

DELAWARE TRUST CONFERENCE

“When Should a Trustee Go to Court?”

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I. Introduction

Following the Peierls decisions by the Delaware Supreme Court in 2013, as well as the Flint opinion by the Delaware Chancery Court in 2015, the number of non-litigation related proceedings involving trusts has significantly declined. Concurrently, the statutory methods for achieving desired goals or outcomes relating to trusts have increased, and previously existing methods have become more flexible and useful due to periodic updates to Delaware’s trust code.

While some in the industry may believe that the Delaware Chancery Court is “closed for business” to Trustees or other interested parties for non-litigation trust matters, in fact there are still several instances and factual scenarios in which Court involvement is not only possible, but may be the best approach out of all available options. Such scenarios include, but are not limited to: (1) trust reformations; (2) succession of Trustees; (3) “pitch and catch” proceedings; (4) possible trust modifications in connection with other relief; and (5) judicial instruction or construction. We will take a closer look at some of the considerations and requirements for each of the foregoing situations. Certain statutes, cases and other referenced materials herein are collectively attached as Exhibit A.

II. Judicial Trust Modifications

A. History of Chancery Court’s Involvement with “Consent Petitions” to Modify Trusts

1. Chancery Court Rules 100-104

- Developed when it was common to accomplish pursuant to a single proceeding: (1) the appointment of the Delaware corporate Trustee, (2) the transfer of situs of the trust to Delaware, (3) the confirmation that Delaware law governed the administration of the trust, and (4) the modification of a trust
- Rule 101(a)(7) – Consents or non-objection to the relief requested are required from the following:
 - Trustees and other fiduciaries, unless they have otherwise signified their consent or non-objection to the petition by acting as a petitioner or accepting a fiduciary position;
 - Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust

would vest, without regard to the exercise or non-exercise of a power of appointment, if the present interest in the trust terminated on the date the petition is filed;

- The trustor of the trust, if living; and
 - All other persons having an interest in the trust according to the express terms of the trust instrument (such as, but not limited to, holders of powers and persons having other rights, held in a nonfiduciary capacity, relating to trust property).
- Rule 104(b) – “Rules 100 through 104 of Section XII shall apply to any matter before the Court of Chancery in which the relief sought includes a modification of a trust, whether by means of a consent petition, civil action, court approved settlement or otherwise.”

2. The Delaware Supreme Court’s 2013 Peierls decisions¹

- Several issues relating to trust situs and governing law were resolved
- A “case or controversy” must exist to obtain a declaratory judgment: “(1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.”²
- Delaware Supreme Court upheld that Chancery Court’s ruling that a petition for judicial relief is not appropriate when the trust agreement expressly authorizes the contemplated action - “Such a request consumes judicial resources unnecessarily and does not present a live dispute capable of resolution”

3. Delaware Chancery Court’s 2015 Flint decision³

- Case involved the proposed modification of a testamentary trust
- Judicial modification is not freely available as a matter of convenience just because all interested parties agree on the proposed changes to the trust

¹ *In re Peierls Family Testamentary Trusts*, 77 A.3d 223 (Del. 2013); *In the Matter of Ethel F. Peierls Charitable Lead Unitrust*, 77 A.3d 232 (Del. 2013); *In re Peierls Family Inter Vivos Trusts*, 77 A.3d 249 (Del. 2013).

² *Rollins Int’l Inc. v. Int’l Hydronics Corp.*, 303 A.2d 660, 662–63 (Del. 1973).

³ *In Re Trust Under Will of Wallace B. Flint for the Benefit of Katherine F. Shadek*, C.A. No. 10593-VCL (June 17, 2015).

- When discussing the precedential value of prior consent decrees issues by the Chancery Court, the Court noted that all pre-dated the Peierls decisions and the adoption of a statutory mechanism for nonjudicial settlement (i.e., nonjudicial settlement agreements)

B. Availability of Nonjudicial Methods to Modify Irrevocable Trusts

1. Decanting (12 Del. C. § 3528)
2. Merger (12 Del. C. § 3342)
3. Nonjudicial settlement agreement (12 Del. C. § 3338)
4. Modifications by consent while Trustor is living (12 Del. C. § 3342)
5. “Built-in” amendment power, typically held by a Trustee or Trust Protector

C. When Could Judicial Modification be Appropriate?

1. Trust instrument does not expressly authorize the action in question
2. Trust agreement is genuinely ambiguous
3. There are minor or unborn beneficiaries whose interests must be protected through judicial oversight of the virtual representation process., typically via the court’s appointment of a guardian *ad litem* to properly represent such interests
4. Modification in connection with other relief (see Section VI below)

D. Trustee’s View

1. As a directed Trustee, modification is routine part of the Trustee’s process
2. Primarily use nonjudicial settlement agreement as the tool for modification to ensure the Trustee is simply a consenting party along with the interested parties seeking modification
3. Judicial modification may be sought to encourage uncooperative parties to participate – Example – spouse of primary beneficiary refusing to consent to NJSA on behalf of minor child remainder beneficiary

III. Resignation/Removal/Appointment of Trustees

A. Court Involvement in the Succession of Trustees

1. Resignation of a Trustee - 12 Del. C. § 3326(a)(3):

“(a) A trustee may resign:

(1) If the trust instrument expressly permits the trustee to resign, in accordance with the terms of the trust instrument;

(2) If the trust instrument neither expressly permits nor prohibits the trustee's resignation, but establishes a procedure for the appointment of a successor trustee who shall be willing and able to serve as such, upon 30 days written notice to the beneficiaries and any co-trustees; or

(3) **In all other cases, with the approval of the Court of Chancery.**

(b) A beneficiary or co-trustee may waive the notice otherwise required by this section.

(c) In approving a resignation, the Court of Chancery may impose orders and conditions reasonably necessary for the protection of the trust property, including the appointment of a special fiduciary.

(d) Any liability of a resigning trustee or of any sureties on the trustee's bond, if any, for acts or omissions of a resigning trustee is not discharged or affected by the trustee's resignation."

