

CHAPTER 501B

TRUSTS

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501B.15 DIVISION AND MERGER OF TRUSTS.

Subdivision 1. Division. A trustee may, without the approval of any court, divide a trust, before or after it is funded, into two or more separate trusts if the trustee determines that dividing the trust is in the best interests of all persons interested in the trust and will not substantially impair the accomplishment of the purposes of the trust.

Subd. 2. Merger. A trustee may, without the approval of any court, merge two or more trusts having substantially similar terms and identical beneficiaries into a single trust if the trustee determines that merging the trusts is in the best interests of all persons interested in the trusts and will not substantially impair the accomplishment of the purposes of the trusts.

Subd. 3. Application. Subdivisions 1 and 2 apply to all trusts whenever executed or created.

History: 1995 c 130 s 2

NOTE: This section, as added by Laws 1995, chapter 130, section 2, is effective January 1, 1996. See Laws 1995, chapter 130, section 22.

501B.16 PETITION FOR COURT ORDER.

A trustee of an express trust by will or other written instrument or a person interested in the trust may petition the district court for an order:

- (1) to confirm an action taken by a trustee;
- (2) upon filing of an account, to settle and allow the account;
- (3) to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests;
- (4) to construe, interpret, or reform the terms of a trust, or authorize a deviation from the terms of a trust, including a proceeding involving section 501B.31;
- (5) to approve payment of the trustee's fees, attorneys' fees, accountants' fees, or any other fees to be charged against the trust;
- (6) to confirm the appointment of a trustee;
- (7) to accept a trustee's resignation and discharge the trustee from the trust;
- (8) to require a trustee to account;
- (9) to remove a trustee for cause;
- (10) to appoint a successor trustee when required by the terms of the trust instrument or when by reason of death, resignation, removal, or other cause there is no acting trustee;
- (11) to confirm an act performed in execution of the trust by a person while there was no acting trustee;
- (12) to subject a trust to continuing court supervision under section 501B.23;
- (13) to remove a trust from continuing court supervision under section 501B.23;
- (14) to mortgage, lease, sell, or otherwise dispose of real property held by the trustee notwithstanding any contrary provision of the trust instrument;
- (15) to suspend the powers and duties of a trustee in military service or war service in accordance with section 525.95 and to order further action authorized in that section;
- (16) to secure compliance with the provisions of sections 501B.33 to 501B.45, in accordance with section 501B.41;
- (17) to determine the validity of a disclaimer filed under section 501B.86;
- (18) to change the situs of a trust;
- (19) to redress a breach of trust;

- (20) to terminate a trust;
- (21) to divide a trust under section 501B.15;
- (22) to merge two or more trusts under section 501B.15; or
- (23) to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee's duties.

History: 1995 c 130 s 3

NOTE: The amendments to this section by Laws 1995, chapter 130, section 3, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

501B.36 REGISTRATION AND REPORTING.

The registration and reporting provisions of sections 501B.37 and 501B.38 apply to a charitable trust, including an organization with a charitable purpose, that has gross assets of \$25,000 or more at any time during the year, except that the provisions do not apply to:

(1) a charitable trust administered by the United States or a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any of their agencies or subdivisions;

(2) a religious association organized under chapter 315 or chapter 317A;

(3) a charitable trust organized and operated exclusively for religious purposes and administered by a religious association organized under chapter 315 or 317A;

(4) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 and operated, supervised, or controlled by or in connection with one or more organizations described in clauses (2) to (5); a pooled income fund as defined in section 642(c)(5) of the Internal Revenue Code of 1986 maintained by an organization described in clauses (2) to (5); or a charitable remainder annuity trust or unitrust, as defined in section 664 of the Internal Revenue Code of 1986;

(5) a trust in which the only charitable interest is a contingent interest for which no charitable deduction has been allowed for Minnesota income, inheritance, or gift tax purposes or a trust in which not all of the unexpired interests are devoted to one or more charitable purposes and in which the only charitable interest is an annuity or an income interest with respect to which a charitable deduction is allowed the trust under applicable Minnesota income tax laws;

(6) an organization registered with the attorney general pursuant to sections 309.52 and 309.53;

(7) a trust for individual and charitable beneficiaries that is described in section 4947(a)(2) of the Internal Revenue Code of 1986, also known as a split-interest trust; or

(8) a charitable gift, bequest, or devise not held and continued by a private express trust or corporation even though the gift, bequest, or devise creates a fiduciary relationship, unless there is no named charitable beneficiary in existence or unless a named charitable beneficiary elects in a writing filed with the attorney general and with the fiduciary to come within the provisions of sections 501B.37 and 501B.38.

History: 1995 c 235 s 12

501B.37 REGISTER OF TRUSTS AND TRUSTEES.

