

ASSEMBLY BILL

No. 1855

Introduced by Assembly Member Bonta

February 10, 2016

An act to add Part 9 (commencing with Section 19500) to Division 9 of the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1855, as introduced, Bonta. Uniform Trust Decanting Act.

Existing law regulates trust administration and generally requires a trustee to administer the trust according to the trust instrument. Under existing law, a trustee may exercise specified powers without court authorization, including the power to acquire or dispose of property. Existing law authorizes the beneficiaries of an irrevocable trust to compel modification of the trust upon petition to the court, if all beneficiaries of the trust consent.

This bill would enact the Uniform Trust Decanting Act, under which a fiduciary of an irrevocable trust may distribute the property of a first trust to one or more 2nd trusts or modify the terms of the first trust without the consent of the beneficiaries or approval of the court, subject to certain exceptions. The bill would require specified persons, including qualified beneficiaries and, if the trust contains a determinable charitable interest, the Attorney General, to be provided notice of the intended exercise of the decanting power, and would authorize the court, on application by specified persons, to, among other things, approve an exercise of the decanting power. Among other provisions, the bill would require a fiduciary exercising the decanting power to act in accordance with its fiduciary duties and in accordance with the purposes of the first

trust. The bill would also specify that the decanting power does not apply to a trust held solely for charitable purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 9 (commencing with Section 19500) is added
2 to Division 9 of the Probate Code, to read:

3
4 PART 9. UNIFORM TRUST DECANTING ACT
5

6 19500. This part may be cited as the Uniform Trust Decanting
7 Act.

8 19501. For purposes of this part:

9 (a) "Appointive property" means the property or property
10 interest subject to a power of appointment.

11 (b) "Ascertainable standard" means a standard relating to an
12 individual's health, education, support, or maintenance within the
13 meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of Title
14 26 of the United States Code and any applicable regulations.

15 (c) "Authorized fiduciary" means any of the following:

16 (1) A trustee or other fiduciary, other than a settlor, that has
17 discretion to distribute or direct a trustee to distribute part or all
18 of the principal of the first trust to one or more current
19 beneficiaries.

20 (2) A special fiduciary appointed under Section 19508.

21 (3) A special-needs fiduciary under Section 19512.

22 (d) "Beneficiary" means a person that meets one of the following
23 conditions:

24 (1) Has a present or future, vested or contingent, beneficial
25 interest in a trust.

26 (2) Holds a power of appointment over trust property.

27 (3) Is an identified charitable organization that will or may
28 receive distributions under the terms of the trust.

29 (e) "Charitable interest" means an interest in a trust that meets
30 one of the following conditions:

31 (1) Is held by an identified charitable organization and makes
32 the organization a qualified beneficiary.

1 (2) Benefits only charitable organizations and, if the interest
2 were held by an identified charitable organization, would make
3 the organization a qualified beneficiary.

4 (3) Is held solely for charitable purposes and, if the interest were
5 held by an identified charitable organization, would make the
6 organization a qualified beneficiary.

7 (f) “Charitable organization” means either of the following:

8 (1) A person, other than an individual, organized and operated
9 exclusively for charitable purposes.

10 (2) A government or governmental subdivision, agency, or
11 instrumentality, to the extent it holds funds exclusively for a
12 charitable purpose.

13 (g) “Charitable purpose” means the relief of poverty, the
14 advancement of education or religion, the promotion of health, a
15 municipal or other governmental purpose, or another purpose the
16 achievement of which is beneficial to the community.

17 (h) “Court” means the court in this state having jurisdiction in
18 matters relating to trusts.

19 (i) “Current beneficiary” means a beneficiary that on the date
20 the beneficiary’s qualification is determined is a distributee or
21 permissible distributee of trust income or principal. The term
22 includes the holder of a presently exercisable general power of
23 appointment but does not include a person that is a beneficiary
24 only because the person holds any other power of appointment.

25 (j) “Decanting power” or “the decanting power” means the
26 power of an authorized fiduciary under this part to distribute
27 property of a first trust to one or more second trusts or to modify
28 the terms of the first trust.

29 (k) “Expanded distributive discretion” means a discretionary
30 power of distribution that is not limited to an ascertainable standard
31 or a reasonably definite standard.

32 (l) “First trust” means a trust over which an authorized fiduciary
33 may exercise the decanting power.

34 (m) “First trust instrument” means the trust instrument for a
35 first trust.

36 (n) “General power of appointment” means a power of
37 appointment exercisable in favor of a powerholder, the
38 powerholder’s estate, a creditor of the powerholder, or a creditor
39 of the powerholder’s estate.

1 (o) “Jurisdiction,” with respect to a geographic area, includes
2 a state or country.

3 (p) “Person” means an individual, estate, business or nonprofit
4 entity, public corporation, government or governmental
5 subdivision, agency, or instrumentality, or other legal entity.

6 (q) “Power of appointment” means a power that enables a
7 powerholder acting in a nonfiduciary capacity to designate a
8 recipient of an ownership interest in, or another power of
9 appointment over, the appointive property. The term does not
10 include a power of attorney.

