

[First Reprint]

ASSEMBLY, No. 1555

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Assemblyman BAGGER

1 AN ACT concerning the limits on certain trustees' powers of
2 distribution and supplementing Title 3B of the New Jersey Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. a. The following powers conferred by a governing instrument
8 upon a trustee in his or her capacity as a trustee shall not be exercised
9 by that trustee:

10 (1) The power to make discretionary distributions of either
11 principal or income to or for the benefit of the trustee, the trustee's
12 estate, or the creditors of either, ¹[in the trustee's individual
13 capacity,]¹ unless either:

14 (a) limited by an ascertainable standard relating to the trustee's
15 health, education, support or maintenance, within the meaning of 26
16 U.S.C. §§ 2041 and 2514; or

17 (b) exercisable by the trustee only in conjunction with another
18 person having a substantial interest in the property subject to the
19 power which is adverse to the interest of the trustee within the
20 meaning of 26 U.S.C. §2041(b) (1) (C) (ii);

21 If a trustee is prohibited by paragraph (1) of this subsection from
22 exercising a power conferred upon the trustee, the ¹[trustee's] trustee
23 nevertheless may¹ exercise ¹[of]¹ that power ¹but¹ shall be limited to
24 distributions for the trustee's health, education, support or
25 maintenance to the extent otherwise permitted by the terms of the
26 trust.

27 (2) The power to make discretionary distributions of either
28 principal or income to satisfy any of the trustee's ¹personal¹ legal
29 obligations ¹[in the trustee's individual capacity]¹ for support or other
30 purposes;

31 (3) The power to make discretionary allocations in the trustee's

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted March 11, 1996.

1 ¹personal¹ favor of receipts or expenses as between income and
2 principal, unless such trustee ¹[acts in a fiduciary capacity whereby
3 such trustee]¹ has no power to enlarge or shift any beneficial interest
4 except as an incidental consequence of the discharge of such trustee's
5 fiduciary duties;

6 (4) The power to exercise any of the powers proscribed in this
7 subsection with regard to an individual other than the trustee to the
8 extent that such individual could exercise a similar prohibited power
9 in connection with a trust that benefits the trustee.

10 b. Unless otherwise prohibited by the provisions of subsection a.
11 of this section, a trustee may exercise a power described in that
12 subsection in favor of someone other than the trustee, the trustee's
13 estate, or the creditors of either.

14 c. If a governing instrument contains a power proscribed under
15 subsection a. of this section the following ¹[may] shall¹ apply:

16 (1) If the power is conferred on two or more trustees, it may be
17 exercised by the trustee or trustees who are not so prohibited as if they
18 were the only trustee or trustees; or

19 (2) If there is no trustee in office who can exercise such power
20 upon application of any interested party, a court of competent
21 jurisdiction shall appoint a trustee to exercise such power or, except
22 as provided in subsection d. of this section, a successor trustee who
23 would not be disqualified ¹[may]shall¹ be appointed ¹to exercise the
24 power that the other trustees cannot exercise¹ in accordance with the
25 provisions of the trust instrument as if the office of trustee were vacant
26 ¹[to exercise the power that the other trustees cannot exercise]¹.

27 d. No beneficiary of a trust, in an individual, trustee or other
28 capacity, may appoint, or remove and appoint, a trustee ¹who is
29 related or subordinate to the beneficiary within the meaning of 26
30 U.S.C. § 672 (c)¹ unless:

31 (1) the trustee's discretionary power to make distributions to or for
32 such beneficiary is limited by an ascertainable standard relating to the
33 beneficiary's health, education, support or maintenance as set forth in
34 subsection a. of this section;

35 (2) the trustee's discretionary power may not be exercised to
36 satisfy any of such beneficiary's legal obligations for support or other
37 purposes; and

38 (3) the trustee's discretionary power may not be exercised to grant
39 to such beneficiary a general power to appoint property of the trust to
40 the beneficiary, the beneficiary's estate or the creditors thereof within
41 the meaning of 26 U.S.C. §2041.

42 This subsection d. shall not apply if the appointment of the trustee
43 by the beneficiary may be made only in conjunction with another
44 person having a substantial interest in the property of the trust, subject
45 to the power, which is adverse to the exercise of the power in favor of
46 the beneficiary within the meaning of 26 U.S.C. §2041(b) (1) (C) (ii).

1 ¹[This subsection d. shall not apply if the trustee appointed by the
2 beneficiary is not related or subordinate to the beneficiary within the
3 meaning of 26 U.S.C. §672(c).]¹

4 e. The provisions of this section shall not apply during the time that
5 a trust remains revocable or amendable by the grantor.

6 f. This section applies to:

7 (1) Any trust created under a governing instrument executed 90
8 days or more after the effective date of this act, unless the governing
9 instrument expressly provides that this act does not apply; and

10 (2) Any trust created under a governing instrument executed
11 before 90 days after the effective date of this act, unless all interested
12 parties affirmatively elect on or before three years after the effective
13 date by a written declaration signed by or on behalf of each interested
14 party and delivered to the trustee, not to be subject to the application
15 of this act. In the case of a testamentary trust, such declarations shall
16 be filed with the clerk of the court in which the will was admitted to
17 probate.

18 g. In this section the term "interested party" means:

19 (1) Each trustee then serving; and

20 (2) Each person having an interest in income or principal whom it
21 would be necessary to join as a party in a proceeding for the judicial
22 settlement of a trustee's account or, if such a person has not attained
23 majority or is otherwise incapacitated, the person's legal representative
24 under applicable law or the person's agent under a durable power of
25 attorney that is sufficient to grant such authority.

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27 2. This act shall take effect immediately .
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32 Limits certain trustees' powers of distribution.