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ILLINOIS

State Decanting Summary[1]

STATUTORY HISTORY	
Statutory citation	760 ILCS 5/16.4
Effective Date	1/1/13
Amendment Date(s)	None
ABILITY TO DECANT	
1. Discretionary distribution authority required to decant?	*Unlimited discretion*: Yes, absolute discretion to distribute principal[2]
	Limited discretion: Yes, power to distribute principal without absolute discretion[3]
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[4]
4. May new trust eliminate beneficiary's withdrawal rights?	No[5]
5. Must new and old trust beneficiaries be identical?	*Unlimited discretion*: No[6]
	Limited discretion: Yes[7]
6. Are beneficiaries of new trusts limited to current beneficiaries of old trust?	*Unlimited discretion*: No[8]
	Limited discretion: No[9]
7. May remainder beneficiaries' interests be accelerated?	Presumably yes[10]
8. New and old trust require same distribution standard?	*Unlimited discretion*: Presumably no
	Limited discretion: Yes[11]
9. May trustee grant a power of appointment in new trust?	*Unlimited discretion*: Yes[12]
	Limited discretion: Yes[13]
10. Must new trust grant identical power of appointment as old trust?	*Unlimited discretion*: No[14]
	Limited discretion: Yes[15]
11. Supplemental needs trust exception?	Yes[16]
TAX RESTRICTIONS	
12. Marital deduction savings provision?	Yes[17]
13. Charitable deduction savings provision?	Yes[18]
14. Beneficiary/trustee savings provision?	No
15. Other tax savings provisions?	2503(b)[19]; 2642(c)[20]; Sub S[21]; 401(a)(9)[22]; Catch-all[23]
16. Non-grantor trust to grantor trust conversion permitted?	Yes[24]
OTHER RESTRICTIONS	
17. Rule against perpetuities savings provision?	Yes[25]
18. May trustee increase trustee commission?	Sometimes[26]
19. Other restrictions?	Decreasing trustee liability or eliminating trustee remover[27]
NOTICE, CONSENT & APPROVAL	
20. Notice to interested parties required prior to decanting?	Yes[28]
21. Is decanting prohibited if a beneficiary objects?	Yes, unless court approval is granted[29]
22. Court approval required to decant?	No, unless primary beneficiary objects or notice cannot be given as required[30]
FIDUCIARY DUTIES	
23. Provision re: purposes for exercise or explicit fiduciary duty?	Yes[31]
24. Provision that trustee has no duty to consider decanting?	Yes[32]
25. Standard of review?	Yes[33]
TRUSTS SUBJECT TO STATUTE	
26. Provision on trusts subject to statute?	Yes[34]
MISCELLANEOUS	
27. Other unique considerations?	Remedies provision[35]

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ILLINOIS STATUTE
760 ILCS 5/16.4

16.4. **Distribution of trust principal in further trust**.

(a) **Definitions**. In this Section:

"Absolute discretion" means the right to distribute principal that is not limited or modified in any manner to or for the benefit of one or more beneficiaries of the trust, whether or not the term "absolute" is used. A power to distribute principal that includes purposes such as best interests, welfare, or happiness shall constitute absolute discretion.

"Authorized trustee" means an entity or individual, other than the settlor, who has authority under the terms of the first trust to distribute the principal of the trust for the benefit of one or more current beneficiaries.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time, including corresponding provisions of subsequent internal revenue laws and corresponding provisions of State law.

"Current beneficiary" means a person who is currently receiving or eligible to receive a distribution of principal or income from the trustee on the date of the exercise of the power.

"Distribute" means the power to pay directly to the beneficiary of a trust or make application for the benefit of the beneficiary.

"First trust" means an existing irrevocable inter vivos or testamentary trust part or all of the principal of which is distributed in further trust under subsection (c) or (d).

"Presumptive remainder beneficiary" means a beneficiary of a trust, as of the date of determination and assuming non-exercise of all powers of appointment, who either (i) would be eligible to receive a distribution of income or principal if the trust terminated on that date, or (ii) would be eligible to receive a distribution of income or principal if the interests of all beneficiaries currently eligible to receive income or principal from the trust ended on that date without causing the trust to terminate.