11 (r) “Powerholder” means a person in which a donor creates a
12 power of appointment.

13 (s) “Presently exercisable power of appointment” means a power
14 of appointment exercisable by the powerholder at the relevant
15 time.

16 (1) The term includes a power of appointment exercisable only
17 after the occurrence of a specified event, the satisfaction of an
18 ascertainable standard, or the passage of a specified time only after
19 one of the following, respectively:

20 (A) The occurrence of the specified event.

21 (B) The satisfaction of the ascertainable standard.

22 (C) The passage of the specified time.

23 (2) The term does not include a power exercisable only at the
24 powerholder’s death.

25 (t) “Qualified beneficiary” means a beneficiary that, on the date
26 the beneficiary’s qualification is determined, satisfies one of the
27 following conditions:

28 (1) Is a distributee or permissible distributee of trust income or
29 principal.

30 (2) Would be a distributee or permissible distributee of trust
31 income or principal if the interests of the distributees described in
32 paragraph (1) terminated on that date without causing the trust to
33 terminate.

34 (3) Would be a distributee or permissible distributee of trust
35 income or principal if the trust terminated on that date.

36 (u) “Reasonably definite standard” means a clearly measurable
37 standard under which a holder of a power of distribution is legally
38 accountable within the meaning of Section 674(b)(5)(A) of Title
39 26 of the United States Code and any applicable regulations.

- 1 (v) “Record” means information that is inscribed on a tangible
2 medium or that is stored in an electronic or other medium and is
3 retrievable in perceivable form.
- 4 (w) “Second trust” means either of the following:
5 (1) A first trust after modification under this part.
6 (2) A trust to which a distribution of property from a first trust
7 is or may be made under this part.
- 8 (x) “Second trust instrument” means the trust instrument for a
9 second trust.
- 10 (y) “Settlor,” except as otherwise provided in Section 19524,
11 means a person, including a testator, that creates or contributes
12 property to a trust. If more than one person creates or contributes
13 property to a trust, each person is a settlor of the portion of the
14 trust property attributable to the person’s contribution except to
15 the extent another person has power to revoke or withdraw that
16 portion.
- 17 (z) “Sign” means, with present intent to authenticate or adopt
18 a record, to do either of the following:
19 (1) Execute or adopt a tangible symbol.
20 (2) Attach to or logically associate with the record an electronic
21 symbol, sound, or process.
- 22 (aa) “State” means a state of the United States, the District of
23 Columbia, Puerto Rico, the United States Virgin Islands, or any
24 territory or insular possession subject to the jurisdiction of the
25 United States.
- 26 (ab) “Terms of the trust” means the manifestation of the settlor’s
27 intent regarding a trust’s provisions as expressed in the trust
28 instrument, as may be established by other evidence that would
29 be admissible in a judicial proceeding, or as may be established
30 by court order or nonjudicial settlement agreement.
- 31 (ac) “Trust instrument” means a record executed by the settlor
32 to create a trust or by any person to create a second trust that
33 contains some or all of the terms of the trust, including any
34 amendments.
- 35 19502. (a) Except as otherwise provided in subdivisions (b)
36 and (c), this part applies to an express trust that is irrevocable or
37 revocable by the settlor only with the consent of the trustee or a
38 person holding an adverse interest.
- 39 (b) This part does not apply to a trust held solely for charitable
40 purposes.

1 (c) Subject to Section 19514, a trust instrument may restrict or
2 prohibit exercise of the decanting power.

3 (d) This part does not limit the power of a trustee, powerholder,
4 or other person to distribute or appoint property in further trust or
5 to modify a trust under the trust instrument, law of this state other
6 than this part, common law, a court order, or a nonjudicial
7 settlement agreement.

8 (e) This part does not affect the ability of a settlor to provide in
9 a trust instrument for the distribution of the trust property or
10 appointment in further trust of the trust property or for modification
11 of the trust instrument.

12 19503. (a) In exercising the decanting power, an authorized
13 fiduciary shall act in accordance with its fiduciary duties, including
14 the duty to act in accordance with the purposes of the first trust.

15 (b) This part does not create or imply a duty to exercise the
16 decanting power or to inform beneficiaries about the applicability
17 of this part.

18 (c) Except as otherwise provided in a first trust instrument, for
19 purposes of this part, the terms of the first trust are deemed to
20 include the decanting power.

21 19504. This part applies to a trust created before, on, or after
22 January 1, 2017, that satisfies either of the following conditions:

23 (a) Has its principal place of administration in this state,
24 including a trust whose principal place of administration has been
25 changed to this state.

26 (b) Provides by its trust instrument that it is governed by the
27 law of this state or is governed by the law of this state for the
28 purpose of any of the following:

29 (1) Administration, including administration of a trust whose
30 governing law for purposes of administration has been changed
31 to the law of this state.

32 (2) Construction of terms of the trust.

33 (3) Determining the meaning or effect of terms of the trust.

34 19505. A trustee or other person that reasonably relies on the
35 validity of a distribution of part or all of the property of a trust to
36 another trust, or a modification of a trust, under this part, law of
37 this state other than this part, or the law of another jurisdiction is
38 not liable to any person for any action or failure to act as a result
39 of the reliance.