2. Removal of a Trustee - 12 Del. C. § 3327 – (the Delaware Chancery Court has consistently held that removal is a serious and extreme remedy):

"A trustee may be removed by the Court of Chancery on its own initiative or on petition of a trustor, co-trustee, or beneficiary if:

(1) The trustee has committed a breach of trust; or

(2) A lack of cooperation among co-trustees substantially impairs the administration of the trust; or

(3) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:

a. A substantial change in circumstances;

b. Unfitness, unwillingness or inability of the trustee to administer the trust properly; or

c. Hostility between the trustee and beneficiaries that threatens the efficient administration of the trust."

3. Delaware's nonjudicial settlement agreement statute, 12 Del. C. § 3338, specifically allows interested parties to agree to the resignation or appointment. Paragraph (d)(4) states that "the resignation or appointment of a trustee and the determination of a trustee's compensation" is a matter that may be resolved by a nonjudicial settlement agreement

- Some have questioned whether this means bringing an action in Chancery Court for the replacement of Trustees is impermissible since it could be accomplished without Court involvement.

- The statute contemplates possible court involvement. Paragraph (e) states:

“Any interested person may bring a proceeding in the Court of Chancery to interpret, apply, enforce, or determine the validity of a nonjudicial settlement agreement adopted under this section, including but not limited to determining whether the representation as provided in § 3547 of this title was adequate.”

- If the trustor of the trust is deceased (which is often the case with older trusts that are more likely to not contain a mechanism for the succession of Trustees that is common in most modern trusts), there is the question of whether the appointment of a successor Trustee violates a “material purpose” of the trust. This would seem to militate toward allowing the use of the Chancery Court

B. Additional Scenarios/Trustee’s View

1. Trust contains a provision stating that a court of competent jurisdiction can appoint a successor Trustee, but there is no nonjudicial mechanism in place for appointment

- Can nonjudicial settlement agreement still be used? Whether the trustor is living is likely relevant
- Does the trust language create the “case or controversy” necessary to allow the interested parties to bring this matter to the Court?

2. Trust instrument does contain a mechanism allowing the beneficiaries (or other parties) to remove and replace Trustees. The current Trustee wishes to resign or be removed, but the authorizing parties refuse to appoint a successor

- What are the current Trustee’s judicial options?

IV. Trust Reformation

A. Basis for Court’s Jurisdiction

1. “Trust reformation is an equitable remedy and is an ordinary remedy for mistake in the terms of a trust instrument.”⁴

⁴ 90 C.J.S. Trusts § 92.

2. "A trust may be rescinded or reformed upon the same grounds as those upon which a transfer of property not in trust may be rescinded or reformed."⁵ . "Where no consideration is involved in the creation of a trust, it can be rescinded or reformed upon the same grounds, such as fraud, duress, undue influence, or mistake, as those upon which a gratuitous transfer of property not in trust can be rescinded or reformed."⁶
3. Delaware applies the traditional law of reformation to the reformation of a trust.⁷

B. Evidentiary Standard

1. The Court of Chancery has the power to reform a voluntary trust instrument even after the death of the settlor, as long as the record "clearly and affirmatively establishes" the grounds for reformation.⁸
2. Notwithstanding that all parties to a case seek relief via consent petition, the petitioners still must introduce "clear and convincing evidence of the decedent's intent" in order to obtain reformation.⁹

C. Requirements for Court Reformation

1. Comply with Chancery Court Rules 100-104
2. Meeting the evidentiary standard
 - If trustor is living, obtain an Affidavit from the trustor clearly stating the mistake and what the trustor actually intended
 - Obtain an Affidavit from the drafting attorney

D. Trustee's View

1. Situations where Trustee has sought a judicial reformation have only arisen in alternate jurisdictions
2. Examples - requirement that the successor trustee be located in a particular jurisdiction; requirement of population maximum where the successor Trustee is located
3. Trustee has sought relief in the local jurisdiction to judicially alter the provisions to allow the Trustee to be appointed as successor Trustee

⁵ Restatement (Third) of Trusts § 62.

⁶ *Id.* cmt. a.

⁷ See *Roos v. Roos*, 203 A.2d 140, 142 (Del. Ch. 1964).

⁸ *Id.* at 142.

⁹ *In re Estate of Tuthill*, 754 A.2d 272, 273 (D.C.Ct. App. 2000).

V. “Pitch and Catch” Petitions

A, Definition - A proceeding is filed in the court of the jurisdiction in which the trust was originally created to transfer/release jurisdiction over the trust (the “pitch” petition), and then file a corresponding proceeding in the Delaware Chancery Court to accept jurisdiction over the trust (the “catch” petition).

B. History of Court’s Involvement

1. The Delaware Chancery Court’s cooperation with the courts of other states to transfer jurisdiction of a trust to Delaware goes back decades.
2. The legitimacy of the process was specifically referenced and condoned in the Peierls Testamentary Trusts decision by the Delaware Supreme Court
 - The Delaware Supreme Court notes that the process should be utilized when the court or courts of another jurisdiction are exercising “active control” over the trust.
 - Evidence of active control can include (1) the trust being required to file periodic accountings in a certain court (applies most typically to testamentary trusts, and (2) the court specifically retaining jurisdiction over the trust via a court order

B. When to File

1. The trust was created/settled in another jurisdiction, and there is no mechanism for the appointment of the Delaware Trustee
2. The court of another jurisdiction is exercising “active control” over the trust, or has otherwise retained jurisdiction over the trust
3. Specific restrictions in trust instrument regarding transfer of situs, administrative law, or jurisdiction

C. Mechanics and Requirements of Filing

1. Most often, the “pitch” proceeding should be filed first and an Order obtained before the Delaware petition is filed, although this is always subject to the local, state, and court rule requirements of the releasing jurisdiction
2. One exception involves New York testamentary trusts. The appropriate New York Surrogate’s Court will usually require a provisional Order from the Delaware Chancery Court noting that it will accept jurisdiction over the trust contingent upon the New York Court entering a Order transferring/releasing jurisdiction over the trust

