

Appendix B

Divided Trusteeship Meeting –
Fall 2015

Limitations on a Trust Director's Powers in State Statutes

Mississippi Code Ann. § 91-8-1201(e)

(e) Notwithstanding anything in this section to the contrary, no modification, amendment, or grant of a power of appointment with respect to a trust, all of whose beneficiaries are charitable organizations, may authorize a trust protector or trust advisor to grant a beneficial interest in the trust to any noncharitable interest or purpose.

Missouri V.A.M.S. § 456.8-808(4)

4. Notwithstanding any provision in the trust instrument to the contrary, a trust protector shall have no power to modify a trust to:

- (1) Remove a requirement from a trust created to meet the requirements of 42 U.S.C. Section 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible beneficiary of the trust at the death of that beneficiary; or
- (2) Reduce or eliminate an income interest of the income beneficiary of any of the following types of 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, during the life of the settlor's spouse;
 - (b) A charitable remainder trust under Section 664 of the Internal Revenue Code, during the life of the noncharitable beneficiary;
 - (c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code, 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 Section 1361(d) of the Internal Revenue Code is currently in place.

Missouri V.A.M.S. § 456.8-808(5)

5. Except to the extent otherwise provided in a trust instrument specifically referring to this subsection, the trust protector shall 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 protector's gross estate for federal estate tax purposes.

Tennessee Code Ann. § 35-15-1201(e)

(e) Notwithstanding anything in this section to the contrary, no modification, amendment or grant of a power of appointment with respect to a trust all of whose beneficiaries are charitable organizations may authorize a trust protector or trust advisor to grant a beneficial interest in such trust to any non-charitable interest or purpose.

Wisconsin Stat. Ann. §§ 701.0818(6)

(6) Prohibited actions. A trust protector may not exercise a power granted to the trust protector to do any of the following:

- (a) Except as provided in sub. (2)(b)3. and 4., create or expand any beneficial interest, power of appointment, right of withdrawal, or right to receive trust property as a result of the exercise of a power of appointment if the creation or

expansion would benefit the trust protector, the trust protector's estate, the trust protector's creditors, or creditors of the trust protector's estate.

(b) Modify or amend a trust to do any of the following:

1. Remove a requirement pursuant to 42 USC 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible beneficiary at the death of that beneficiary.
2. Reduce or eliminate an income interest of an income beneficiary of any of the following trusts:
 - a. A trust for which a marital deduction has been taken for federal or state estate tax purposes under section 2056, 2056A, or 2523 of the Internal Revenue Code or any comparable provision of applicable state law, during the life of the settlor's spouse.
 - b. A charitable remainder trust under section 664 of the Internal Revenue Code, during the life of the noncharitable beneficiary.
 - c. A trust in which the settlor has a qualified interest under section 2702(b) of the Internal Revenue Code, during any period in which the settlor is a beneficiary.
 - d. A trust for which an election as a qualified Subchapter S Trust under section 1361(d) of the Internal Revenue Code is in place.

(c) Modify any beneficial interest in a trust that qualified for a marital deduction or charitable deduction from federal or state estate tax in a manner that would have caused the trust not to qualify for the deduction.