1 19506. (a) In this section, a notice period begins on the day
2 notice is given under subdivision (c) and ends 59 days after the
3 day notice is given.

4 (b) Except as otherwise provided in this part, an authorized
5 fiduciary may exercise the decanting power without the consent
6 of any person and without court approval.

7 (c) Except as otherwise provided in subdivision (f), an
8 authorized fiduciary shall give notice in a record of the intended
9 exercise of the decanting power not later than 60 days before the
10 exercise to all of the following:

- 11 (1) Each settlor of the first trust, if living or then in existence.
- 12 (2) Each qualified beneficiary of the first trust.
- 13 (3) Each holder of a presently exercisable power of appointment
14 over any part or all of the first trust.
- 15 (4) Each person that currently has the right to remove or replace
16 the authorized fiduciary.
- 17 (5) Each other fiduciary of the first trust.
- 18 (6) Each fiduciary of the second trust.
- 19 (7) The Attorney General, if subdivision (b) of Section 19513
20 applies.

21 (d) An authorized fiduciary is not required to give notice under
22 subdivision (c) to a qualified beneficiary who is a minor and has
23 no representative or to a person that is not known to the fiduciary
24 or is known to the fiduciary but cannot be located by the fiduciary
25 after reasonable diligence.

26 (e) A notice under subdivision (c) shall include all of the
27 following:

- 28 (1) A description of the manner in which the authorized fiduciary
29 intends to exercise the decanting power.
- 30 (2) The proposed effective date for exercise of the power.
- 31 (3) A copy of the first trust instrument.
- 32 (4) A copy of all second trust instruments.

33 (f) The decanting power may be exercised before expiration of
34 the notice period under subdivision (a) if all persons entitled to
35 receive notice waive the period in a signed record.

36 (g) The receipt of notice, waiver of the notice period, or
37 expiration of the notice period does not affect the right of a person
38 to file an application under Section 19508 that asserts either of the
39 following:

1 (1) An attempted exercise of the decanting power is ineffective
2 because it did not comply with this part or was an abuse of
3 discretion or breach of fiduciary duty.

4 (2) Section 19521 applies to the exercise of the decanting power.

5 (h) An exercise of the decanting power is not ineffective because
6 of the failure to give notice to one or more persons under
7 subdivision (c) if the authorized fiduciary acted with reasonable
8 care to comply with subdivision (c).

9 19507. (a) Notice to a person with authority to represent and
10 bind another person under this code or a first trust instrument has
11 the same effect as notice given directly to the person represented.

12 (b) Consent of or waiver by a person with authority to represent
13 and bind another person under this code or a first trust instrument
14 is binding on the person represented unless the person represented
15 objects to the representation before the consent or waiver otherwise
16 would become effective.

17 (c) A person with authority to represent and bind another person
18 under this code or a first trust instrument may file an application
19 under Section 19508 on behalf of the person represented.

20 (d) A settlor may not represent or bind a beneficiary under this
21 part.

22 19508. (a) On application of an authorized fiduciary, a person
23 entitled to notice under subdivision (c) of Section 19506, a
24 beneficiary, or, with respect to a charitable interest, the Attorney
25 General or other person that has standing to enforce the charitable
26 interest, the court may do any of the following:

27 (1) Provide instructions to the authorized fiduciary regarding
28 whether a proposed exercise of the decanting power is permitted
29 under this part and is consistent with the fiduciary duties of the
30 authorized fiduciary.

31 (2) Appoint a special fiduciary and authorize the special
32 fiduciary to determine whether the decanting power should be
33 exercised under this part and to exercise the decanting power.

34 (3) Approve an exercise of the decanting power.

35 (4) Determine that a proposed or attempted exercise of the
36 decanting power is ineffective because of either of the following:

37 (A) After applying Section 19521, the proposed or attempted
38 exercise does not or did not comply with this part.

39 (B) The proposed or attempted exercise would be or was an
40 abuse of the fiduciary's discretion or a breach of fiduciary duty.

1 (5) Determine the extent to which Section 19521 applies to a
2 prior exercise of the decanting power.

3 (6) Provide instructions to the trustee regarding the application
4 of Section 19521 to a prior exercise of the decanting power.

5 (7) Order other relief to carry out the purposes of this part.

6 (b) On application of an authorized fiduciary, the court may
7 approve either or both of the following:

8 (1) An increase in the fiduciary’s compensation under Section
9 19515.

10 (2) A modification under Section 19517 of a provision granting
11 a person the right to remove or replace the fiduciary.

12 19509. An exercise of the decanting power shall be made in a
13 record signed by an authorized fiduciary. The signed record shall,
14 directly or by reference to the notice required by Section 19506,
15 identify the first trust and the second trust or trusts and state the
16 property of the first trust being distributed to each second trust and
17 the property, if any, that remains in the first trust.