3. Comply with Delaware Chancery Court Rules 100-14
4. Ideally, the Order from the transferring/releasing jurisdiction will (1) appoint the Delaware Trustee (if necessary), (2) transfer the situs of the trust, (3) confirm that Delaware law will govern the administration of the trust, and (4) transfer/release jurisdiction over the trust, all such relief being contingent upon the Delaware Chancery Court's acceptance of jurisdiction over the trust. The Delaware petition should state that the purpose of the proceeding is to effectuate the Order from the "pitching" state, which makes the matter ripe for judicial determination and meets the "case or controversy" requirement

D. Statutory Developments

1. 12 Del. C. § 3332(b)
2. 12 Del. C. § 3340
3. Regardless of statutory developments, the pitch and catch process is still desirable in order to deal with any ambiguous governing law or jurisdictional issues

D. Trustee's View

1. As a directed Trustee, trust modification is an essential step in virtually every new trust
2. Following Peierls, Trustee's analysis focuses on the ability to change trustee and any prohibitions of situs change – very rare language
3. Will usually utilize nonjudicial settlement agreement to affirm the administrative situs change to Delaware
4. Once Trustee receives the assets from the outgoing Trustee in the pitching jurisdiction, Delaware Trustee administers the trust under Delaware law
5. Example involving New York – Court approved appointment of Trustee as successor Trustee, acknowledgement of Trustee's location in Delaware but hand wrote a note that notwithstanding the change in Trustee the assets shall not leave NY

VI. Trust Modification in Connection with Other Relief

A. Possible Examples

1. Petition to appoint a successor Trustee where no mechanism is in place to appoint. In addition, Court is asked to approve a modification to add a mechanism for future succession of Trustees.
2. In connection with a "pitch and catch", the parties request that the Delaware Chancery Court modify the trust to convert it into a directed trust as to

investment decisions. The use of the directed trust statute was cited as one of the primary reasons for the transfer of the situs and administrative law of the trust in the “pitch” petition

3. Both the nonjudicial settlement agreement statute (12 Del. C. § 3338) and the modification by consent statute (12 Del. C. § 3342) include the ability of any party to an agreement to seek judicial approval of the agreement

B. Trustee’s View

VII. Petitions for Instruction or Construction

A. Statutory basis for Delaware Chancery Court’s involvement: 10 Del. C. § 6504

“Any person interested as or through an executor, administrator, trustee, guardian or fiduciary, creditor, devisee, legatee, heir, next-of-kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, a person with a mental condition, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next-of-kin or others; or

(2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings”

- B. There is some overlap with Delaware’s nonjudicial settlement agreement statute, 12 Del. C. § 3338, which in paragraph (d)(1) provides that “the interpretation or construction of the terms of [a] trust” is a matter that may be resolved by a nonjudicial settlement agreement”

- C. There are numerous fact patterns that could give rise to a valid Petition for Instruction or Construction, but Trustees and other interested parties should take care to ensure there is a proper “case or controversy” in accordance with the Delaware Chancery Court’s precedent

D. Examples

1. Petition for Instruction

- Irrevocable trust was terminating due to the death of the last individual beneficiary
- The trust’s termination provisions called for the remaining trust estate to be distributed to charitable beneficiaries in certain percentages
- One of the named charitable beneficiaries no longer existed, but there was a successor organization that did not qualify as a charity

- The trust instrument did not state how the trust assets should be distributed if a named charitable organization was no longer in existence
- It was no clear whether the assets should go to the successor organization, or should be distributed pro rata to the other named charitable organizations
- The Trustee filed a Petition for Instruction in the Delaware Chancery Court seeking direction on how to distribute the remaining trust assets
- The entities were all represented by counsel, and ultimately agreed to a settlement regarding the distribution. The Court entered an Order approving the agreed-upon distributions

2. Petition for Construction

- Several testamentary trusts were situated in Delaware, created for the benefit of the trustor's children and further descendants
- A trust beneficiary, recently deceased, had adopted children later in life, such that the ages of his adopted children were closer in age to the trustor's great-grandchildren than the trustor's grandchildren
- Because of some ambiguity in the definitions of the terms "grandchildren" and "descendants" as used in the Will, it was not clear whether the adopted children were part of the class of measuring lives for purposes of the trust's termination, and whether they be part of the class of final distributees upon the trust's termination. Their inclusion as part of the group of measuring lives could have a significant effect on the duration of the trust
- The Trustees of the Delaware trusts filed Petitions for Construction to construe the provisions of the Will to determine whether the deceased beneficiary's adopted children were measuring lives for purposes of the trust's termination provisions, and whether upon trust termination such children would be part of the class of final distributees
- All interested parties were represented by counsel
- There were several companion trusts created under the same Will but situated in Florida. A Florida proceeding relating to those trusts and covering the same issues was
- A guardian *ad litem* was appointed by the Florida court for certain minor beneficiaries, and the Delaware Chancery Court agreed to appoint the same individual for the Delaware proceedings
- All interested parties entered into a settlement agreement, and both the Florida and Delaware courts entered orders approving the settlement and directing the

E. Trustee's View

1. Utilized where the interested parties fail to act and appoint a successor Investment Direction Advisor or a successor Trustee
2. Complicating factor is to offer an alternative fiduciary as the court not going to appoint an unwilling party

EXHIBIT A

Selected Court Rules, Statutes and Cases

Rule 98. Reserved.

XII. PROCEEDINGS TO MODIFY TRUSTS BY CONSENT.

Rule 100. Contents of a petition to modify a trust by consent.

(a) A party seeking to modify a trust by consent shall file a petition with the Register in Chancery.

(b) Every petition to modify a trust by consent shall address each of the following matters:

(1) The factual circumstances under which the trust was settled or created, the reasons for its settlement, how the trust has operated since its settlement including any material amendments since its settlement, and the events leading to the relief sought in the petition;

(2) Whether the trust was settled or created in a state other than Delaware or contains a choice of law provision in favor of the law of a jurisdiction other than Delaware; and

(3) The basis for this Court's jurisdiction over the trust and, to the extent jurisdiction is based on Delaware being the principal place of administration, a description of the administrative tasks and duties carried out by the Delaware trustee or other Delaware fiduciaries and a comparison of those tasks and duties to those entrusted to fiduciaries or proposed fiduciaries domiciled outside Delaware.

