

CHAPTER 41

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

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

C.3B:11-4.1 Limitations on powers of trustees; applicability; "interested party" defined.

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

(1) The power to make discretionary distributions of either principal or income to or for the benefit of the trustee, the trustee's estate, or the creditors of either, unless either:

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

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

If a trustee is prohibited by paragraph (1) of this subsection from exercising a power conferred upon the trustee, the trustee nevertheless may exercise that power but shall be limited to distributions for the trustee's health, education, support or maintenance to the extent otherwise permitted by the terms of the trust.

(2) The power to make discretionary distributions of either principal or income to satisfy any of the trustee's personal legal obligations for support or other purposes;

(3) The power to make discretionary allocations in the trustee's personal favor of receipts or expenses as between income and principal, unless such trustee has no power to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of such trustee's fiduciary duties;

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

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

c. If a governing instrument contains a power proscribed under subsection a. of this section the following shall apply:

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

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

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

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

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

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

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

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

f. This section applies to:

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

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

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

(1) Each trustee then serving; and

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

2. This act shall take effect immediately .

Approved June 26, 1996.