18 19510. (a) For purposes of this section:

19 (1) “Noncontingent right” means a right that is not subject to
20 the exercise of discretion or the occurrence of a specified event
21 that is not certain to occur. The term does not include a right held
22 by a beneficiary if any person has discretion to distribute property
23 subject to the right to any person other than the beneficiary or the
24 beneficiary’s estate.

25 (2) “Presumptive remainder beneficiary” means a qualified
26 beneficiary other than a current beneficiary.

27 (3) “Successor beneficiary” means a beneficiary that is not a
28 qualified beneficiary on the date the beneficiary’s qualification is
29 determined. The term does not include a person that is a beneficiary
30 only because the person holds a nongeneral power of appointment.

31 (4) “Vested interest” means any of the following:

32 (A) A right to a mandatory distribution that is a noncontingent
33 right as of the date of the exercise of the decanting power.

34 (B) A current and noncontingent right, annually or more
35 frequently, to a mandatory distribution of income, a specified dollar
36 amount, or a percentage of value of some or all of the trust
37 property.

38 (C) A current and noncontingent right, annually or more
39 frequently, to withdraw income, a specified dollar amount, or a
40 percentage of value of some or all of the trust property.

1 (D) A presently exercisable general power of appointment.

2 (E) A right to receive an ascertainable part of the trust property
3 on the trust's termination that is not subject to the exercise of
4 discretion or to the occurrence of a specified event that is not
5 certain to occur.

6 (b) Subject to subdivision (c) and Section 19513, an authorized
7 fiduciary that has expanded distributive discretion over the
8 principal of a first trust for the benefit of one or more current
9 beneficiaries may exercise the decanting power over the principal
10 of the first trust.

11 (c) Subject to Section 19512, in an exercise of the decanting
12 power under this section, a second trust may not do any of the
13 following:

14 (1) Include as a current beneficiary a person that is not a current
15 beneficiary of the first trust, except as otherwise provided in
16 subdivision (d).

17 (2) Include as a presumptive remainder beneficiary or successor
18 beneficiary a person that is not a current beneficiary, presumptive
19 remainder beneficiary, or successor beneficiary of the first trust,
20 except as otherwise provided in subdivision (d).

21 (3) Reduce or eliminate a vested interest.

22 (d) Subject to paragraph (3) of subdivision (c) and Section
23 19513, in an exercise of the decanting power under this section, a
24 second trust may be a trust created or administered under the law
25 of any jurisdiction and may do each of the following:

26 (1) Retain a power of appointment granted in the first trust.

27 (2) Omit a power of appointment granted in the first trust, other
28 than a presently exercisable general power of appointment.

29 (3) Create or modify a power of appointment if the powerholder
30 is a current beneficiary of the first trust and the authorized fiduciary
31 has expanded distributive discretion to distribute principal to the
32 beneficiary.

33 (4) Create or modify a power of appointment if the powerholder
34 is a presumptive remainder beneficiary or successor beneficiary
35 of the first trust, but the exercise of the power may take effect only
36 after the powerholder becomes, or would have become if then
37 living, a current beneficiary.

38 (e) A power of appointment described in paragraphs (1) to (4),
39 inclusive, of subdivision (d) may be general or nongeneral. The
40 class of permissible appointees in favor of which the power may

1 be exercised may be broader than, or different from, the
2 beneficiaries of the first trust.

3 (f) If an authorized fiduciary has expanded distributive discretion
4 over part but not all of the principal of a first trust, the fiduciary
5 may exercise the decanting power under this section over that part
6 of the principal over which the authorized fiduciary has expanded
7 distributive discretion.

8 19511. (a) For purposes of this section, “limited distributive
9 discretion” means a discretionary power of distribution that is
10 limited to an ascertainable standard or a reasonably definite
11 standard.

12 (b) An authorized fiduciary that has limited distributive
13 discretion over the principal of the first trust for benefit of one or
14 more current beneficiaries may exercise the decanting power over
15 the principal of the first trust.

16 (c) Under this section and subject to Section 19513, a second
17 trust may be created or administered under the law of any
18 jurisdiction. Under this section, the second trusts, in the aggregate,
19 shall grant each beneficiary of the first trust beneficial interests
20 which are substantially similar to the beneficial interests of the
21 beneficiary in the first trust.

22 (d) A power to make a distribution under a second trust for the
23 benefit of a beneficiary who is an individual is substantially similar
24 to a power under the first trust to make a distribution directly to
25 the beneficiary. A distribution is for the benefit of a beneficiary if
26 it satisfies any of the following conditions:

27 (1) The distribution is applied for the benefit of the beneficiary.

28 (2) The beneficiary is under a legal disability or the trustee
29 reasonably believes the beneficiary is incapacitated, and the
30 distribution is made as permitted under this code.

31 (3) The distribution is made as permitted under the terms of the
32 first trust instrument and the second trust instrument for the benefit
33 of the beneficiary.

34 (e) If an authorized fiduciary has limited distributive discretion
35 over part but not all of the principal of a first trust, the fiduciary
36 may exercise the decanting power under this section over that part
37 of the principal over which the authorized fiduciary has limited
38 distributive discretion.

