

1 **DISTRIBUTION LIMITATIONS ON TRUST**

2 **BENEFICIARY**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: John L. Valentine**

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

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

11 ENACTS:

12 **75-7-410**, Utah Code Annotated 1953

13 **75-7-411**, Utah Code Annotated 1953

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

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

16 **75-7-410. Limitations on powers of a trust beneficiary to make or obtain distributions**
17 **to or for himself.**

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

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

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

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

28 (d) indirectly cause the powers enumerated in Subsections (1)(a), (b), or (c) to be exercised
29 for his benefit by exercising any other power, including the right to remove or replace any trustee
30 or make or obtain distributions to or for the benefit of a class of beneficiaries. A person who has
31 the right to remove or to replace a trustee may not possess or be considered to possess, by virtue
32 of having that right, the powers of the trustee who is subject to removal or replacement.

33 (2) This section does not apply to:

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

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

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

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

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

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

51 (4) This section applies to:

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

54 (b) any trust created under an inter vivos document or will executed before July 1, 1999,
55 unless an election made under Section 75-7-411 provides that this section shall not apply.

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

57 **75-7-411. Election to make Section 75-7-410 inapplicable to preexisting trusts.**

58 (1) The limitations on powers of a trust beneficiary to make or obtain distributions to or

59 for himself contained in Section 75-7-410 shall apply to any trust created under an inter vivos
60 document or will executed before July 1, 1999, unless:

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

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

67 (i) July 1, 2002;

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

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

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

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

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

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

Legislative Review Note

as of 2-2-99 5:41 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel