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MISSOURI[1]

State Decanting Summary[2]

STATUTORY HISTORY	
Statutory citation	MO. REV. STAT. § 456.4-419
Effective Date	8/28/11
Amendment Date(s)	
ABILITY TO DECANT	
1. Discretionary distribution authority required to decant?	Yes, discretionary power to make a distribution of principal or income[3]
2. Limitation on trustee who may decant?	Yes[4]
CHANGES PERMITTED	
3. May new trust eliminate beneficiary's mandatory distribution rights?	Yes, except as to marital and charitable trusts, GRATs, QSSTs, and ESBTs[5]
4. May new trust eliminate beneficiary's withdrawal rights?	No[6]
5. Must new and old trust beneficiaries be identical?	No[7]
6. Are beneficiaries of new trust limited to current beneficiaries of old trust?	No[8]
7. May remainder beneficiaries' interests be accelerated?	Yes[9]
8. New and old trust require same distribution standard?	Unclear[10]
9. May trustee grant a power of appointment in new trust?	Silent
10. Must new trust grant identical power of appointment as old trust?	Silent
11. Supplemental needs trust exception?	No
TAX RESTRICTIONS	
12. Marital deduction savings provision?	Yes[11]
13. Charitable deduction savings provision?	Yes[12]
14. Beneficiary/trustee savings provision?	Yes[13]
15. Other tax savings provisions?	2503(c)[14]; 2702[15]; Sub S[16]
16. Non-grantor trust to grantor trust conversion permitted?	Silent
OTHER RESTRICTIONS	
17. Rule against perpetuities savings provision?	No
18. May trustee increase trustee commission?	Silent
19. Other restrictions	
NOTICE, CONSENT & APPROVAL	
20. Notice to interested parties required prior to decanting?	No, except as to beneficiaries of new trust[17]
21. Is decanting prohibited if a beneficiary objects?	Silent
22. Court approval required to decant?	No
FIDUCIARY DUTIES	
23. Provision re: purposes for exercise or explicit fiduciary duty?	Yes[18]
24. Provision that trustee has no duty to consider decanting?	Yes[19]
25. Standard of review?	No
TRUSTS SUBJECT TO STATUTE	
26. Provision on trusts subject to statute?	Yes[20]
MISCELLANEOUS	
27. Other unique considerations?	Codification of common law provision[21]

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MISSOURI STATUTE
Mo. Rev. Stat. § 456.4-419

Distributions of income and principal of first trusts and second trusts, discretionary power of trustee--notice requirements.

456.4-419. 1. Unless the terms of the trust instrument expressly provide otherwise, a trustee who has discretionary power under the terms of a trust to make a distribution of income or principal, whether or not limited by an ascertainable standard, to or for the benefit of one or more beneficiaries of a trust, the first trust, may instead exercise such discretionary power by appointing all or part of the income or principal subject to such discretionary power in favor of a trustee of a second trust, the second trust, created under either the same or different trust instrument in the event that the trustee of the first trust decides that the appointment is necessary or desirable after taking into account the terms and purposes of the first trust, the terms and purposes of the second trust, and the consequences of the distribution.

2. The following provisions apply to any exercise of the authority granted by subsection 1 of this section:

(1) The second trust may have as beneficiaries only one or more of those beneficiaries of the first trust to or for whom any discretionary distribution may be made from the first trust and who are proper objects of the exercise of the power, or one or more of those other beneficiaries of the first trust to or for whom a distribution of income or principal may have been made in the future from the first trust at a time or upon the happening of an event specified under the first trust;

(2) Unless the exercise of such power is limited by an ascertainable standard, no trustee of the first trust may exercise such authority to make a distribution from the first trust if:

(a) Such trustee is a beneficiary of the first trust; or

(b) Any beneficiary may remove and replace the trustee of the first trust with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue Code;

(3) Except if participating in a change that is needed for a distribution to any such beneficiary under an ascertainable standard, no trustee shall exercise such authority to the extent that doing so would have the effect either of:

(a) Increasing the distributions that can be made in the future from the second trust to the trustee of the first trust or to a beneficiary who can remove and replace the trustee of the first trust with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue Code; or

(b) Removing restrictions on discretionary distributions imposed by the instrument under which the first trust was created;

(4) In the case of any trust contributions which have been treated as gifts qualifying for the exclusion from gift tax described in Section 2503(b) of the Internal Revenue Code, by reason of the application of Section 2503(c), the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest no later than the date upon which such interest would have vested under the terms of the governing instrument for the first trust;

(5) The exercise of such authority may not reduce any income interest of any income beneficiary of any of the following trusts:

(a) A trust for which a marital deduction has been taken for federal tax purposes under Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any comparable provision of applicable state law;

(b) A charitable remainder trust under Section 664 of the Internal Revenue Code;

(c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code; or

(d) A trust which has been qualified as a Subchapter S trust under Section 1361(d) of the Internal Revenue Code or an electing small business trust under Section 1361(e) of the Internal Revenue Code;

(6) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions, unless after the exercise of such authority, such beneficiary's power of withdrawal is unchanged with respect to the trust property; and

(7) A spendthrift clause or a provision in the trust instrument that prohibits amendment or revocation of the trust shall not preclude the trustee from exercising the authority granted by subsection 1 of this section.