39 19512. (a) For purposes of this section:

- 1 (1) “Beneficiary with a disability” means a beneficiary of a first
 2 trust who the special needs fiduciary believes may qualify for
 3 governmental benefits based on disability, whether or not the
 4 beneficiary currently receives those benefits or is an individual
 5 who has been adjudicated legally incompetent.
- 6 (2) “Governmental benefits” means financial aid or services
 7 from a state, federal, or other public agency.
- 8 (3) “Special needs fiduciary” means, with respect to a trust that
 9 has a beneficiary with a disability, any of the following:
- 10 (A) A trustee or other fiduciary, other than a settlor, that has
 11 discretion to distribute part or all of the principal of a first trust to
 12 one or more current beneficiaries.
- 13 (B) If no trustee or fiduciary has discretion under subparagraph
 14 (A), a trustee or other fiduciary, other than a settlor, that has
 15 discretion to distribute part or all of the income of the first trust to
 16 one or more current beneficiaries.
- 17 (C) If no trustee or fiduciary has discretion under subparagraphs
 18 (A) and (B), a trustee or other fiduciary, other than a settlor, that
 19 is required to distribute part or all of the income or principal of
 20 the first trust to one or more current beneficiaries.
- 21 (4) “Special needs trust” means a trust the trustee believes would
 22 not be considered a resource for purposes of determining whether
 23 a beneficiary with a disability is eligible for governmental benefits.
- 24 (b) A special needs fiduciary may exercise the decanting power
 25 under Section 19510 over the principal of a first trust as if the
 26 fiduciary had authority to distribute principal to a beneficiary with
 27 a disability subject to expanded distributive discretion if both of
 28 the following conditions are satisfied:
- 29 (1) A second trust is a special needs trust that benefits the
 30 beneficiary with a disability.
- 31 (2) The special needs fiduciary determines that exercise of the
 32 decanting power will further the purposes of the first trust.
- 33 (c) In an exercise of the decanting power under this section, all
 34 of the following rules apply:
- 35 (1) Notwithstanding paragraph (2) of subdivision (c) of Section
 36 19510, the interest in the second trust of a beneficiary with a
 37 disability may fulfill either of the following:
- 38 (A) Be a pooled trust as defined by Medicaid law for the benefit
 39 of the beneficiary with a disability under Section 1396p(d)(4)(C)
 40 of Title 42 of the United States Code.

1 (B) Contain payback provisions complying with reimbursement
2 requirements of Medicaid law under Section 1396p(d)(4)(A) of
3 Title 42 of the United States Code.

4 (2) Paragraph (3) of subdivision (c) of Section 19510 does not
5 apply to the interests of the beneficiary with a disability.

6 (3) Except as affected by any change to the interests of the
7 beneficiary with a disability, the second trust, or if there are two
8 or more second trusts, the second trusts in the aggregate, shall
9 grant each other beneficiary of the first trust beneficial interests
10 in the second trusts which are substantially similar to the
11 beneficiary's beneficial interests in the first trust.

12 19513. (a) For purposes of this section:

13 (1) "Determinable charitable interest" means a charitable interest
14 that is a right to a mandatory distribution currently, periodically,
15 on the occurrence of a specified event, or after the passage of a
16 specified time and that is unconditional or will be held solely for
17 charitable purposes.

18 (2) "Unconditional" means not subject to the occurrence of a
19 specified event that is not certain to occur, other than a requirement
20 in a trust instrument that a charitable organization be in existence
21 or qualify under a particular provision of the United States Internal
22 Revenue Code of 1986 on the date of the distribution, if the
23 charitable organization meets the requirement on the date of
24 determination.

25 (b) If a first trust contains a determinable charitable interest, the
26 Attorney General has the rights of a qualified beneficiary and may
27 represent and bind the charitable interest.

28 (c) If a first trust contains a charitable interest, the second trust
29 or trusts may not do any of the following:

30 (1) Diminish the charitable interest.

31 (2) Diminish the interest of an identified charitable organization
32 that holds the charitable interest.

33 (3) Alter any charitable purpose stated in the first trust
34 instrument.

35 (4) Alter any condition or restriction related to the charitable
36 interest.

37 (d) If there are two or more second trusts, the second trusts shall
38 be treated as one trust for purposes of determining whether the
39 exercise of the decanting power diminishes the charitable interest

1 or diminishes the interest of an identified charitable organization
2 for purposes of subdivision (c).

3 (e) If a first trust contains a determinable charitable interest, the
4 second trust or trusts that include a charitable interest pursuant to
5 subdivision (c) shall be administered under the law of this state
6 unless any of the following occur:

7 (1) The Attorney General, after receiving notice under Section
8 19506, fails to object in a signed record delivered to the authorized
9 fiduciary within the notice period.

10 (2) The Attorney General consents in a signed record to the
11 second trust or trusts being administered under the law of another
12 jurisdiction.

13 (3) The court approves the exercise of the decanting power.

14 (f) This part does not limit the powers and duties of the Attorney
15 General under law of this state other than this part.

16 19514. (a) An authorized fiduciary may not exercise the
17 decanting power to the extent the first trust instrument expressly
18 prohibits exercise of either of the following:

19 (1) The decanting power.

