

Part 6 Revocable Trusts

75-7-604 Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Enacted by Chapter 89, 2004 General Session

75-7-605 Revocation or amendment of revocable trust.

- (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This Subsection (1) does not apply to a trust created under an instrument executed before May 1, 2004.
- (2) If a revocable trust is created or funded by more than one settlor:
 - (a) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and
 - (b) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.
- (3) The settlor may revoke or amend a revocable trust:
 - (a) by substantially complying with a method provided in the terms of the trust; or
 - (b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:
 - (i) executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or
 - (ii) any other method manifesting clear and convincing evidence of the settlor's intent.
- (4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.
- (5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.
- (6) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.
- (7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Enacted by Chapter 89, 2004 General Session

75-7-606 Settlor's powers -- Powers of withdrawal.

- (1)
 - (a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust.
 - (b) To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or a person holding an adverse interest, the trustee may follow a direction from the settlor and

the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

- (2) To the extent a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.
- (3) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.
- (4) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Amended by Chapter 153, 2019 General Session

75-7-607 Limitation on action contesting validity of revocable trust -- Distribution of trust property.

- (1) A person shall commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:
 - (a) three years after the settlor's death; or
 - (b) 90 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.
- (2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:
 - (a) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or
 - (b) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.
- (3) With respect to a potential contest, the trustee is only liable for actions taken two or more business days after the trustee has actual receipt of written notice from a potential contestant. The written notice shall include the name of the settlor or of the trust, the name of the potential contestant, and a description of the basis for the potential contest. The written notice shall be mailed to the trustee at the principal place of administration of the trust by registered or certified mail, return receipt requested, or served upon the trustee in the same manner as a summons in a civil action. Any other form or service of notice is not sufficient to impose liability on the trustee for actions taken pursuant to the terms of the trust.
- (4) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Enacted by Chapter 89, 2004 General Session