"Principal" includes the income of the trust at the time of the exercise of the power that is not currently required to be distributed, including accrued and accumulated income.

"Second trust" means any irrevocable trust to which principal is distributed in accordance with subsection (c) or (d).

"Successor beneficiary" means any beneficiary other than the current and presumptive remainder beneficiaries, but does not include a potential appointee of a power of appointment held by a beneficiary.

(b) **Purpose**. An independent trustee who has discretion to make distributions to the beneficiaries shall exercise that discretion in the trustee's fiduciary capacity, whether the trustee's discretion is absolute or limited to ascertainable standards, in furtherance of the purposes of the trust.

(c) **Distribution to second trust if absolute discretion**. An authorized trustee who has the absolute discretion to distribute the principal of a trust may distribute part or all of the principal of the trust in favor of a trustee of a second trust for the benefit of one, more than one, or all of the current beneficiaries of the first trust and for the benefit of one, more than one, or all of the successor and remainder beneficiaries of the first trust.

(1) If the authorized trustee exercises the power under this subsection, the authorized trustee may grant a power of appointment (including a presently exercisable power of appointment) in the second trust to one or more of the current beneficiaries of the first trust, provided that the beneficiary granted a power to appoint could receive the principal outright under the terms of the first trust.

(2) If the authorized trustee grants a power of appointment, the class of permissible appointees in favor of whom a beneficiary may exercise the power of appointment granted in the second trust may be broader than or otherwise different from the current, successor, and presumptive remainder beneficiaries of the first trust.

(3) If the beneficiary or beneficiaries of the first trust are described as a class of persons, the beneficiary or beneficiaries of the second trust may include one or more persons of such class who become includible in the class after the distribution to the second trust.

(d) **Distribution to second trust if no absolute discretion**. An authorized trustee who has the power to distribute the principal of a trust but does not have the absolute discretion to distribute the principal of the trust may distribute part or all of the principal of the first trust in favor of a trustee of a second trust, provided that the current beneficiaries of the second trust shall be the same as the current beneficiaries of the first trust and the successor and remainder beneficiaries of the second trust shall be the same as the successor and remainder beneficiaries of the first trust.

(1) If the authorized trustee exercises the power under this subsection (d), the second trust shall include the same language authorizing the trustee to distribute the income or principal of a trust as set forth in the first trust.

(2) If the beneficiary or beneficiaries of the first trust are described as a class of persons, the beneficiary or beneficiaries of the second trust shall include all persons who become includible in the class after the distribution to the second trust.

(3) If the authorized trustee exercises the power under this subsection (d) and if the first trust grants a power of appointment to a beneficiary of the trust, the second trust shall grant such power of appointment in the second trust and the class of permissible appointees shall be the same as in the first trust.

(4) **Supplemental Needs Trusts**.

(i) Notwithstanding the other provisions of this subsection (d), the authorized trustee may distribute part or all of the principal of a disabled beneficiary's interest in the first trust in favor of a trustee of a second trust which is a supplemental needs trust if the authorized trustee determines that to do so would be in the best interests of the disabled beneficiary.

(ii) **Definitions**. For purposes of this subsection (d):

"Best interests" of a disabled beneficiary include, without limitation, consideration of the financial impact to the disabled beneficiary's family.

"Disabled beneficiary" means a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust who the authorized trustee determines has a disability that substantially impairs the beneficiary's ability to provide for his or her own care or custody and that constitutes a substantial handicap, whether or not the beneficiary has been adjudicated a "disabled person".

"Governmental benefits" means financial aid or services from any State, Federal, or other public agency.

"Supplemental needs second trust" means a trust that complies with paragraph (iii) of this paragraph (4) and that relative to the first trust contains either lesser or greater restrictions on the trustee's power to distribute trust income or principal and which the trustee believes would, if implemented, allow the disabled beneficiary to receive a greater degree of governmental benefits than the disabled beneficiary will receive if no distribution is made.

