the definition of “security account” in § 801 of Title 12 to make ministerial changes to the language of the definition and to expand the definition to include investment management accounts, securities accounts, custody accounts, or other agency accounts 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.

Section 2 of this Act amends § 805 of Title 12 to confirm that registration in beneficiary form with respect to an uncertificated security or a security account need not include the names of beneficiaries if the names of all beneficiaries are otherwise maintained by the registering entity. This avoids, for example, any requirement for the book entry of an uncertificated security or the name of a security account to include the names of all beneficiaries, so long as the registering entity otherwise maintains the names of such beneficiaries.

Sections 1 and 2 of this Act are not intended to override provisions of an entity’s operating agreement or governing provisions, and will take effect subject to any implementing requirements of the agreement or governing provisions, such as transfer or ownership restrictions.

Sections 3 and 4 of this Act pertain to “letters of wishes” by trustors and add a new definition to § 3301 of Title 12 and a new subsection to § 3315 of Title 12. Letters of wishes have long been created by trustors as a means of assisting fiduciaries to understand the discretionary terms of the trust’s governing instrument, to understand the application of those terms as intended by trustors, and to assist fiduciaries to exercise distribution discretion. Accordingly, Sections 3 and 4 of this Act acknowledge existing and common practice by affirming that the standard of review of a fiduciary’s decision to consider or not to consider a letter of wishes is the same “abuse of discretion” (within the meaning of § 187 of the Restatement (Second) of Trusts, not §§ 50 and 60 of the Restatement (Third) of Trusts) standard described in § 3315 of Title 12. The new provisions recognize that a letter of wishes is a non-binding document intended to provide guidance and insight into the trustor’s intent relevant to a particular trust. New subsection (c) of § 3315 of Title 12 specifically provides 3 safe harbors for determining that a fiduciary has not abused its discretion, by stating that the following do not constitute an abuse of that fiduciary’s discretion: (1) the fiduciary’s decision not to consider a letter of wishes with respect to an unambiguous provision of the trust’s governing instrument; (2) the fiduciary’s decision not to consider a letter of wishes not meeting the criteria of the new subsection (c) of § 3315 of Title 12; and (3) the fiduciary’s decision to consider a letter of

wishes meeting the criteria of the new subsection (c) of § 3315 of Title 12, with respect to an ambiguous provision of a trust's governing instrument. In addition, the new subsection (c) of § 3315 of Title 12 provides that the letter of wishes is not binding on the fiduciary, that the fiduciary has no duty to follow the letter of wishes, and that the fiduciary's exercise or non-exercise of a discretionary power does not create an inference that the fiduciary improperly exercised such power or abused the fiduciary's discretion under § 3315(a) of Title 12.

Sections 3 and 4 of this Act, however, are not intended to override the Court of Chancery's decision in *Bishop v. McNeil*, 1999 Del. Ch. LEXIS 186, 1999 WL 743489 (Del. Ch. 1999), in which the Court declined to take into account a letter to construe the provisions of an unambiguous governing instrument for a trust because the letter was extrinsic evidence of trustor intent. Thus, Sections 3 and 4 of this Act are not intended to affect the law regarding the Court's interpretation of unambiguous governing instruments for trusts, for which the Court may not consider extrinsic evidence, or to affect the law regarding the Court's interpretation of ambiguous governing instruments for trusts, for which the Court may consider extrinsic evidence, including any such letter of wishes.

Section 5 of this Act adds new paragraph (32) to § 3325 of Title 12 to provide trustees of trusts with a statutory power to hire, retain, and compensate providers of programs and education for trust beneficiaries that may help prepare the beneficiaries for inheriting wealth, by helping to develop wealth-management skills, enhance beneficiary mental health and well-being, particularly as those areas may be impacted by the trust itself, and to reduce the potential for the trust to disincentivize the beneficiaries' productivity or impact their mental health or well-being. The trustee may provide these programs and services or may hire and pay third parties or affiliates from the trust estate to provide these services and, in each case, without diminution of the trustee's regular compensation to which the trustee would otherwise be entitled to receive for serving as trustee.

Section 6 of this Act amends § 3339 of Title 12, regarding designated representatives, to do all of the following:

(1) Provide specifically that when a trustor appoints a designated representative for beneficiaries, the appointment may be with respect to beneficiaries who are minors, who are incapacitated, who are unborn, or whose identities or locations are not known and not reasonably ascertainable.

(2) Make clearer that when notice of the appointment is required to be given to parents of the represented person or to a guardian of the property of the represented person, the requirement applies only to those beneficiaries who are minors or who are incapacitated.

Section 7 of this Act adds new § 3345 of Title 12 to enable trustors to create what is to be known as a "Beneficiary Well-Being Trust" by expressly referencing § 3345 of Title 12 in the trust's governing instrument. Section 3345 of Title 12 recognizes a growing concern of trustors that while there are many advantages to passing wealth through generations in trust, such as tax savings, creditor protection, consolidated investment and management, and protection of assets from imprudent waste, trusts may grow in value so that considerable wealth may become available to the beneficiaries, sometimes before beneficiaries have had an opportunity to learn and know the value of money and the personal and social responsibilities that access to wealth entails. The purpose of the Beneficiary Well-Being Trust is to provide wealth management training and services for the beneficiaries' mental health and well-being and to educate beneficiaries about their family history and legacy, family values and dynamics, family governance, and philanthropy, all as more fully described in § 3345 of Title 12. The governing instrument of a Beneficiary Well-Being Trust may provide for additional powers, duties, rights, and interests of the beneficiaries, trustees, and advisers to the fullest extent permissible under § 3303 of Title 12. The trustees and advisers of a Beneficiary Well-Being Trust may provide beneficiary well-being programs or may hire and pay third parties or affiliates from the trust estate to provide beneficiary well-being programs and, in each case, without diminution of the trustee's or adviser's regular compensation to which the trustee or adviser would otherwise be entitled to receive for serving as trustee or adviser.

Section 8 of this Act amends § 3547 of Title 12, regarding virtual representation, to extend the principles of the section by allowing a designated representative of a beneficiary under § 3339 of Title 12 to represent virtually those whom the beneficiary could virtually represent, including, under the circumstances already permitted under § 3547 of Title 12, someone who is a minor, is incapacitated, is unborn, or whose identity or location is not known and not reasonably ascertainable; a presumptive remainder beneficiary of a trust; a contingent successor remainder beneficiary of a trust; the holder of a power of appointment over a trust; or the beneficiaries of a trust that is itself the beneficiary of another trust, if there is not a material conflict of interest between the designated representative and those who are to be virtually represented.

Section 9 of this Act provides an effective date for this Act and makes clear that this Act applies to trusts created before, on, or after the effective date of this Act.

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