3. At least sixty days prior to making a discretionary distribution under subsection 1 of this section, the trustee of the first trust shall notify the permissible distributees of the second trust, or the qualified beneficiaries of the second trust if there are no permissible distributees of the second trust, of the distribution. A beneficiary may waive the right to the notice required by this subsection and, with respect to future distributions, may withdraw a waiver previously given.

4. In exercising the authority granted by subsection 1 of this section, the trustee shall remain subject to all fiduciary duties otherwise imposed under the trust instrument and Missouri law.

5. This section does not impose on a trustee a duty to exercise the authority granted by subsection 1 of this section in favor of another trust or to consider exercising such authority in favor of another trust.

6. This section is intended to codify and, from and after enactment, to provide certain limitations to the common law of this state, and this section applies to any trust governed by the laws of this state, including a trust whose principal place of administration is transferred to this state before or after the enactment of this section.

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[1] Reviewed by Scot Boulton 10/8/12.

[2] ***Circular 230 Disclosure***. To comply with certain Treasury regulations, we inform you that these materials are not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person, and each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. These materials do not constitute, and should not be treated as legal advice. Although every effort has been made to assure the accuracy of these materials, the author and Sidley Austin LLP do not assume responsibility for any individual's reliance on these materials. The reader should independently verify all statements made in these materials and should independently determine both the tax and nontax consequences of any particular transaction before recommending or implementing that transaction.

[3] "Unless the terms of the trust instrument expressly provide otherwise, a trustee who has discretionary power under the terms of a trust to make a distribution of income or principal, whether or not limited by an ascertainable standard, to or for the benefit of one or more beneficiaries of a trust, the first trust, may instead exercise such discretionary power by appointing all or part of the income or principal subject to such discretionary power in favor of a trustee of a second trust, the second trust, created under either the same or different trust instrument in the event that the trustee of the first trust decides that the appointment is necessary or desirable after taking into account the terms and purposes of the first trust, the terms and purposes of the second trust, and the consequences of the distribution." § 456.4-419(1).

[4] "Unless the exercise of such power is limited by an ascertainable standard, no trustee of the first trust may exercise such authority to make a distribution from the first trust if: (a) Such trustee is a beneficiary of the first trust; or (b) Any beneficiary may remove and replace the trustee of the first trust with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue Code[.]" § 456.4-419(2)(2).

[5] § 456.4-419(2)(5).

[6] § 456.4-419(2)(6).

[7] The second trust may have as beneficiaries one or more beneficiaries of the first trust. § 456.4-419(2)(1).

[8] The second trust may have as beneficiaries current beneficiaries of the first trust and "one or more of those other beneficiaries of the first trust to or for whom a distribution of income or principal may have been made in the future from the first trust at a time or upon the happening of an event specified under the first trust[.]" § 456.4-419(2)(1).

[9] § 456.4-419(2)(1).

[10] Section 456.4-419(3) provides in part: "Except if participating in a change that is needed for a distribution to any such beneficiary under an ascertainable standard, no trustee shall exercise such authority to the extent that doing so would have the effect . . . of (b) Removing restrictions on discretionary distributions imposed by the instrument under which the first trust was created[.]"

[11] § 456.4-419(2)(5)(a).

[12] § 456.4-419(2)(5)(b).

[13] "Unless the exercise of such power is limited by an ascertainable standard, no trustee of the first trust may exercise such authority to make a distribution from the first trust if: (a) Such trustee is a beneficiary of the first trust; or (b) Any beneficiary may remove and replace the trustee of the first trust with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue Code[.]" § 456.4-419(2)(2). "Except if participating in a change that is needed for a distribution to any such beneficiary under an ascertainable standard, no trustee shall exercise such authority to the extent that doing so would have the effect either of: (a) Increasing the distributions that can be made in the future from the second trust to the trustee of the first trust or to a beneficiary who can remove and replace the trustee of the first trust with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue Code; or (b) Removing restrictions on discretionary distributions imposed by the instrument under which the first trust was created[.] § 456.4-419(2)(3).

[14] § 456.4-419(4).

[15] "The exercise of such authority may not reduce any income interest of . . . [a] grantor retained annuity trust under Section 2702 of the Internal Revenue Code[.]" § 456.4-419(2)(5)(c).

[16] "The exercise of such authority may not reduce any income interest of any income beneficiary of any of the following trusts: . . . (d) A trust which has been qualified as a Subchapter S trust under Section 1361(d) of the Internal Revenue Code or an electing small business trust under Section 1361(e) of the Internal Revenue Code[.]" § 456.4-419(2)(5)(d). Note that the prohibition against reducing the income interest of a QSST does not prohibit other changes, such as adding an additional current beneficiary, that could disqualify a QSST. Note that ESBTs do not require the distribution of income and therefore the prohibition against reducing the income interest seems unnecessary.

[17] At least sixty days' notice to the permissible distributees of the second trust is required. § 456.4-419(3). Notice to the beneficiaries of the first trust does not appear to be required.

[18] The decanting must be "necessary or desirable after taking into account the terms and purposes of the first trust, the terms and purposes of the second trust, and the consequences of the distribution." § 456.4-419(1).

[19] § 456.4-419(5).

[20] "[T]his section applies to any trust governed by the laws of this state, including a trust whose principal place of administration is transferred to this state before or after the enactment of this section." § 456.4-419(6).

[21] § 456.4-419(6).