(iii) **Remainder beneficiaries**. A supplemental needs second trust may name remainder and successor beneficiaries other than the disabled beneficiary's estate, provided that the second trust names the same presumptive remainder beneficiaries and successor beneficiaries to the disabled beneficiary's interest, and in the same proportions, as exist in the first trust. In addition to the foregoing, where the first trust was created by the disabled beneficiary or the trust property has been distributed directly to or is otherwise under the control of the disabled beneficiary, the authorized trustee may distribute to a "pooled trust" as defined by federal Medicaid law for the benefit of the disabled beneficiary or the supplemental needs second trust must contain pay back provisions complying with Medicaid reimbursement requirements of federal law.

(iv) **Reimbursement**. A supplemental needs second trust shall not be liable to pay or reimburse the State or any public agency for financial aid or services to the disabled beneficiary except as provided in the supplemental needs second trust.

(e) **Notice**. An authorized trustee may exercise the power to distribute in favor of a second trust under subsections (c) and (d) without the consent of the settlor or the beneficiaries of the first trust and without court approval if:

(1) there are one or more legally competent current beneficiaries and one or more legally competent presumptive remainder beneficiaries and the authorized trustee sends written notice of the trustee's decision, specifying the manner in which the trustee intends to exercise the power and the prospective effective date for the distribution, to all of the legally competent current beneficiaries and presumptive remainder beneficiaries, determined as of the date the notice is sent and assuming non-exercise of all powers of appointment; and

(2) no beneficiary to whom notice was sent objects to the distribution in writing delivered to the trustee within 60 days after the notice is sent ("notice period").

A trustee is not required to provide a copy of the notice to a beneficiary who is known to the trustee but who cannot be located by the trustee after reasonable diligence or who is not known to the trustee.

If a charity is a current beneficiary or presumptive remainder beneficiary of the trust, the notice shall also be given to the Attorney General's Charitable Trust Bureau.

(f) **Court involvement**.

(1) The trustee may for any reason elect to petition the court to order the distribution, including, without limitation, the reason that the trustee's exercise of the power to distribute under this Section is unavailable, such as:

(a) a beneficiary timely objects to the distribution in a writing delivered to the trustee within the time period specified in the notice; or

(b) there are no legally competent current beneficiaries or legally competent presumptive remainder beneficiaries.

(2) If the trustee receives a written objection within the notice period, either the trustee or the beneficiary may petition the court to approve, modify, or deny the exercise of the trustee's powers. The trustee has the burden of proving the proposed exercise of the power furthers the purposes of the trust.

(3) In a judicial proceeding under this subsection (f), the trustee may, but need not, present the trustee's opinions and reasons for supporting or opposing the proposed distribution, including whether the trustee believes it would enable the trustee to better carry out the purposes of the trust. A trustee's actions in accordance with this Section shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(g) **Term of the second trust**. The second trust to which an authorized trustee distributes the assets of the first trust may have a term that is longer than the term set forth in the first trust, including, but not limited to, a term measured by the lifetime of a current beneficiary; provided, however, that the second trust shall be limited to the same permissible period of the rule against perpetuities that applied to the first trust, unless the first trust expressly permits the trustee to extend or lengthen its perpetuities period.

(h) **Divided discretion**. If an authorized trustee has absolute discretion to distribute the principal of a trust and the same trustee or another trustee has the power to distribute principal under the trust instrument which power is not absolute discretion, such authorized trustee having absolute discretion may exercise the power to distribute under subsection (c).

(i) **Later discovered assets**. To the extent the authorized trustee does not provide otherwise:

(1) The distribution of all of the assets comprising the principal of the first trust in favor of a second trust shall be deemed to include subsequently discovered assets otherwise belonging to the first trust and undistributed principal paid to or acquired by the first trust subsequent to the distribution in favor of the second trust.

(2) The distribution of part but not all of the assets comprising the principal of the first trust in favor of a second trust shall not include subsequently discovered assets belonging to the first trust and principal paid to or acquired by the first trust subsequent to the distribution in favor of a second trust; such assets shall remain the assets of the first trust.

