SPONSOR: Rep. Bush & Sen. Mantzavinos
Sens. Pettyjohn, Wilson

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 103

AN ACT TO AMEND TITLE 12 AND TITLE 13 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 § 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.

(d) The term "fiduciary" shall mean trustees, personal representatives, guardians, custodians under the Uniform Transfers to Minors Act (Chapter 45 of this title), advisers or protectors acting in a fiduciary capacity under § 3313(a) of this title, agents acting in a fiduciary capacity under § 3322 of this title, designated representatives acting in a fiduciary capacity under § 3339 of this title, enforcers acting in a fiduciary capacity under § 3556(c) of this title, and other fiduciaries; while the term "nonfiduciary" shall mean advisers or protectors not acting in a ~~nonfiduciary~~ fiduciary capacity under § 3313(a) of this title, agents not acting in a ~~nonfiduciary~~ fiduciary capacity under § 3322 of this title, ~~or~~ designated representatives not acting in a ~~nonfiduciary~~ fiduciary capacity under § 3339 of this ~~title.~~ title, enforcers not acting in a fiduciary capacity under § 3556(c) of this title, and others that are not acting in a fiduciary capacity.

Section 2. 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.

(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~~ A 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 beneficiary that has a discretionary interest in a trust shall not be deemed to have a right to compel a distribution from the trust. Nothing within this subsection, however, shall be deemed to alter the standard of review of the discretion of the fiduciary under subsection

(a) of this section. 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.~~

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 of this title, the term "officeholder" includes a trustee, an adviser as defined in § 3313 of this title, ~~and~~ a designated representative as defined in § 3339 of this ~~title.~~ title, and an enforcer under § 3556(c) of this title.

(b) An officeholder may resign:

(1) If the governing instrument expressly permits the officeholder to resign, in accordance with the terms of the governing instrument;

(2) If the governing instrument neither expressly permits nor prohibits the officeholder's resignation, but establishes a procedure for the appointment of a successor officeholder ~~who~~ that shall be willing and able to serve as such, upon 30 days written notice to the beneficiaries, those holding the power to appoint a successor officeholder, and any other officeholders; ~~or~~

(3) Alternatively, even if either paragraph (b)(1) or (b)(2) of this subsection applies, by a modification of a trust under § 3342 of this title;

(4) If paragraphs (b)(1), (b)(2), and (b)(3) of this subsection do not apply, by a nonjudicial settlement agreement under § 3338 of this title; or

~~(3)~~(5) In all other cases, with the approval of the Court of Chancery.

Section 4. Amend § 3556, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3556. Trust for other noncharitable purposes.

Without limiting the effectiveness of § 3555 of this title:

(a) ~~In addition to the provisions of § 3555 of this title, a~~ A trust for a declared purpose that is not impossible of attainment is valid notwithstanding that the trust might not be deemed to be for charitable purposes.

(b) A trust authorized by subsection (a) of this section ~~shall~~ is not ~~be~~ invalid because it lacks an identifiable person as beneficiary. Except as otherwise provided by the terms of the governing instrument, a person is not deemed to be a

beneficiary of a trust authorized by subsection (a) of this section solely because the person received or receives disbursements from the trust in furtherance of the declared purpose of the trust.

(c) A trust authorized ~~by~~ under subsection (a) of this section may be enforced by a person appointed ~~in~~ for such purpose by the terms of the ~~trust~~ trust, as permitted under § 3303(b) of this title, or, if ~~there is no such person~~ none, or if the last such person is no longer ~~is~~ willing and able to serve, by a person appointed for such purpose by the Court of ~~Chancery. A person who~~ Chancery (each such person so appointed, an "enforcer"). Except as otherwise provided by the terms of the governing instrument, a person that has an interest in the declared purpose of the trust other than a general public interest may petition the Court of Chancery for an order that appoints a person as enforcer to enforce the terms of the trust or to remove ~~that person.~~ any person previously nominated to serve as an enforcer or currently serving as an enforcer. A governing instrument of a trust authorized under subsection (a) of this section may provide that the enforcer or some other person has exclusive standing to enforce the terms of such trust.

(d) Property of a trust authorized ~~by~~ under subsection (a) of this section may be applied only to ~~its~~ the property's intended use. ~~Upon~~ On the termination of the trust, any property of the trust remaining ~~shall~~ must be distributed ~~in accordance with~~ under the terms of the trust or, in the absence of such terms, as provided in § 3592 of this title.

(e) Except as otherwise provided by the terms of the governing instrument, a person serving as an enforcer of a trust authorized under subsection (a) of this section is considered a fiduciary when exercising such authority.

(f) A person that accepts appointment as an enforcer of a trust authorized under subsection (a) of this section submits to the personal jurisdiction of this State regarding any matter related to the trust. This subsection does not preclude other methods of obtaining jurisdiction over the enforcer of a trust.

(g) Except as otherwise provided by the terms of the governing instrument, with respect to a trust authorized under subsection (a) of this section that lacks an identifiable person as beneficiary, §§ 3338 and 3342 of this title may be utilized without the need for any beneficiary as an "interested person" for purposes of § 3338 of this title or the written consent or written nonobjection of any beneficiary for purposes of § 3342 of this title.