(c) Every petition to modify a trust by consent shall address each of the following matters with particularity:

(1) The nature and status of any filed, pending, or threatened action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or regulatory, relating to the subject matter of the trust, or among any of the petitioners or trust beneficiaries;

(2) Any prior determination or judgment on the merits in any action, suit, or proceeding involving any living person who is either a petitioner or a person who will serve as a fiduciary if the relief requested in the petition is granted, resulting in a criminal conviction, an adjudicated breach of the fiduciary duty of loyalty, or a determination reflecting on the honesty or integrity of such person;

(3) The nature of the relief sought in the petition and the reasons why such relief is being sought;

(4) The role(s) of the petitioner(s) in the existing trust (whether beneficiary, fiduciary, adviser, protector, etc.) and the proposed role(s) of the petitioner(s) in the trust if the relief sought in the petition is granted;

(5) How the proposed relief will affect the interests of current, vested future, and contingent beneficiaries;

(6) Any personal interest of any petitioner, or person who will serve as a fiduciary if the relief requested in the petition is granted, creating an actual or potential conflict between the interests of such person and the interests of the current, vested future, or contingent beneficiaries relating to the relief requested in the petition, including but not limited to conflicts relating to differing investment horizons, an interest in present income versus capital growth, or any

limitation on, exculpation from, or indemnification for any existing or potential future liability;

(7) Whether any petitioner or beneficiary has a familial, personal, or financial relationship with any person who, as a result of the relief requested in the petition, will be appointed to a fiduciary or nonfiduciary office or role relating to the trust or will receive greater authority, broader discretion, or increased protection, including but not limited to any limitation on, exculpation from, or indemnification for existing or potential future liability;

(8) Whether the relief sought in the petition would lead to any limitation on, exculpation from, or indemnification for any existing or potential future liability on the part of any fiduciary; and

(9) Whether any required consents are being given on behalf of any beneficiaries by representation under 12 Del. C. § 3547. Any petition which relies upon such consents also must conform with the requirements of Rule 103.

(d) In addition to the foregoing, any petition to modify a trust by consent that seeks to confirm a change of situs of a trust from another jurisdiction to Delaware, or that seeks to apply Delaware law to a trust despite a choice of law provision selecting the law of another jurisdiction, also shall address:

(1) Whether the trust instrument contains a provision expressly allowing the situs of the trust or the law governing the administration of the trust to be changed;

(2) If the trust was settled or created in a jurisdiction other than Delaware or contains a choice of law provision in favor of the law of a jurisdiction other than Delaware, whether or under what circumstances the law of the other jurisdiction authorizes changing the situs of the trust or the law governing the administration of the trust;

(3) Whether application has been made to the courts of the jurisdiction in which the trust had its situs immediately before the change of situs to Delaware for approval of the transfer of situs of the trust to Delaware, and the status of the application, or if no application was made, why such approval need not be sought;

(4) Whether Delaware law governs the administration of the trust, and, if so, why. To the extent that the petition relies upon the domicile of the trustee as support for a determination that the trust situs is Delaware or that Delaware law governs the administration of the trust, the petition shall explain why Delaware is the principal place of trust administration, taking into account the administrative tasks and duties that will be carried out by the trustee, any tasks and duties assigned to advisers, trust protectors, or other persons, and any other factors counting in favor of or against Delaware jurisdiction, such as the ability of the Delaware trustee to resign automatically or under specific circumstances; and

(5) Whether a court of any other jurisdiction has taken any action relating to the trust.

Rule 101. Appendix of exhibits to consent petition.

(a) The party submitting the consent petition shall file contemporaneously an appendix of exhibits containing all documents relevant to the Court's review of the petition, including but not limited to:

(1) The current trust instrument;

(2) The terms of any proposed modification of the trust's governing instrument;

(3) A blacklined version of the proposed modified trust instrument indicating plainly in what respect the proposed modified trust instrument differs from the current trust instrument;

(4) A clean version showing how the proposed modified trust instrument will read if the consent petition is granted;

- (5) Any orders relating to the trust instrument;
- (6) A family tree or other document showing the relationship to the trustor of those having a beneficial interest in the trust; and
- (7) Consents or statements of non-objection to the relief sought in the petition from all whose interest in the trust is affected by the petition, which may include, but shall not be limited to, consents from:
 - (i) Trustees and other fiduciaries, unless they have otherwise signified their consent or non-objection to the petition by acting as a petitioner or accepting a fiduciary position;
 - (ii) Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust would vest, without regard to the exercise or non-exercise of a power of appointment, if the present interest in the trust terminated on the date the petition is filed;
 - (iii) The trustor of the trust, if living; and
 - (iv) All other persons having an interest in the trust according to the express terms of the trust instrument (such as, but not limited to, holders of powers and persons having other rights, held in a nonfiduciary capacity, relating to trust property).

Rule 102. Form of consents to the relief sought in the petition.

(a) Consents to the relief sought in the petition shall be submitted in the following form:

(1) Each consent shall have a signature line with the name of the individual signing the consent typed or printed underneath.

(2) Each consent shall be executed by (i) the beneficiary personally; (ii) the beneficiary's attorney ad litem; (iii) a person authorized to represent the beneficiary under 12 Del. C. § 3547 or any successor statute; or (iv) a person authorized by applicable law to represent the beneficiary as to the petition (such as, but not limited to, the beneficiary's attorney-in-fact or the Attorney General in the case of certain charitable beneficiaries).

(3) Each consent shall be acknowledged by a person authorized to notarize documents (or a similar official if a document is signed in a foreign jurisdiction) unless there is justifiable cause why the consents cannot be acknowledged and the Court waives the requirement of an acknowledgment by separate order.

(4) Each consent shall affirm that the party executing the consent has been provided with the petition and all disclosures and documents required by Court of Chancery Rules 100(b), 100(c), and 101, and has received, read, understood, and been provided with an opportunity to consult with counsel regarding the consent and the materials provided.