(j) **Other authority to distribute in further trust**. This Section shall not be construed to abridge the right of any trustee to distribute property in further trust that arises under the terms of the governing instrument of a trust, any provision of applicable law, or a court order. In addition, distribution of trust principal to a second trust may be made by agreement between a trustee and all primary beneficiaries of a first trust, acting either individually or by their respective representatives in accordance with Section 16.1 of this Act.

(k) **Need to distribute not required**. An authorized trustee may exercise the power to distribute in favor of a second trust under subsections (c) and (d) whether or not there is a current need to distribute principal under the terms of the first trust.

(l) **No duty to distribute**. Nothing in this Section is intended to create or imply a duty to exercise a power to distribute principal, and no inference of impropriety shall be made as a result of an authorized trustee not exercising the power conferred under subsection (c) or (d). Notwithstanding any other provision of this Section, a trustee has no duty to inform beneficiaries about the availability of this Section and no duty to review the trust to determine whether any action should be taken under this Section.

(m) **Express prohibition**. A power authorized by subsection (c) or (d) may not be exercised if expressly prohibited by the terms of the governing instrument, but a general prohibition of the amendment or revocation of the first trust or a provision that constitutes a spendthrift clause shall not preclude the exercise of a power under subsection (c) or (d).

(n) **Restrictions**. An authorized trustee may not exercise a power authorized by subsection (c) or (d) to affect any of the following:

(1) to reduce, limit or modify any beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a right to withdraw a percentage of the value of the trust or a right to withdraw a specified dollar amount provided that such mandatory right has come into effect with respect to the beneficiary, except with respect to a second trust which is a supplemental needs trust;

(2) to decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence; except to indemnify or exonerate one party from liability for actions of another party with respect to distribution that unbundles the governance structure of a trust to divide and separate fiduciary and nonfiduciary responsibilities among several parties, including without limitation one or more trustees, distribution advisors, investment advisors, trust protectors, or other parties, provided however that such modified governance structure may reallocate fiduciary responsibilities from one party to another but may not reduce them;

(3) to eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power under subsection (c) or (d); provided, however, such person's right to remove or replace the authorized trustee may be eliminated if a separate independent, non-subservient individual or entity, such as a trust protector, acting in a nonfiduciary capacity has the right to remove or replace the authorized trustee;

(4) to reduce, limit or modify the perpetuities provision specified in the first trust in the second trust, unless the first trust expressly permits the trustee to do so.

(o) **Exception**. Notwithstanding the provisions of paragraph (1) of subsection (n) but subject to the other limitations in this Section, an authorized trustee may exercise a power authorized by subsection (c) or (d) to distribute to a second trust; provided, however, that the exercise of such power does not subject the second trust to claims of reimbursement by any private or governmental body and does not at any time interfere with, reduce the amount of, or jeopardize an individual's entitlement to government benefits.

(p) **Tax limitations**. If any contribution to the first trust qualified for the annual exclusion under Section 2503(b) of the Code, the marital deduction under Section 2056(a) or 2523(a) of the Code, or the charitable deduction under Section 170(a), 642(c), 2055(a) or 2522(a) of the Code, is a direct skip qualifying for treatment under Section 2642(c) of the Code, or qualified for any other specific tax benefit that would be lost by the existence of the authorized trustee's authority under subsection (c) or (d) for income, gift, estate, or generation-skipping transfer tax purposes under the Code, then the authorized trustee shall not have the power to distribute the principal of a trust pursuant to subsection (c) or (d) in a manner that would prevent the contribution to the first trust from qualifying for or would reduce the exclusion, deduction, or other tax benefit that was originally claimed with respect to that contribution.

(1) Notwithstanding the provisions of this subsection (p), the authorized trustee may exercise the power to pay the first trust to a trust as to which the settlor of the first trust is not considered the owner under Subpart E of Part I of Subchapter J of Chapter 1 of Subtitle A of the Code even if the settlor is considered such owner of the first trust. Nothing in this Section shall be construed as preventing the authorized trustee from distributing part or all of the first trust to a second trust that is a trust as to which the settlor of the first trust is considered the owner under Subpart E of Part I of Subchapter J of Chapter 1 of Subtitle A of the Code.

