

CHAPTER 501B

TRUSTS

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501B.17 VENUE.

Subdivision 1. **Filing of petition.** A petition under section 501B.16 or 501B.22 may be filed:

(1) in the case of a trust created by will, in the district court for (i) the county where the will was probated, (ii) the county where a trustee having custody of part or all of the trust assets resides or has a trust office, or (iii) the county in which the trust is administered;

(2) in the case of a nontestamentary trust, in the district court for (i) the county where a trustee having custody of part or all of the trust assets resides or has a trust office or (ii) the county in which the trust is administered; or

(3) in the case of a trust holding real property, in the district court for any county in which the real estate is situated.

Subd. 2. **Prior court proceedings.** In the case of a trust with respect to which there have been prior court proceedings in this state, a petition under section 501B.16 or 501B.22 must be filed in the court in which the prior proceedings were held.

History: 2005 c 26 s 1

501B.18 ORDER FOR HEARING.

Upon the filing of a petition under section 501B.16, the court shall, by order, fix a time and place for a hearing, unless notice and hearing have been waived in writing by the beneficiaries of the trust then in being. Unless waived, notice of the hearing must be given as follows: (1) by publishing, at least 20 days before the date of the hearing, a copy of the order for hearing one time in a legal newspaper for the county in which the petition is filed; and (2) by mailing, at least 15 days before the date of the hearing, a copy of the order for hearing to those beneficiaries of the trust who are known to or reasonably ascertainable by the petitioner. In the case of a beneficiary who is a minor or an incapacitated person as defined in section 524.5-102 and for whom a conservator, guardian, or guardian ad litem known to the petitioner has been appointed, notice must be mailed to that fiduciary. Notice may be given in any other manner the court orders.

History: 2005 c 10 art 4 s 21

501B.19 REPRESENTATION OF PERSONS WHO ARE UNBORN, UNASCERTAINED, UNKNOWN, OR MINORS OR INCAPACITATED PERSONS.

If an interested person is a minor or an incapacitated person as defined in section 524.5-102 and has no guardian or conservator within the state, or if an interested person is unborn, unascertained, or a person whose identity or address is unknown to the petitioner, the court shall represent that person, unless the court, upon the application of the trustee or any other interested person, appoints a guardian ad litem to represent the person.

History: 2005 c 10 art 4 s 22

501B.705 TRUSTEE'S POWER TO ADJUST.

[For text of subd 1, see M.S.2004]

Subd. 2. **Factors to consider.** In deciding whether and to what extent to exercise the power conferred by subdivision 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including, but not limited to, the following factors:

- (1) the nature, purpose, and expected duration of the trust;
- (2) the intent of the settlor;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other provisions of sections 501B.59 to 501B.76 and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;
- (9) the anticipated tax consequences of an adjustment; and
- (10) the investment return under current economic conditions from other portfolios meeting fiduciary requirements.

Subd. 3. Limitation on trustee's power. A trustee may not make an adjustment:

- (1) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (2) that changes the amount payable to a beneficiary as fixed annuity or a fixed fraction of the value of the trust assets;
- (3) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside; provided, however, that this limitation does not apply to any trust created prior to August 1, 2001, to the extent the trustee receives amounts during the accounting period which would, under the provisions of Minnesota Statutes 2000, section 501B.70, in effect prior to August 1, 2001, have been allocated to income;
- (4) if possessing or exercising the power to make an adjustment causes an individual to be treated as owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make adjustment;
- (5) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove or appoint the trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;
- (6) if the trustee is a beneficiary of the trust; or
- (7) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

Subd. 4. Cotrustee may exercise power. If the provisions of subdivision 3, clause (4), (5), (6), or (7), apply to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

Subd. 5. Release of power. A trustee may release the entire power conferred by subdivision 1 or may release only the power to adjust from income to principal or to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivision 3, clause (1), (2), (3), (4), (5), or (7), or if the trustee determines that possessing or exercising the power will

or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision 3. The release may be permanent or for a specified period, including a period measured by the life of an individual.

[For text of subs 6 to 8, see M.S.2004]

History: 2005 c 26 s 2-5

501B.895 PUBLIC HEALTH CARE PROGRAMS AND CERTAIN TRUSTS.

(a) It is the public policy of this state that individuals use all available resources to pay for the cost of long-term care services, as defined in section 256B.0595, before turning to Minnesota health care program funds, and that trust instruments should not be permitted to shield available resources of an individual or an individual's spouse from such use.

(b) When a state or local agency makes a determination on an application by the individual or the individual's spouse for payment of long-term care services through a Minnesota public health care program pursuant to chapter 256B, any irrevocable inter-vivos trust or any legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust created on or after July 1, 2005, containing assets or income of an individual or an individual's spouse, including those created by a person, court, or administrative body with legal authority to act in place of, at the direction of, upon the request of, or on behalf of the individual or individual's spouse, becomes revocable for the sole purpose of that determination. For purposes of this section, any inter-vivos trust and any legal instrument, device, or arrangement similar to an inter-vivos trust:

(1) shall be deemed to be located in and subject to the laws of this state; and

(2) is created as of the date it is fully executed by or on behalf of all of the settlors or others.

(c) For purposes of this section, a legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust means any instrument, device, or arrangement which involves a grantor who transfers or whose property is transferred by another including, but not limited to, any court, administrative body, or anyone else with authority to act on their behalf or at their direction, to an individual or entity with fiduciary, contractual, or legal obligations to the grantor or others to be held, managed, or administered by the individual or entity for the benefit of the grantor or others. These legal instruments, devices, or other arrangements are irrevocable inter-vivos trusts for purposes of this section.

(d) In the event of a conflict between this section and the provisions of an irrevocable trust created on or after July 1, 2005, this section shall control.

(e) This section does not apply to trusts that qualify as supplemental needs trusts under section 501B.89 or to trusts meeting the criteria of United States Code, title 42, section 1396p (d)(4)(a) and (c) for purposes of eligibility for medical assistance.

(f) This section applies to all trusts first created on or after July 1, 2005, as permitted under United States Code, title 42, section 1396p, and to all interests in real or personal property regardless of the date on which the interest was created, reserved, or acquired.

History: 2005 c 155 art 3 s 7; 1Sp2005 c 3 art 11 s 6; 1Sp2005 c 4 art 5 s 19