(5) A consent may, but need not, waive notice of draft reports, reports, hearings or other matters relating to the petition.

(6) Each consent shall include a statement in which the consenting party consents to the jurisdiction of the courts of this State as a proper forum for (i) the resolution of all matters pertaining to the administration of the trust for so long as the situs of the trust is Delaware and (ii) any future matters arising out of or relating to the subject matter of the petition.

(b) A statement of non-objection is deemed a consent for purposes of this Rule.

Rule 103. Consent petitions appending consents under 12 Del. C. § 3547.

(a) In addition to complying with Rules 100-102, every petition to modify a trust by consent that includes one or more consents being given on behalf of any beneficiaries by representation

under 12 Del. C. § 3547, or any successor statute, shall address with particularity the process used to obtain the required consents, including the information provided to the parties giving consent.

(b) Each consent executed under 12 Del. C. § 3547, or any successor statute, shall include a reference to the statute, state the relationship of the person signing the consent to those represented, certify that no material conflict of interest exists between the consenting party and the person(s) represented, including any of the factors set forth in subsection (c) of this Rule, and include in the signature block the name of the person signing the consent, the class of those persons represented, and the relationship between the person signing the consent and the class of persons represented.

(c) Any petition falling under this Rule shall contain a certification, signed by the senior Delaware attorney involved in the matter and the senior out-of-state attorney, if any, involved in the matter, certifying to the best of their knowledge that, after good faith investigation, the person purporting to consent for others by representation:

(1) Will not, as a result of the relief sought in the petition, be appointed to a fiduciary or nonfiduciary office or role relating to the trust;

(2) If already serving in a fiduciary or nonfiduciary office or role relating to the trust, will not as a result of the relief sought in the petition receive greater authority, broader discretion, or increased protection, including but not limited to any limitation on, exculpation from, or indemnification for any existing or potential future liability; and

(3) Does not have an actual or potential conflict of interest with those persons represented relating to the relief sought in the petition, including but not limited to conflicts relating to differing investment horizons or an interest in present income over capital growth.

Rule 104. Consent petition proposed orders and application of rules.

(a) The party submitting the consent petition shall file contemporaneously a separate order for each request sought in the consent petition. Proposed orders for multiple individuals, beneficiaries, or other interested parties are not permissible and a separate proposed order for each individual, beneficiary, or interested party must be submitted with the consent petition. The initial filing fee for a consent petition will include the cost of filing one proposed order. If more than one proposed order is submitted with a consent petition, an additional fee equal to the fee charged for filing one proposed order shall be charged for each additional proposed order submitted.

(b) Rules 100 through 104 of Section XII shall apply to any matter before the Court of Chancery in which the relief sought includes a modification of a trust, whether by means of a consent petition, civil action, court approved settlement or otherwise. For purposes of this rule, "modification of a trust" shall not include the severance or division of a trust, the merger of a trust, a distribution from a trust, or the appointment of a fiduciary of a trust if, by the terms of the trust instrument or applicable law, such action is permissible without court intervention, unless the parties seek court approval of such action.

Rule 105. Notice of intent to execute writ given by sheriff.

Omitted, effective Apr. 1, 2003.

Rule 106. Appointment of trustee without writ.

Omitted, effective Apr. 1, 2003.

West's Delaware Code Annotated
Title 12. Decedents' Estates and Fiduciary Relations
Part V. Fiduciary Relations
Chapter 33. Administrative Provisions

12 Del.C. § 3338

§ 3338. Nonjudicial settlement agreements

Effective: August 30, 2017

Currentness

<Text of section applicable as provided by 79 Laws 2013, ch. 172, § 6; 80 Laws 2015, ch. 153, § 5; 80 Laws 2016, ch. 340, § 2.>

(a) For purposes of this section, “interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the Court of Chancery. With respect to any nonjudicial settlement agreement regarding a trust, the term “interested persons” means all whose interest in the trust would be affected by the proposed nonjudicial settlement agreement, which may include:

(1) Trustees and other fiduciaries;

(2) Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust would vest, without regard to the exercise or nonexercise of any power of appointment, if the present interests in the trust terminated on the date of the nonjudicial settlement agreement;

(3) The trustor of the trust, if living; and

(4) All other persons having an interest in the trust according to the express terms of the governing instrument (such as, but not limited to, holders of powers and persons having other rights, held in a nonfiduciary capacity, relating to trust property).

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust, and if applicable, does not change the trust's purpose in a manner that would violate subsection (b) of § 3303 of this chapter if the change was effected by court order; provided, however, that this subsection shall not apply in cases where the trustor is a party to the nonjudicial settlement agreement.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) The interpretation or construction of the terms of the trust;
- (2) The approval of a trustee's report or accounting;
- (3) The direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) The resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) The transfer of a trust's principal place of administration; and
- (6) The liability of a trustee for an action relating to the trust.

(c) Any interested person may bring a proceeding in the Court of Chancery to interpret, apply, enforce, or determine the validity of a nonjudicial settlement agreement adopted under this section, including but not limited to determining whether the representation as provided in § 3547 of this title was adequate.

Credits

Added by 79 Laws 2013, ch. 172, § 2, eff. Aug. 6, 2013. Amended by 80 Laws 2015, ch. 153, § 3, eff. Aug. 1, 2015; 80 Laws 2016, ch. 340, § 1, eff. July 29, 2016; 81 Laws 2017, ch. 149, § 1, eff. Aug. 30, 2017.

12 Del.C. § 3338, DE ST TI 12 § 3338

Current through 81 Laws 2017, chs. 1-179 Revisions to 2017 Acts by the Delaware Code Revisors were unavailable at the time of publication.