20 (2) A power granted by state law to the fiduciary to distribute
21 part or all of the principal of the trust to another trust or to modify
22 the trust.

23 (b) Exercise of the decanting power is subject to any restriction
24 in the first trust instrument that expressly applies to exercise either
25 of the following:

26 (1) The decanting power.

27 (2) A power granted by state law to a fiduciary to distribute part
28 or all of the principal of the trust to another trust or to modify the
29 trust.

30 (c) A general prohibition of the amendment or revocation of a
31 first trust, a spendthrift clause, or a clause restraining the voluntary
32 or involuntary transfer of a beneficiary's interest does not preclude
33 exercise of the decanting power.

34 (d) Subject to subdivisions (a) and (b), an authorized fiduciary
35 may exercise the decanting power under this part even if the first
36 trust instrument permits the authorized fiduciary or another person
37 to modify the first trust instrument or to distribute part or all of
38 the principal of the first trust to another trust.

39 (e) If a first trust instrument contains an express prohibition
40 described in subdivision (a) or an express restriction described in

1 subdivision (b), the provision shall be included in the second trust
2 instrument.

3 19515. (a) If a first trust instrument specifies an authorized
4 fiduciary's compensation, the fiduciary may not exercise the
5 decanting power to increase the fiduciary's compensation above
6 the specified compensation unless either of the following occurs:

7 (1) All qualified beneficiaries of the second trust consent to the
8 increase in a signed record.

9 (2) The increase is approved by the court.

10 (b) If a first trust instrument does not specify an authorized
11 fiduciary's compensation, the fiduciary may not exercise the
12 decanting power to increase the fiduciary's compensation above
13 the compensation permitted by this code unless either of the
14 following occurs:

15 (1) All qualified beneficiaries of the second trust consent to the
16 increase in a signed record.

17 (2) The increase is approved by the court.

18 (c) A change in an authorized fiduciary's compensation which
19 is incidental to other changes made by the exercise of the decanting
20 power is not an increase in the fiduciary's compensation for
21 purposes of subdivisions (a) and (b).

22 19516. (a) Except as otherwise provided in this section, a
23 second trust instrument may not relieve an authorized fiduciary
24 from liability for breach of trust to a greater extent than the first
25 trust instrument.

26 (b) A second trust instrument may provide for indemnification
27 of an authorized fiduciary of the first trust or another person acting
28 in a fiduciary capacity under the first trust for any liability or claim
29 that would have been payable from the first trust if the decanting
30 power had not been exercised.

31 (c) A second trust instrument may not reduce fiduciary liability
32 in the aggregate.

33 (d) Subject to subdivision (c), a second trust instrument may
34 divide and reallocate fiduciary powers among fiduciaries, including
35 one or more trustees, distribution advisors, investment advisors,
36 trust protectors, or other persons, and may relieve a fiduciary from
37 liability for an act or failure to act of another fiduciary as permitted
38 by law of this state other than this part.

39 19517. An authorized fiduciary may not exercise the decanting
40 power to modify a provision in a first trust instrument granting

1 another person power to remove or replace the fiduciary unless
2 any of the following occurs:

3 (a) The person holding the power consents to the modification
4 in a signed record and the modification applies only to the person.

5 (b) The person holding the power and the qualified beneficiaries
6 of the second trust consent to the modification in a signed record
7 and the modification grants a substantially similar power to another
8 person.

9 (c) The court approves the modification and the modification
10 grants a substantially similar power to another person.

11 19518. (a) For purposes of this section:

12 (1) “Grantor trust” means a trust as to which a settlor of a first
13 trust is considered the owner under Sections 671 to 677, inclusive,
14 or Section 679 of Title 26 of the United States Code.

15 (2) “Internal Revenue Code” means the United States Internal
16 Revenue Code of 1986.

17 (3) “Nongrantor trust” means a trust that is not a grantor trust.

18 (4) “Qualified benefits property” means property subject to the
19 minimum distribution requirements of Section 401(a)(9) of Title
20 26 of the United States Code, and any applicable regulations, or
21 to any similar requirements that refer to Section 401(a)(9) of Title
22 26 of the United States Code or the regulations.

23 (b) An exercise of the decanting power is subject to all of the
24 following limitations:

25 (1) If a first trust contains property that qualified, or would have
26 qualified but for provisions of this part other than this section, for
27 a marital deduction for purposes of the gift or estate tax under the
28 Internal Revenue Code or a state gift, estate, or inheritance tax,
29 the second trust instrument shall not include or omit any term that,
30 if included in or omitted from the trust instrument for the trust to
31 which the property was transferred, would have prevented the
32 transfer from qualifying for the deduction, or would have reduced
33 the amount of the deduction, under the same provisions of the
34 Internal Revenue Code or state law under which the transfer
35 qualified.

