

**DISTRIBUTION LIMITATIONS ON TRUST BENEFICIARY**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: John L. Valentine**

AN ACT RELATING TO THE UNIFORM PROBATE CODE; PROTECTING A BENEFICIARY OF A TRUST FROM UNINTENDED TAXATION BECAUSE OF POWERS TO OBTAIN DISTRIBUTIONS FROM THE TRUST TO HIMSELF, EXCEPT UNDER CERTAIN CIRCUMSTANCES.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

**75-7-410**, Utah Code Annotated 1953

**75-7-411**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **75-7-410** is enacted to read:

**75-7-410. Limitations on powers of a trust beneficiary to make or obtain distributions to or for himself.**

(1) Unless the terms of a trust refer specifically to this section and provide expressly to the contrary, the powers conferred upon a person who is a beneficiary of a trust, whether in his capacity as a trustee or as an individual beneficiary, cannot be exercised by him to:

(a) make or obtain discretionary distributions of either principal or income to or for the benefit of himself;

(b) make discretionary allocations of receipts or expenses between principal and income, unless he acts in a fiduciary capacity where he has no power to enlarge or shift a beneficial interest except as an incidental consequence of the discharge of his fiduciary duties;

(c) make or obtain discretionary distributions of either principal or income to satisfy his legal obligations; or

(d) indirectly cause the powers enumerated in Subsections (1)(a), (b), or (c) to be exercised for his benefit by exercising any other power, including the right to remove or replace any trustee or make or obtain distributions to or for the benefit of a class of beneficiaries. A person who has

the right to remove or to replace a trustee may not possess or be considered to possess, by virtue of having that right, the powers of the trustee who is subject to removal or replacement.

(2) This section does not apply to:

(a) a settlor of a revocable or amendable trust;

(b) a decedent's or settlor's spouse as a beneficiary of a testamentary or inter vivos marital deduction trust;

(c) distributions reasonably needed to provide for a beneficiary's health, education, support, or maintenance as described in Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, or modifications of those sections, and regulations pertaining to those sections;

(d) rights of withdrawal within the limits of Section 2041(b)(2) or 2514(e) of the Internal Revenue Code, or modifications of those sections, and regulations pertaining to those sections;

(e) powers clearly intended as general powers of appointment under Section 2041(b)(1) or 2514(c) of the Internal Revenue Code, or modifications of those sections, and regulations pertaining to those sections, whether or not specifically expressed in terms of powers exercisable in favor of the beneficiary, his estate, his creditors, or the creditors of this estate.

(3) A proscribed power under this section that is conferred upon two or more persons may be exercised by the persons who are not disqualified under this section. If there is no person qualified to exercise a power proscribed by this section, the power may be exercised by a qualified person appointed under the appointment provisions of the trust instrument, or appointed by a court of competent jurisdiction as a special trustee.

(4) This section applies to:

(a) any trust created under an inter vivos document or will executed after June 30, 1999; and

(b) any trust created under an inter vivos document or will executed before July 1, 1999,

unless an election made under Section 75-7-411 provides that this section shall not apply.

Section 2. Section **75-7-411** is enacted to read:

**75-7-411. Election to make Section 75-7-410 inapplicable to preexisting trusts.**

(1) The limitations on powers of a trust beneficiary to make or obtain distributions to or for himself contained in Section 75-7-410 shall apply to any trust created under an inter vivos document

or will executed before July 1, 1999, unless:

(a) if the trust is revocable or amendable, the settlor replaces or amends the trust at any time to provide otherwise; or

(b) if the trust is irrevocable, or if the trust is revocable or amendable but the settlor is incapacitated, all parties in interest, as defined in Subsection (3) elect affirmatively, through a written instrument delivered to the trustee, not to be subject to the application of Section 75-7-410. The election shall be made on or before the later of:

(i) July 1, 2002;

(ii) three years after the date on which the trust became irrevocable; or

(iii) in the case of a revocable or amendable trust where the settlor is incapacitated, three years after the date on which the settlor became incapacitated.

(2) The provisions of this section and Section 75-7-410 do not create a new cause of action or impair any existing cause of action which relate to any power proscribed by Section 75-7-410 that was exercised before July 1, 1999.

(3) For the purposes of Subsection (1):

(a) If the trust is revocable or amendable, but the settlor is incapacitated, the party in interest is the settlor's legal representative or the settlor's donee under a durable power of attorney that is sufficient to grant the authority.

(b) If the trust is not revocable or amendable, the parties in interest are each trustee then serving and each income beneficiary then in existence and each remainder beneficiary then in existence, or, if any income or remainder beneficiary has not attained majority or is incapacitated, the beneficiary's legal representative or the beneficiary's donee under a durable power of attorney that is sufficient to grant the authority, or a guardian ad litem appointed for that purpose.