

SECTION ____ . LIMITATIONS ON POWERS OF TRUST DIRECTOR.

(a) Notwithstanding a contrary provision in the terms of a trust, a trust director may not:

(1) remove from a trust created to meet the requirements of 42 U.S.C. Section 1396p(d)(4) [as amended] a requirement to pay back a governmental entity for benefits provided to a beneficiary of the trust at the death of that beneficiary;

(2) grant a beneficial interest to a noncharitable interest or purpose in a trust for which all of the beneficiaries are charitable organizations; or

(3) reduce or eliminate an interest in income of a beneficiary of:

(A) a trust for which a marital deduction was taken for federal tax purposes under 26 U.S.C. Sections 2056 or 2523, [as amended,] or for state tax purposes under any comparable provision of applicable state law, during the life of the settlor's spouse;

(B) a charitable remainder trust under 26 U.S.C. Section 664, [as amended,] during the life of the noncharitable beneficiary;

(C) a grantor retained annuity trust under 26 U.S.C. Section 2702, [as amended,] during any period in which the settlor is a beneficiary; or

(D) a trust for which an election as a qualified Sub-Chapter S Trust under 26 U.S.C. Section 1361(d), [as amended,] is currently in force.

(b) Except as provided by the terms of a trust specifically referring to this subsection, a trust director may not exercise a power in a way that would result in a taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the trust director's gross estate for federal estate tax purposes.

Discussion Notes

Under the capacious language of Section ___, there is little in the administration or management of a trust that cannot be subject to the control of a trust director. At least four states, however, have specific statutory provisions that cut back on the powers that may be given to a trust director (see Appendix B).¹ In general, these limits relate to charitable trusts, tax planning, or special needs trusts. The blackletter above, which is derived from Missouri Ann. Statutes § 456.8-808(4)-(5) and Tennessee Code Ann. § 35-15-1201(e), is a first pass at consolidating the existing provisions into a simpler synthesis that complies with Uniform Law Commission drafting norms. Whether to include a provision such as this, and if so, what provisions should be included, are both open questions for discussion at the meeting. The purpose of this first draft is meant to provide a starting point for that discussion along with Appendix B, which extracts the existing state statutes on the topic.

¹ See Miss. Code Ann. § 91-8-1201(e); Mo. Ann. Stat. § 456.8-808(4)-(5); Tenn. Code Ann. § 35-15-1201(e); Wis. Stat. Ann. § 701.0818(6).