36 (2) If the first trust contains property that qualified, or would
37 have qualified but for provisions of this part other than this section,
38 for a charitable deduction for purposes of the income, gift, or estate
39 tax under the Internal Revenue Code or a state income, gift, estate,
40 or inheritance tax, the second trust instrument shall not include or

1 omit any term that, if included in or omitted from the trust
2 instrument for the trust to which the property was transferred,
3 would have prevented the transfer from qualifying for the
4 deduction, or would have reduced the amount of the deduction,
5 under the same provisions of the Internal Revenue Code or state
6 law under which the transfer qualified.

7 (3) If the first trust contains property that qualified, or would
8 have qualified but for provisions of this part other than this section,
9 for the exclusion from the gift tax described in Section 2503(b) of
10 Title 26 of the United States Code, the second trust instrument
11 shall not include or omit a term that, if included in or omitted from
12 the trust instrument for the trust to which the property was
13 transferred, would have prevented the transfer from qualifying
14 under Section 2503(b) of Title 26 of the United States Code. If the
15 first trust contains property that qualified, or would have qualified
16 but for provisions of this part other than this section, for the
17 exclusion from the gift tax described in Section 2503(b) of Title
18 26 of the United States Code by application of Section 2503(c) of
19 Title 26 of the United States Code, the second trust instrument
20 shall not include or omit a term that, if included or omitted from
21 the trust instrument for the trust to which the property was
22 transferred, would have prevented the transfer from qualifying
23 under Section 2503(c) of Title 26 of the United States Code.

24 (4) If the property of the first trust includes shares of stock in
25 an S-corporation, as defined in Section 1361 of Title 26 of the
26 United States Code and the first trust is, or but for provisions of
27 this part other than this section would be, a permitted shareholder
28 under any provision of Section 1361 of Title 26 of the United
29 States Code, an authorized fiduciary may exercise the power with
30 respect to part or all of the S-corporation stock only if any second
31 trust receiving the stock is a permitted shareholder under Section
32 1361(c)(2) of Title 26 of the United States Code. If the property
33 of the first trust includes shares of stock in an S-corporation and
34 the first trust is, or but for provisions of this part other than this
35 section would be, a qualified subchapter-S trust within the meaning
36 of Section 1361(d) of Title 26 of the United States Code, the second
37 trust instrument shall not include or omit a term that prevents the
38 second trust from qualifying as a qualified subchapter-S trust.

39 (5) If the first trust contains property that qualified, or would
40 have qualified but for provisions of this part other than this section,

1 for a zero inclusion ratio for purposes of the generation-skipping
2 transfer tax under Section 2642(c) of Title 26 of the United States
3 Code, the second trust instrument shall not include or omit a term
4 that, if included in or omitted from the first trust instrument, would
5 have prevented the transfer to the first trust from qualifying for a
6 zero inclusion ratio under Section 2642(c) of Title 26 of the United
7 States Code.

8 (6) If the first trust is directly or indirectly the beneficiary of
9 qualified benefits property, the second trust instrument may not
10 include or omit any term that, if included in or omitted from the
11 first trust instrument, would have increased the minimum
12 distributions required with respect to the qualified benefits property
13 under Section 401(a)(9) of Title 26 of the United States Code and
14 any applicable regulations, or any similar requirements that refer
15 to Section 401(a)(9) of Title 26 of the United States Code or the
16 regulations. If an attempted exercise of the decanting power
17 violates the preceding sentence, the trustee is deemed to have held
18 the qualified benefits property and any reinvested distributions of
19 the property as a separate share from the date of the exercise of
20 the power and Section 19521 applies to the separate share.

21 (7) If the first trust qualifies as a grantor trust because of the
22 application of Section 672(f)(2)(A) of Title 26 of the United States
23 Code, the second trust may not include or omit a term that, if
24 included in or omitted from the first trust instrument, would have
25 prevented the first trust from qualifying under Section 672(f)(2)(A)
26 of Title 26 of the United States Code.

27 (8) In this paragraph, “tax benefit” means a federal or state tax
28 deduction, exemption, exclusion, or other benefit not otherwise
29 listed in this section, except for a benefit arising from being a
30 grantor trust. Subject to paragraph (9), a second trust instrument
31 may not include or omit a term that, if included in or omitted from
32 the first trust instrument, would have prevented qualification for
33 a tax benefit if both of the following apply:

34 (A) The first trust instrument expressly indicates an intent to
35 qualify for the benefit or the first trust instrument clearly is
36 designed to enable the first trust to qualify for the benefit.

37 (B) The transfer of property held by the first trust or the first
38 trust qualified, or but for provisions of this part other than this
39 section, would have qualified for the tax benefit.

1 (9) (A) Subject to paragraph (4), and except as otherwise
2 provided in paragraph (7), the second trust may be a nongrantor
3 trust, even if the first trust is a grantor trust.

4 (B) Subject to paragraph (4), and except as otherwise provided
5 in paragraph (10), the second trust may be a grantor trust, even if
6 the first trust is a nongrantor trust.

7 (10) An authorized fiduciary may not exercise the decanting
8 power if a settlor objects in a signed record delivered to the
9 fiduciary within the notice period and either of the following
10 conditions are satisfied:

11 (A) The first trust and a second trust are both grantor trusts, in
12 whole or in part, the first trust grants the settlor or another person
13 the power to cause the second trust to cease to be a grantor trust,
14 and the second trust does not grant an equivalent power to the
15 settlor or other person.