West's Delaware Code Annotated
Title 12. Decedents' Estates and Fiduciary Relations
Part V. Fiduciary Relations
Chapter 33. Administrative Provisions

12 Del.C. § 3342

§ 3342. Modification of trust by consent while trustor is living

Effective: August 30, 2017

Currentness

<Text of section applicable as provided by 80 Laws 2016, ch. 340, § 2.>

(a) Notwithstanding any provision of law or the trust's governing instrument limiting or prohibiting amendment of the trust, an irrevocable trust may be modified to include any provision that could have been included in the governing instrument of a trust were such trust created upon the date of the modification by written consent or written nonobjection of all of the trust's trustors, all then serving fiduciaries and all beneficiaries regardless of whether the modification may violate a material purpose of the trust. A trustor's power to provide a written consent or written nonobjection to a trust's modification may be exercised (i) by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust's governing instrument; or (ii) if an agent under a power of attorney is not so authorized, by the guardian of the trustor's property (or similar court-appointed representative) with the approval of the court supervising the guardian (or similar representative).

(b) No fiduciary shall have a duty to consent to any proposed modification nor, absent wilful misconduct, have any liability to any person having an interest in the trust for failure to consent to any proposed modification.

(c) Any interested person, including the trustor, may bring a proceeding in the Court of Chancery to interpret, apply, enforce, or determine the validity of a modification adopted under this section, including but not limited to determining whether the representation as provided in § 3547 of this title was adequate; provided, however, that any such person may waive the right to contest the modification.

(d) This section shall apply to any trust administered under the laws of this State.

Credits

Added by 80 Laws 2016, ch. 340, § 1, eff. July 29, 2016; 81 Laws 2017, ch. 149, § 1, eff. Aug. 30, 2017.

12 Del.C. § 3342, DE ST TI 12 § 3342

Current through 81 Laws 2017, chs. 1-179 Revisions to 2017 Acts by the Delaware Code Revisors were unavailable at the time of publication.

West's Delaware Code Annotated
Title 12. Decedents' Estates and Fiduciary Relations
Part V. Fiduciary Relations
Chapter 33. Administrative Provisions

12 Del.C. § 3326

§ 3326. Resignation of trustee

Currentness

(a) A trustee may resign:

- (1) If the trust instrument expressly permits the trustee to resign, in accordance with the terms of the trust instrument;
- (2) If the trust instrument neither expressly permits nor prohibits the trustee's resignation, but establishes a procedure for the appointment of a successor trustee who shall be willing and able to serve as such, upon 30 days written notice to the beneficiaries and any co-trustees; or
- (3) In all other cases, with the approval of the Court of Chancery.

(b) A beneficiary or co-trustee may waive the notice otherwise required by this section.

(c) In approving a resignation, the Court of Chancery may impose orders and conditions reasonably necessary for the protection of the trust property, including the appointment of a special fiduciary.

(d) Any liability of a resigning trustee or of any sureties on the trustee's bond, if any, for acts or omissions of a resigning trustee is not discharged or affected by the trustee's resignation.

Credits

72 Laws 2000, ch. 388, § 6. Redesignated from 12 Del.C. § 3406 by 74 Laws 2003, ch. 82, § 7, eff. June 30, 2003.

Codifications: 12 Del.C. 1974, § 3406

12 Del.C. § 3326, DE ST TI 12 § 3326

Current through 81 Laws 2017, chs. 1-179 Revisions to 2017 Acts by the Delaware Code Revisors were unavailable at the time of publication.

West's Delaware Code Annotated
Title 12. Decedents' Estates and Fiduciary Relations
Part V. Fiduciary Relations
Chapter 33. Administrative Provisions

12 Del.C. § 3327

§ 3327. Removal of trustee

Currentness

A trustee may be removed by the Court of Chancery on its own initiative or on petition of a trustor, co-trustee, or beneficiary if:

- (1) The trustee has committed a breach of trust; or
- (2) A lack of cooperation among co-trustees substantially impairs the administration of the trust; or
- (3) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:
 - a. A substantial change in circumstances;
 - b. Unfitness, unwillingness or inability of the trustee to administer the trust properly; or
 - c. Hostility between the trustee and beneficiaries that threatens the efficient administration of the trust.

Credits

72 Laws 2000, ch. 388, § 6. Redesignated from 12 Del.C. § 3407 by 74 Laws 2003, ch. 82, § 7, eff. June 30, 2003.

Codifications: 12 Del.C. 1974, § 3407

Notes of Decisions (26)

12 Del.C. § 3327, DE ST TI 12 § 3327

Current through 81 Laws 2017, chs. 1-179 Revisions to 2017 Acts by the Delaware Code Revisors were unavailable at the time of publication.

KeyCite Yellow Flag - Negative Treatment
Distinguished by duPont v. Southern Nat. Bank of Houston, Texas,
S.D.Tex., September 27, 1983

42 Del.Ch. 40

Court of Chancery of Delaware, New Castle County.

Jachebet T. **ROOS** and Sadie R. Keyser,
Trustees of David L. Topkis, Plaintiffs,

v.

Jachebet T. **ROOS**, Emile V. Topkis,
Bernard H. Topkis, Executors fo the
Estate of Hannah R. Topkis, Defendants.

Aug. 12, 1964.

Trustees of express trust brought action against executors of estate of deceased wife of settlor for reformation of declaration of trust. The trustees made a motion for summary judgment. The Court of Chancery, Short, Vice Chancellor, held that where the settlor executed the declaration of trust in the mistaken belief that it provided for the contingency of his death prior to that of his wife, declaration of trust could be reformed after death of settlor.

Order granting motion for summary judgment and reforming declaration of trust.

West Headnotes (7)

[1] **Reformation of Instruments**

Contracts in General

In order that reformation of written contract on ground of mistake may be decreed, it must be shown by evidence that is clear, convincing, and free from doubt that instrument sought to be reformed does not, because of mutual mistake, properly record all material provisions of prior, definite, and specific oral agreements by parties.

4 Cases that cite this headnote

[2] **Trusts**

Reformation

Where settlor received no consideration for creation of voluntary declaration of trust, unilateral mistake on part of settlor was sufficient to warrant reformation.

7 Cases that cite this headnote

[3] **Trusts**

Reformation

Court of equity has power to reform voluntary trust instrument even after death of settlor.