(2) During any period when the first trust owns subchapter S corporation stock, an authorized trustee may not exercise a power authorized by paragraph (c) or (d) to distribute part or all of the S corporation stock to a second trust that is not a permitted shareholder under Section 1361(c)(2) of the Code.

(3) During any period when the first trust owns an interest in property subject to the minimum distribution rules of Section 401(a)(9) of the Code, an authorized trustee may not exercise a power authorized by subsection (c) or (d) to distribute part or all of the interest in such property to a second trust that would result in the shortening of the minimum distribution period to which the property is subject in the first trust.

(q) **Limits on compensation of trustee**.

(1) Unless the court upon application of the trustee directs otherwise, an authorized trustee may not exercise a power authorized by subsection (c) or (d) solely to change the provisions regarding the determination of the compensation of any trustee; provided, however, an authorized trustee may exercise the power authorized in subsection (c) or (d) in conjunction with other valid and reasonable purposes to bring the trustee's compensation into accord with reasonable limits in accord with Illinois law in effect at the time of the exercise.

(2) The compensation payable to the trustee or trustees of the first trust may continue to be paid to the trustees of the second trust during the terms of the second trust and may be determined in the same manner as otherwise would have applied in the first trust; provided, however, that no trustee shall receive any commission or other compensation imposed upon assets distributed due to the distribution of property from the first trust to a second trust pursuant to subsection (c) or (d).

(r) **Written instrument**. The exercise of a power to distribute principal under subsection (c) or (d) must be made by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of the first trust and the second trust.

(s) **Terms of second trust**. Any reference to the governing instrument or terms of the governing instrument in this Act includes the terms of a second trust established in accordance with this Section.

(t) **Settlor**. The settlor of a first trust is considered for all purposes to be the settlor of any second trust established in accordance with this Section. If the settlor of a first trust is not also the settlor of a second trust, then the settlor of the first trust shall be considered the settlor of the second trust, but only with respect to the portion of second trust distributed from the first trust in accordance with this Section.

(u) **Remedies**. A trustee who reasonably and in good faith takes or omits to take any action under this Section is not liable to any person interested in the trust. An act or omission by a trustee under this Section is presumed taken or omitted reasonably and in good faith unless it is determined by the court to have been an abuse of discretion. If a trustee reasonably and in good faith takes or omits to take any action under this Section and a person interested in the trust opposes the act or omission, the person's exclusive remedy is to obtain an order of the court directing the trustee to exercise authority in accordance with this Section in such manner as the court determines necessary or helpful for the proper functioning of the trust, including without limitation prospectively to modify or reverse a prior exercise of such authority. Any claim by any person interested in the trust that an act or omission by a trustee under this Section was an abuse of discretion is barred if not asserted in a proceeding commenced by or on behalf of the person within two years after the trustee has sent to the person or the person's personal representative a notice or report in writing sufficiently disclosing facts fundamental to the claim such that the person knew or reasonably should have known of the claim. Except for a distribution of trust principal from a first trust to a second trust made by agreement in accordance with Section 16.1 of this Act, the preceding sentence shall not apply to a person who was under a legal disability at the time the notice or report was sent and who then had no personal representative. For purposes of this subsection (u), a personal representative refers to a court appointed guardian or conservator of the estate of a person.

(v) **Application**. This Section is available to trusts in existence on the effective date of this amendatory Act of the 97th General Assembly or created on or after the effective date of this amendatory Act of the 97th General Assembly. This Section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Illinois under Illinois law or that is governed by Illinois law with respect to the meaning and effect of its terms, including a trust whose governing law has been changed to the laws of this State, unless the governing instrument expressly prohibits use of this Section by specific reference to this Section. A provision in the

governing instrument in the form: "Neither the provisions of Section 16.4 of the Trusts and Trustees Act nor any corresponding provision of future law may be used in the administration of this trust" or a similar provision demonstrating that intent is sufficient to preclude the use of this Section.

CH1 7687149v.1 November 15, 2013

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[1] ***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.

