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RHODE ISLAND

State Decanting Summary[1]

STATUTORY HISTORY	
Statutory citation	RHODE ISLAND, R.I. GEN. LAWS § 18-4-31 (2012)
Effective Date	6/23/12
Amendment Date(s)	7/15/13 (S0286 and H5501)
ABILITY TO DECANT	
1. Discretionary distribution authority required to decant?	Yes, authority to invade principal[2]
2. Limitation on trustee who may decant?	No
CHANGES PERMITTED	
3. May new trust eliminate beneficiary's mandatory distribution rights?	No, as to income, annuity, or unitrust[3]
4. May new trust eliminate beneficiary's withdrawal rights?	Silent
5. Must new and old trust beneficiaries be identical?	No[4]
6. Are beneficiaries of new trust limited to current beneficiaries of old trust?	Yes[5]
7. May remainder beneficiaries' interests be accelerated?	No[6]
8. New and old trust require same distribution standard?	Silent
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[7]
TAX RESTRICTIONS	
12. Marital deduction savings provision?	Yes[8]
13. Charitable deduction savings provision?	Yes[9]
14. Beneficiary/trustee savings provision?	No
15. Other tax savings provisions?	No
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?	Yes, 60 days[10]
21. Is decanting prohibited if a beneficiary objects?	No[11]
22. Court approval required to decant?	No
FIDUCIARY DUTIES	
23. Provision re: purposes for exercise or explicit fiduciary duty?	No
24. Provision that trustee has no duty to consider decanting?	Yes[12]
25. Standard of review?	No
TRUSTS SUBJECT TO STATUTE	
26. Provision on trusts subject to statute?	No
MISCELLANEOUS	
27. Other unique considerations?	No

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RHODE ISLAND STATUTE
RHODE ISLAND, R.I. GEN. LAWS § 18-4-31 (2013)

§ 18-4-31 Power to invade principal in trust. – (a) Unless the trust instrument expressly provides otherwise or unless the trust is a "Special Needs Trust" or "Supplemental Needs Trust" created in accordance with 42 United States Code section 1396p(d)(4)(A), a trustee who has authority under the terms of a trust to invade the principal of the trust, referred to in this section as the "first trust," to make distributions to or for the benefit of one or more persons, may instead exercise such authority by appointing all or part of the principal of the trust subject to the power in favor of a trustee of another trust, referred to in this section as the "second trust," for the current benefit of one or more of such persons under the same trust instrument or under a different trust instrument, provided:

(1) The beneficiaries of the second trust may include only beneficiaries of the first trust;

(2) The second trust may not reduce any fixed income, annuity or unitrust interest in the assets of the first trust; and

(3) If any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift or estate tax purposes under the Internal Revenue Code of 1986, as amended 26 U.S.C. § 1, et seq., the second trust shall not contain any provisions which, if included in the first trust, would have prevented the first trust from qualifying for such a deduction or would have reduced the amount of such deduction.

(b) The exercise of a power to invade principal under subsection (a) shall be by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of the first trust.

(c) The exercise of a power to invade principal under subsection (a)(1) or (a)(2) shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate.

(d) The trustee shall notify all Qualified Beneficiaries (as hereinafter defined) of the first trust, in writing, of the manner in which the trustee intends to exercise the power, such notice to be at least sixty (60) days prior to the effective date of the trustee's exercise of the trustee's power to invade principal. A copy of the proposed instrument exercising the power shall satisfy the trustee's notice obligation under this subsection. If all Qualified Beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal shall be exercisable immediately. The trustee's notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal except as provided in other applicable provisions of this title.

(e) "Qualified Beneficiary" means a living beneficiary who, on the date the beneficiary's qualifications is determined:

(1) Is a distributee or permissible distribute of trust income or principal;

(2) Would be a distribute or permissible distribute of trust income or principal if the interests of the distributes described in subsection (a) terminated on that date without causing the trust to terminate; or

(3) Would be a distributee or permissible distribute of trust income or principal if the trust terminated in accordance with its terms on that date.

(f) The exercise of the power to invade principal under subsection (a)(1) or (a)(2) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(g) Nothing in this section is intended to create or imply a duty to exercise a power to invade principal, and no inference of impropriety shall be made as a result of a trustee not exercising the power to invade principal conferred under subsection (a)(1) or (a)(2).

(h) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust or under any other section of this title or under another provisions of law or under common law.

CH1 7749702v.1 July 28, 2013

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[2] § 18-4-31(a).

[3] § 18-4-31(a)(2).

[4] § 18-4-31(a).

[5] § 18-4-31(a).

[6] § 18-4-31(a).

[7] A trustee who has absolute power under the terms of a trust to invade the principal of the trust *may not* invade the principal in trust *if* the trust is a "Special Needs Trust" or "Supplemental Needs Trust" created in accordance with 42 United States Code Section 1396p(d)(4)(A). *See* § 18-4-31(a).

[8] § 18-4-31(a)(3).

[9] § 18-4-31(a)(3).

[10] § 18-4-31(d). "Qualified beneficiary" is defined in § 18-4-31(e).

[11] The statute grants all qualifying beneficiaries the right to object to the trustee's exercise of power, but it does not state that the exercise of power will be prevented by an objection. *See* § 18-4-31(d).

[12] § 18-4-31(g).