

633A.4215 Distributions in further trust.

1. As used in [this section](#):

a. “*First trust*” means a trust from which income or principal is transferred into the second trust.

b. “*Restricted trustee*” means a trustee of the first trust if such trustee is a beneficiary of the first trust or if such trustee has the power to change the trustees of the first trust within the meaning of [subsection 5](#).

c. “*Second trust*” means a trust into which the income or principal of the first trust has been transferred.

2. Unless the terms of the governing instrument expressly provide otherwise, if a trustee of the first trust has discretion under the terms of a governing instrument to make a distribution of income or principal to or for the benefit of one or more beneficiaries of the first trust, whether or not restricted by any standard, then the trustee, independently or with court approval, may appoint part or all of the income or principal subject to the trustee’s discretion in favor of a trustee of a second trust under a governing instrument separate from the governing instrument of the first trust. Before exercising the trustee’s discretion to appoint and distribute assets to a second trust, the trustee of the first trust shall determine whether the appointment is necessary or desirable after taking into account the purposes of the first trust, the terms and conditions of the second trust, and the consequences of the distribution. In addition, the following apply to all appointments made under [this section](#):

a. The second trust may only have as beneficiaries one or more of the beneficiaries of the first trust to or for whom a discretionary distribution of income or principal may be made from the first trust, or to or for whom a distribution of income or principal may be made in the future from the first trust at a time or upon the happening of an event specified under the first trust.

b. No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so could have any of the following effects:

(1) Benefiting the restricted trustee as a beneficiary of the first trust, unless the exercise of such authority is limited by an ascertainable standard based on or related to health, education, maintenance, or support.

(2) Removing restrictions on discretionary distributions to a beneficiary imposed by the governing instrument under which the first trust was created, except that a provision in the second trust which limits distributions by an ascertainable standard based on or related to the health, education, maintenance, or support of any such beneficiary is permitted, as is a distribution to a trust established pursuant to 42 U.S.C. §1396p(d)(4).

c. No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so would have the effect of increasing the distributions that can be made from the second trust to the restricted trustees of the first trust or to a beneficiary who may change the trustees of the first trust within the meaning of [subsection 5](#) compared to the distributions that can be made to such trustee or beneficiary, as the case may be, under the first trust, unless the exercise of such authority is limited by an ascertainable standard based on or related to health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

d. The provisions of paragraphs “b” and “c” only apply to restrict the authority of a trustee if either a trustee, or a beneficiary who may change the trustee, is a United States citizen or domiciliary under the Internal Revenue Code, or the trust owns property that would be subject to United States estate or gift taxes if owned directly by such a person.

e. In the case of any trust contributions which have been treated as gifts qualifying for the exclusion from gift tax described in section 2503(b) of the Internal Revenue Code, by reason of the application of section 2503(c) of the Internal Revenue Code, the governing instrument for the second trust shall provide that the beneficiary’s remainder interest shall vest no later than the date upon which such interest would have vested under the terms of the governing instrument for the first trust.

f. The exercise of such authority may not reduce any income interest of any income beneficiary of any of the following trusts:

(1) 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.

(2) A charitable remainder trust under section 664 of the Internal Revenue Code.

(3) A grantor retained annuity or unitrust trust under section 2702 of the Internal Revenue Code.

g. The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions, unless after the exercise of such authority, the beneficiary's power of withdrawal is unchanged with respect to the trust property.

h. The exercise of such authority is not prohibited by a provision in the governing instrument that prohibits amendment or revocation of the trust.

i. Any appointment made by a trustee shall be considered a distribution by the trustee pursuant to the trustee's distribution powers and authority.

j. Notwithstanding the foregoing provisions of [this subsection](#), the governing instrument of the second trust may grant a power of appointment to one or more of the beneficiaries of the second trust who are beneficiaries of the first trust. The power of appointment may include the power to appoint trust property to the holder of the power of appointment, the holder's creditors, the holder's estate, the creditors of the holder's estate, or any other person, whether or not that person is a trust beneficiary.

k. A permitted exercise of the trustee's discretion over the entire income and principal of the first trust may be made by modifying the first trust without an actual distribution of property, in which case the second trust is the modified first trust. A modification in further trust pursuant to this paragraph shall require the trustee to notify all beneficiaries of the trust, in writing, at least twenty days prior to the effective date of such exercise, but shall not be subject to the limitations of [part 2 of subchapter II of this chapter](#).

l. [This section](#) applies to any trust administered under the laws of this state, including a trust whose governing jurisdiction is transferred to this state.

3. Any action that may not be taken by a trustee of the first trust by reason of the restrictions in [subsection 2](#), paragraph "b", may instead be taken by any other trustee of the first trust who is not so restricted, or, if none, by the next available party who can be a successor trustee and who is not so restricted.

4. The second trust may be a trust created or administered under the laws of any jurisdiction, within or without the United States.

5. For the purposes of [subsections 1 and 2](#), a beneficiary shall be considered to have the power to change the trustees if the beneficiary can, alone or with others, name such beneficiary as a trustee or can remove a trustee and replace that trustee with a new trustee who is the beneficiary or who is related or subordinate, as defined in section 672 of the Internal Revenue Code, to the beneficiary.

6. The exercise of the power to distribute the income or principal of the trust under [this section](#) shall be by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of the trust. The trustee of the first trust may notify the beneficiaries of the first trust, in writing, prior to the effective date of the trustee's exercise of the power under [this section](#). A copy of the exercise of this authority and the second trust agreement shall satisfy this notice provision. For the purposes of [this section](#), the term "beneficiaries" means those persons who would be entitled to notice and a copy of the first trust instrument under [section 633A.4213](#).

7. The exercise of the power to distribute the income or principal of the trust under [this section](#) shall be considered the exercise of a power of appointment that shall not be exercised in favor of the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate.

8. The power under [this section](#) may not be exercised to suspend the power to alienate

trust property or extend the first trust beyond the permissible period of any rule against perpetuities applicable to the first trust.

[2020 Acts, ch 1076, §6](#)

Referred to in [§633A.4810](#)

Legislative intent and construction; 2020 Acts, ch 1076, §17

NEW section