[For text of subd 1, see M.S.1994]

Subd. 2. Filing of instruments. Except as otherwise provided in section 501B.36, a charitable trust shall register and file with the attorney general a copy of its articles of incorporation or the instrument that created the charitable trust, including any amendments, within three months after the charitable trust first receives possession or control of property authorized or required to be applied, either at present or in the future, for charitable purposes.

Subd. 3. Registration fee. A \$25 registration fee shall be paid by every charitable trust filing the information required by this section.

History: 1995 c 235 s 13,14

501B.38 INFORMATION FILING.

Subdivision 1. Deadlines; extensions. A charitable trust subject to sections 501B.33 to 501B.45 must file with the attorney general a copy of its federal tax or information return,

including all schedules and amendments, submitted by the charitable trust to the Internal Revenue Service for the period covered in the trust's accounting year last completed. If the charitable trust does not file a federal tax or information return, it shall file a balance sheet and a statement of income and expenses for the accounting year last completed.

Subd. 1a. Extensions. The information required by this section must be filed annually on or before the 15th day of the fifth month following the close of the charitable trust's taxable year as established for federal tax purposes. The time for filing may be extended by application to the attorney general, but no extension may be for more than three months. A charitable trust that files the information required under this subdivision with the attorney general is not required to file the same information with the commissioner of revenue.

Subd. 2. Suspension of filing. The attorney general may suspend the filing requirements under subdivision 1 for a particular charitable trust for a reasonable, specifically designated time on written application of the trustee filed with the attorney general. If the filing requirements are suspended, the attorney general shall file in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced by the suspension and that the information required by this section is not required for proper supervision by the attorney general's office.

Subd. 3. Filing fee. A \$25 filing fee shall be paid by every charitable trust filing the information required by this section.

History: 1995 c 235 s 15

501B.71 CHARGES AGAINST INCOME AND PRINCIPAL.

[For text of subs 1 to 4, see M.S.1994]

Subd. 5. Exceptions. Paragraphs (a) to (c) are exceptions to the requirements of subdivisions 1 to 4.

(a) With respect to a revocable living trust, during the lifetime of the grantor, all of the trustee's regular compensation for services performed must be charged against income, unless directed otherwise by the grantor.

(b) If charging a part or all of the trustee's regular compensation to principal, in the judgment of the trustee, is impracticable, because of the lack of sufficient cash and readily marketable assets, or inadvisable, because of the nature of the principal assets, the trustee may determine to pay part or all of the compensation out of income. The decision of the trustee to pay a larger portion or all of the trustee's regular compensation out of income is conclusive, and the income of the trust is not entitled to reimbursement from principal at any subsequent time or times.

(c) If charging a part or all of the trustee's regular compensation to income, in the judgment of the trustee, is impracticable, because of the lack of sufficient income, or inadvisable, because of a desire to provide maximum income to the beneficiary, the trustee may determine to pay part or all of such compensation out of principal. The decision of the trustee to pay a larger portion or all of the trustee's regular compensation out of the principal is conclusive.

History: 1995 c 130 s 4

NOTE: Subdivision 5, as added by Laws 1995, chapter 130, section 4, is effective January 1, 1996. See Laws 1995, chapter 130, section 22.

501B.81 ENUMERATED POWERS OF TRUSTEE.

[For text of subs 1 to 5, see M.S.1994]

Subd. 6. Deposits. The trustee may deposit trust funds in a bank, including a bank operated by the trustee, or in a state or federal savings association.

[For text of subs 7 to 32, see M.S.1994]

History: 1995 c 202 art 1 s 25

501B.89 TRUST PROVISIONS LINKED TO PUBLIC ASSISTANCE ELIGIBILITY; SUPPLEMENTAL NEEDS TRUSTS.

Subdivision 1. Trusts containing limitations linked to eligibility for public assistance. (a) Except as allowed by subdivision 2 or 3, a provision in a trust that provides for the

suspension, termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible for, or receives public assistance or benefits under a public health care program is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

(b) This subdivision applies to trust provisions created after July 1, 1992. For purposes of this section, a trust provision is created on the date of execution of the first instrument that contains the provision, even though the trust provision is later amended or reformed or the trust is not funded until a later date.

[For text of subd 2, see M.S.1994]

Subd. 3. Supplemental needs trusts under federal law. A trust created on or after August 11, 1993, which qualifies as a supplemental needs trust for a person with a disability under United States Code, title 42, section 1396p(c)(2)(B)(iv) or 1396p(d), as amended by section 13611(b) of the Omnibus Budget Reconciliation Act of 1993, Public Law Number 103-66, commonly known as OBRA 1993, is enforceable, and the courts of this state may authorize creation and funding of a trust which so qualifies.

History: 1995 c 207 art 6 s 108,109

NOTE: The amendments to subdivisions 1 and 3 by Laws 1995, chapter 207, article 6, sections 108 and 109, are effective retroactive to August 11, 1993. See Laws 1995, chapter 207, article 6, section 125, subdivision 3.