[2] § 5/16.4(c).

[3] § 5/16.4(d).

[4] § 5/16.4(n)(1).

[5] § 5/16.4(n)(1).

[6] "An authorized trustee who has the absolute discretion to distribute the principal of a trust may distribute part or all of the principal of the trust in favor of a trustee of a second trust for the benefit of one, more than one, or all of the current beneficiaries of the first trust and for the benefit of one, more than one, or all of the successor and remainder beneficiaries of the first trust." § 5/16.4(c).

[7] "An authorized trustee who has the power to distribute the principal of a trust but does not have the absolute discretion to distribute the principal of a trust may distribute part or all of the principal of the first trust in favor of a trustee of a second trust, provided that the current beneficiaries of the second trust shall be the same as the current beneficiaries of the first trust and the successor and remainder beneficiaries of the second trust shall be the same as the successor and remainder beneficiaries of the first trust." § 5/16.4(d).

[8] § 5/16.4(c).

[9] The successor and remainder beneficiaries of the second trust must be the same as the successor and remainder beneficiaries of the first trust. § 5/16.4(d).

[10] If the trustee has absolute discretion, the interests of some of the income beneficiaries may be eliminated.

[11] If a trustee who does not have the absolute discretion to distribute the principal of the trust exercises the power under subsection (d), "the second trust shall include the same language authorizing the trustee to distribute the income or principal of a trust as set forth in the first trust." § 5/16.4(d)(1).

[12] The trustee may grant a power of appointment (including a presently exercisable power of appointment) in the second trust to one or more of the current beneficiaries of the first trust, provided that the beneficiary granted a power to appoint could receive the principal outright under the terms of the first trust. § 5/16.4(c)(1). The class of permissible appointees in favor of whom a beneficiary may exercise the power of appointment granted in the second

trust may be broader than or otherwise different from the current, successor, and presumptive remainder beneficiaries of the first trust. § 5/16.4(c)(2).

[13] If the trustee does not have absolute discretion and if the first trust grants a power of appointment to a beneficiary of the trust, the second trust shall grant such power of appointment in the second trust and the class of permissible appointees shall be the same as in the first trust. § 5/16.4(d)(3).

[14] § 5/16.4(c)(1).

[15] § 5/16.4(d)(3).

[16] § 5/16.4(d)(4).

[17] § 5/16.4(p).

[18] § 5/16.4(p).

[19] § 5/16.4(p).

[20] § 5/16.4(p).

[21] § 5/16.4(p)(2).

[22] § 5/16.4(p)(3).

[23] § 5/16.4(p).

[24] § 5/16.4(p)(1).

[25] One part of the statute provides that the second trust shall be limited to the same permissible period of the rule against perpetuities that applied to the first trust, unless the first trust expressly permits the trustee to extend or lengthen its perpetuities period. § 5/16.4(g). Another part of the statute provides that the trustee may not reduce, limit or modify the perpetuities provision specified in the first trust in the second trust, unless the first trust expressly permits the trustee to do so. § 5/16.4(n)(4).

[26] § 5/16.4(q)(1), (2).

[27] § 5/16.4(n)(2), (3).

[28] § 5/16.4(e).

[29] § 5/16.4(e).

[30] The trustee may decant without court approval if: (1) there are one or more legally competent current beneficiaries *and* one or more legally competent presumptive remainder beneficiaries *and* the authorized trustee sends written notice of the trustee's decision to all of the legally competent current beneficiaries and presumptive remainder beneficiaries *and* (2) no beneficiary to whom notice was sent objects to the distribution in writing delivered to the trustee within 60 days after the notice is sent. § 5/16.4(e).

[31] The trustee is to exercise the power "in furtherance of the purpose of the trust." § 5/16.4(b).

[32] § 5/16.4(l).

[33] The standard of review applied is an abuse of discretion standard. § 5/16.4(u).

[34] "The statute is available to any trust that is administered in Illinois under Illinois law or that is governed by Illinois law with respect to the meaning and effect of its terms. § 5/16.4(v).

[35] § 5/16.4(u).