7 Cases that cite this headnote

[4] **Trusts**

Reformation

Where settlor executed declaration of trust in mistaken belief that it provided for contingency of his death prior to death of wife, declaration of trust could be reformed after death of settlor.

4 Cases that cite this headnote

[5] **Trusts**

Reformation

Application for reformation of declaration of trust was not improper because purpose was avoidance of tax consequences.

2 Cases that cite this headnote

[6] **Trusts**

Reformation

Trustees of express trust had standing to maintain action for reformation of trust. Court of Chancery Rules, rule 17(a), Del.C. Ann.

Cases that cite this headnote

[7] **Trusts**

Reformation

Beneficiaries of express trust were not necessary parties in action by trustees for reformation of declaration of trust, where beneficiaries of trust would not be adversely

affected by reformation and, if anything, would be benefited. Court of Chancery Rules, rule 17(a), Del.C. Ann.

2 Cases that cite this headnote

Attorneys and Law Firms

****140 *41** F. Alton Tybout, Wilmington, for plaintiffs.

Garry G. Greenstein, of Wahl, Greenstein, & Berkowitz, Wilmington, for defendants.

Opinion

SHORT, Vice Chancellor

This is an action to reform a written declaration of trust. Plaintiffs are the trustees named in the trust instrument. Defendants are the executors of the estate of the deceased wife of the settlor. The case is before the court on plaintiffs' motion for summary judgment.

On June 19, 1936 David L. Topkis executed a written declaration of trust declaring that he was possessed of 500 shares of the common stock of Strand Realty Company, ****141** a Delaware corporation, 'in trust as follows:

'FIRST: During my life the dividends of said stock are to be held for and on my own account or order.

'SECOND: In case I shall die before my wife, HANNAH R. TOPKIS, said stock is to pass to and be transferred to JACHEBET H. ROOSE and SADIE R. KEYSER, my daughters, or the survivor or successor as trustees to pay the dividends thereon to my said wife, HANNAH R. TOPKIS, or her order for life.

'THIRD: In case my said wife dies before my own death, then the stock is to be held from and after my death by my daughters JACHEBET H. ROOS and SADIE R. KEYSER, * * * as trustees, * * * to pay the net income to and among my four children, JACHEBET H. ROOS, SADIE R. KEYSER, EMILE V. TOPKIS, and BERNARD H. TOPKIS, in equal shares, during their respective lives and at and upon the death of any of my children * * * to pay the income arising from the share of each deceased son or daughter to his or their children of my own blood, in equal shares, until the death of all of my said children and * * * to assign, transfer, and set over

the said five hundred (500) shares of the common capital stock of said Company to the grandchildren of my own blood, * * * clear and discharged of all trusts * * *.'

The instrument concluded with a spendthrift provision. It also commenced with a preamble which recited, inter alia: 'WHEREAS, *42 said stock was thus given to and taken by me in my name as Trustee with the intent to create a trust fund for myself and my wife for our respective lives and for our children upon our decease * * *.'

By the first item of his last will and testament dated August 29, 1939, David L. Topkis devised and bequeathed his entire estate to his wife Hannah R. Topkis, absolutely and in fee simple. By succeeding items in said will Topkis provided for the disposition of his estate in the event that his wife predeceased him. David L. Topkis died on November 28, 1939, leaving his wife, Hannah R. Topkis, to survive him. The trustees, pursuant to the terms of item Second of said trust instrument, paid the income from the trust of the widow, Hannah R. Topkis, until her death on May 20, 1962. By her last will and testament dated August 29, 1949 Hannah R. Topkis devised and bequeathed the residue of her estate to the defendants in trust for the benefit of her children and grandchildren with provisions, so far as material, identical in effect to those in Item Third of the trust instrument.

The complaint recites the above facts and alleges that it was the intent of the settlor that the income and principal of the trust should be disposed of in the manner provided by Item Third of the trust instrument in any event, whether he survived his wife or she survived him. It further alleges that 'through an oversight in drafting' the settlor 'neglected to make his intention clear.' The trustees ask the court to reform the trust instrument by adding appropriate language to Item Third of the trust declaration which would then read as follows: 'THIRD: In case my said wife dies before my own death, then the stock is to be held from and after by death, or in the event I predecease my wife, then upon her death, by my daughters, JACHEBET H. ROOS and SADIE R. KEYSER, or the survivor or successor as trustees * * *.'

Defendants' answer admits all of the material allegations of the complaint, including the allegation of the settlor's intent.

In support of plaintiffs' motion they have filed an affidavit of the attorney who drafted the trust instrument. This affidavit recites that the attorney 'in 1936 was requested

by David L. Topkis to prepare *43 a Declaration of Trust in the shares of stock of Strand Realty Company, whereby he, as Settlor, would hold the stock in Trust with life income to himself; life income to his wife, Hannah R. Topkis, if she survived him; **142 and at the death of the last survivor of them, the income was to go to their children; and when the last of the children died, the Trust was to terminate and distribution made to the Settlor's grandchildren.' The affidavit further alleges that the 'plan and intent of David L. Topkis was set out in the preamble clauses, and deponent in drafting the Declaration of Trust believed he did set out the Settlor's plan in the body of the instrument,' that 'there is no question in the mind of deponent that both David L. Topkis and Hannah R. Topkis * * * wanted the Declaration of Trust to continue and believed it was drafted to continue, after the death of Hannah R. Topkis, even though she survived David L. Topkis,' and that 'until the matter was called into question, deponent believed he had followed the instructions of David L. Topkis in drafting the terms of the instrument.'