16 (B) The first trust is a nongrantor trust and a second trust is a
17 grantor trust, in whole or in part, with respect to the settlor, unless
18 either of the following apply:

19 (i) The settlor has the power at all times to cause the second
20 trust to cease to be a grantor trust.

21 (ii) The first trust instrument contains a provision granting the
22 settlor or another person a power that would cause the first trust
23 to cease to be a grantor trust and the second trust instrument
24 contains the same provision.

25 19519. (a) Subject to subdivision (b), a second trust may have
26 a duration that is the same as, or different from, the duration of
27 the first trust.

28 (b) To the extent that property of a second trust is attributable
29 to property of the first trust, the property of the second trust is
30 subject to any rules governing maximum perpetuity, accumulation,
31 or suspension of the power of alienation that apply to property of
32 the first trust.

33 19520. An authorized fiduciary may exercise the decanting
34 power whether or not under the first trust's discretionary
35 distribution standard the fiduciary would have made or could have
36 been compelled to make a discretionary distribution of principal
37 at the time of the exercise.

38 19521. (a) If exercise of the decanting power would be
39 effective under this part, except that the second trust instrument
40 in part does not comply with this part, the exercise of the power

1 is effective and the following rules apply with respect to the
2 principal of the second trust attributable to the exercise of the
3 power:

4 (1) A provision in the second trust instrument that is not
5 permitted under this part is void to the extent necessary to comply
6 with this part.

7 (2) A provision required by this part to be in the second trust
8 instrument, which is not contained in the instrument, is deemed to
9 be included in the instrument to the extent necessary to comply
10 with this part.

11 (b) If a trustee or other fiduciary of a second trust determines
12 that subdivision (a) applies to a prior exercise of the decanting
13 power, the fiduciary shall take corrective action consistent with
14 the fiduciary's duties.

15 19522. (a) For purposes of this section:

16 (1) "Animal trust" means a trust or an interest in a trust created
17 to provide for the care of one or more animals.

18 (2) "Protector" means a person appointed in an animal trust to
19 enforce the trust on behalf of the animal or, if no such person is
20 appointed in the trust, a person appointed by the court for that
21 purpose.

22 (b) The decanting power may be exercised over an animal trust
23 that has a protector to the extent the trust could be decanted under
24 this part if each animal that benefits from the trust were an
25 individual, if the protector consents in a signed record to the
26 exercise of the power.

27 (c) A protector for an animal has the rights under this part of a
28 qualified beneficiary.

29 (d) Notwithstanding any other provision of this part, if a first
30 trust is an animal trust, in an exercise of the decanting power, the
31 second trust shall provide that trust property may be applied only
32 to its intended purpose for the period the first trust benefited the
33 animal.

34 19523. A reference in this code to a trust instrument or terms
35 of the trust includes a second trust instrument and the terms of the
36 second trust.

37 19524. (a) For purposes of the law of this state other than this
38 part and subject to subdivision (b), a settlor of a first trust is deemed
39 to be the settlor of the second trust with respect to the portion of

1 the principal of the first trust subject to the exercise of the decanting
2 power.

3 (b) In determining settlor intent with respect to a second trust,
4 the intent of a settlor of the first trust, a settlor of the second trust,
5 and the authorized fiduciary may be considered.

6 19525. (a) Except as otherwise provided in subdivision (c), if
7 exercise of the decanting power was intended to distribute all the
8 principal of the first trust to one or more second trusts,
9 later-discovered property belonging to the first trust and property
10 paid to or acquired by the first trust after the exercise of the power
11 is part of the trust estate of the second trust or trusts.

12 (b) Except as otherwise provided in subdivision (c), if exercise
13 of the decanting power was intended to distribute less than all the
14 principal of the first trust to one or more second trusts,
15 later-discovered property belonging to the first trust or property
16 paid to or acquired by the first trust after exercise of the power
17 remains part of the trust estate of the first trust.

18 (c) An authorized fiduciary may provide in an exercise of the
19 decanting power or by the terms of a second trust for disposition
20 of later-discovered property belonging to the first trust or property
21 paid to or acquired by the first trust after exercise of the power.

22 19526. A debt, liability, or other obligation enforceable against
23 property of a first trust is enforceable to the same extent against
24 the property when held by the second trust after exercise of the
25 decanting power.

26 19527. In applying and construing this uniform act,
27 consideration shall be given to the need to promote uniformity of
28 the law with respect to its subject matter among states that enact
29 it.

30 19528. This part modifies, limits, or supersedes the federal
31 Electronic Signatures in Global and National Commerce Act (15
32 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede
33 Section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize
34 electronic delivery of any of the notices described in Section 103(b)
35 of that act (15 U.S.C. Sec. 7003(b)).

36 19529. The provisions of this part are severable. If any
37 provision of this part or its application is held invalid, that

- 1 invalidity shall not affect other provisions or applications that can
- 2 be given effect without the invalid provision or application.

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