

633A.4214 Duties with regard to discretionary powers.

1. A trustee shall exercise a discretionary power within the bounds of reasonable judgment and in accordance with applicable fiduciary principles and the terms of the trust.

2. Notwithstanding the use of such terms as “absolute”, “sole”, or “uncontrolled” in the grant of discretion, a trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust or the power. Absent an abuse of discretion, a trustee’s exercise of discretion is not subject to control by a court.

3. Subject to paragraph “c” and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, all of the following shall apply:

a. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee the power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee’s individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986.

b. A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes to another person.

c. This subsection does not apply to the following:

(1) A power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, was previously allowed.

(2) A trust that may be revoked or amended by the settlor.

(3) A trust, if contributions to the trust qualify for an annual exclusion under section 2503(c) of the Internal Revenue Code of 1986.

4. A power whose exercise is limited or prohibited by subsection 3 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

99 Acts, ch 125, §60, 109

C2001, §633.4214

2002 Acts, ch 1107, §13; 2003 Acts, ch 95, §16; 2003 Acts, ch 108, §109; 2005 Acts, ch 38, §54

CS2005, §633A.4214