(h) Except as otherwise provided by the terms of the governing instrument, with respect to trusts authorized by subsection (a) of this section that lack an identifiable person as beneficiary, if one or more enforcers are serving, all of the following apply:

(1) To effectuate a nonjudicial settlement agreement with respect to the trust under § 3338 of this title, each enforcer then serving is an "interested person" of the trust.

(2) To effectuate a modification of the trust under § 3342 of this title, the written consent or written nonobjection of each enforcer then serving is required.

Section 5. Amend § 3580, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3580. Definition.

In this subchapter, the term “trustee” includes fiduciaries and other persons exercising, or directing or consenting to the exercise of, or ~~who~~ that are required to be consulted before the exercise of, powers or duties under a trust's governing instrument or under this title, as well as designated representatives under § 3339 of this ~~title.~~ title and enforcers under § 3556 of this title.

Section 6. Amend § 1513, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1513. Disposition of marital property; imposition of lien; insurance policies.

(b) For purposes of this chapter only, “marital property” means all of the following:

(1) All property acquired by either party subsequent to the marriage, except any of the following:

a. Property acquired by an individual spouse by bequest, devise, or descent or by gift, including a gift in trust ~~and~~ (but excluding gifts between ~~spouses,~~ spouses that are made outright and free from trust), if any of the following apply:

1. The gifted property is titled and maintained in the sole name of the donee spouse;

2. The gifted property is held in a trust created by another person, of which trust the donee spouse is a beneficiary, regardless of whether other individuals are beneficiaries of the same trust;

3. A gift tax return is filed reporting the transfer of the gifted property in the sole name of the donee spouse or in a trust of which the donee spouse is a beneficiary; ~~or~~

4. A notarized or other validly-executed document, executed before or contemporaneously with the transfer, is offered demonstrating the nature of the ~~transfer.~~ transfer; or

5. Unless the trust instrument expressly provides otherwise, the gifted property is held in a trust created by a donor spouse, of which trust the donee spouse is a beneficiary, regardless of whether other individuals are beneficiaries of the same trust.

Section 7. This Act is effective upon enactment and applies to trusts whenever created.

SYNOPSIS

Section 1 of this Act amends§ 3301(d) of Title 12 by adding to the definition of “fiduciary” enforcers of purpose trusts under § 3556 of Title 12 that are acting in a fiduciary capacity, by adding to the definition of "nonfiduciary" enforcers of purpose trusts under § 3556 of Title 12 that are not acting in a fiduciary capacity, and by clarifying that others that are not acting in a fiduciary capacity are also nonfiduciaries.

Section 2 of this Act amends § 3315(b) of Title 12 so that the statute now states expressly the practical effect of a discretionary interest in a trust merely being an expectancy, which is that a beneficiary of such an interest cannot compel a

distribution from the trust. The statute continues to provide, however, that the standard of review under § 3315(a) of Title 12 applies in a suit by a beneficiary for abuse of discretion. Section 2 of this Act also deletes in 2 instances the use of the word "trustee" as being redundant because "fiduciary," as defined in § 3301 of Title 12, already includes a trustee.

Section 3 of this Act amends § 3326 of Title 12 to state expressly within the statute that a modification of a trust by consent while the trustor is living (under§ 3342 of Title 12) may be used to effectuate the resignation of a trustee or other officeholder. Section 3 of this Act also amends § 3326 to state expressly within the statute that a nonjudicial settlement agreement (under§ 3338 of Title 12) may be used to effectuate the resignation of a trustee or other officeholder where the trust's governing instrument is silent concerning both resignation and the appointment of successor trustees or other officeholders. It is intended that these express statements in § 3326 of Title 12 will reduce the need to resort to a court petition to effectuate the resignation and resulting appointment.

Section 4 of this Act amends § 3556 of Title 12 so that the statute:

(1) Expressly states that a person is not deemed to be a beneficiary of a purpose trust solely by virtue of receiving disbursements from the purpose trust.

(2) Defines the term "enforcer" and permits the governing instrument of a purpose trust to grant the enforcer or some other person exclusive standing to enforce the terms of a purpose trust.

(3) Provides that an enforcer will serve as a fiduciary of the purpose trust unless the governing instrument provides otherwise.

(4) States that a person that accepts an appointment as enforcer submits to personal jurisdiction in Delaware.

(5) If there are no identifiable beneficiaries of the purpose trust, authorizes the enforcer to act as an "interested person" in the context of a nonjudicial settlement agreement under§ 3338 of Title 12 or a nonjudicial modification under§ 3342 of Title 12.

The changes in Section 4 of this Act were made to update Delaware law consistent with modern purpose trust statutes in other jurisdictions.

Section 5 of this Act amends § 3580 of Title 12 to add to the definition of "trustee" for purposes of Subchapter VII of Chapter 35 of Title 12 by expressly including enforcers of purpose trusts under§ 3556 of Title 12.

Section 6 of this Act amends § 1513 of Title 13 to address an ambiguity inherent in the situation where one spouse makes a gift in trust for the other spouse. This Section clarifies that in such circumstance, the donee's interest in the trust is not marital property unless the trust agreement provides otherwise.

Section 7 of this Act provides an effective date.