[1] [2] In this state the law with respect to the reformation of written contracts on the ground of mistake is well established. In order that reformation of such a contract may be decreed it must be shown by evidence that is clear, convincing and free from doubt that the instrument sought to be reformed does not, because of mutual mistake, properly record all of the material provisions of a prior, definite and specific oral agreement made by the parties. *Colvocoresses v. W. S. Wasserman Co.*, 24 Del.Ch. 53, 4 A.2d 800; *Home Life Insurance Company of America v. McCarns*, 25 Del.Ch. 220, 16 A.2d 587; *Miller v. Hob Tea Room, Inc.*, 31 Del.Ch. 404, 75 A.2d 577. Here, however, the instrument with which we are concerned does not pretend to record the provisions of a prior oral agreement. It is rather a voluntary declaration of trust, the settlor having received no consideration for its creation. In such a case a unilateral mistake on the part of the settlor is sufficient to warrant reformation. *Scott on Trusts* § 333.4; *Restatement, Trusts*, § 333; *In Re Trust Estate of LaRocca*, 411 Pa. 633, 192 A.2d 409; *Kiser v. Lucas*, 170 Md. 486, 185 A. 441; *Wright v. Goff*, 22 Beav. 207, 52 Reprint 1087. This principle has also been recognized by this court in *DuPont v. DuPont*, 19 Del.Ch. 131(144), 164 A. 238, a case involving the right of the settlor to *44 revoke a trust. The Chancellor said: 'If it be the fact that the instrument [voluntary trust] was executed by mistake [failure to provide a power of revocation], there can be no question of the settlor's right

to have the trust set aside. There is no dissent from that proposition. The Delaware cases, * * * recognize it.' The same rule is applicable to cases seeking reformation, where that remedy is more appropriate. *Scott on Trusts*, § 333.4.

The elimination of the requirement of mutuality of mistake with respect to voluntary declarations of trust does not relax the quality of proof required to establish the existence of the mistake. The proof must still be clear, convincing and free from doubt. *In Re Trust Estate of LaRocca*, supra.

In *Irish v. Irish*, 361 Pa. 410, 65 A.2d 345, the Supreme Court of Pennsylvania reversed a decree dismissing an action by the settlor to reform a voluntary deed of trust because of the mistake or inadvertence of the scrivener in failing to provide for the occurrence of a certain contingency, which, if it occurred would have resulted, as here, in a reversion to the settlor. It was held that if the evidence clearly established the settlor's intent, at the time he created the trust, to provide for the contingency, an order nunc pro tunc reforming the instrument to conform to the intent was authorized. To the same effect, see *In re Trust Estate of LaRocca*, supra.

[3] [4] While some courts have taken a contrary view, the great weight of authority recognizes the power of a court of equity to reform a voluntary trust instrument even after the death of the settlor. *Kiser v. Lucas*, supra; *Wright v. Goff*, supra; *Commercial Trust Co. of New Jersey v. Kohl*, 140 N.J.Eq. 294, 54 A.2d 473 (testamentary trust); *Restatement of Trusts* § 333. In the *Kiser* case, the Court of Appeals of Maryland **143 said: 'On principle it would seem that if a mistake exist within the rule, it should be cured even if the settlor be dead, provided he died without having confirmed the grant in the form in which it was executed, and all the conditions exist for the reformation of the deed of trust.' In *Kerr on Fraud and Mistake*, (6th Ed.), pages 621, 622, the author says: '[I]f a man executes a voluntary deed declaring certain trusts and happens to die, and it is proved from instructions *45 or otherwise that the deed was not prepared in the exact manner which he intended, the deed may be reformed and those particular provisions necessary to carry his intention into effect may be introduced.' So, in the present case, the fact that the settlor is dead will not preclude the granting of relief if the record clearly and affirmatively establishes that the settlor executed the declaration of trust in the mistaken belief that it provided for the contingency of his death prior to that of his wife. The allegations of the

complaint, which are admitted in all material respects by the defendants' answer, the recital of the preamble, and the supporting affidavit of the attorney who prepared the trust instrument¹ clearly, convincingly and without doubt establish the mistake asserted by plaintiffs. They affirmatively show that it was the intention of David L. Topkis, at the time he executed the trust instrument, to provide against the very contingency which has here occurred, namely his death before that of his wife. I am satisfied that plaintiffs are entitled to the relief which they here seek.

[5] It is obvious, in fact plaintiffs' affirmatively represent, that the purpose of their action is to avoid certain tax consequences which would ensue if the corpus of the trust were permitted to pass under the will of the settlor's widow. That the avoidance of tax consequences is a reason for seeking reformation is no indication that the application for relief is in any way improper. Conversely, the avoidance of tax consequences has been recognized as a valid objective. Scott on Trusts, § 333.4. And compare, *In re Irenee duPont*, Del.Ch., 194 A.2d 309. Be that as it may, and whatever the object to be attained, it is clear that

this court is empowered to reform a trust instrument for mistake when warranted by the evidence.

[6] [7] The right of the plaintiffs, trustees, to maintain this action is not challenged. That they, as trustees of an express trust, have standing to do so is provided by Rule 17(a) of the Rules of this Court, Del.C. Ann. Neither is it contended that defendants are not proper parties, or that necessary parties, that is, the beneficiaries of the trust, are not joined. It is obvious that the interests of the beneficiaries of this trust will not be adversely affected by reformation of the trust *46 instrument. If anything, they will be benefited. In such circumstances they are not necessary parties. 89 C.J.S. Trusts § 86 p. 883.

An order, on notice, will be signed granting plaintiffs' motion for summary judgment and reforming the declaration of trust in the manner provided in the complaint.

All Citations

42 Del.Ch. 40, 203 A.2d 140

Footnotes

1 Compare, *In re Trust Estate of LaRocca*, supra.

West's Delaware Code Annotated
Title 12. Decedents' Estates and Fiduciary Relations
Part V. Fiduciary Relations
Chapter 33. Administrative Provisions

12 Del.C. § 3332

§ 3332. Governing law; change of situs

Effective: August 30, 2017
Currentness

<Text of section applicable as provided by 80 Laws 2015, ch. 153, § 5.>

(a) The duration of a trust and time of vesting of interests in the trust property shall not change merely because the place of administration of the trust is changed from some other jurisdiction to this State.

(b) Except as otherwise provided by the terms of a court order and notwithstanding a general choice of law provision in the governing instrument of a trust, such as a provision to the effect that the laws of a jurisdiction other than this State shall govern the trust or the administration of the trust, the laws of this State shall govern the administration of the trust while the trust is administered in this State unless the governing instrument expressly provides that the laws of another jurisdiction govern the administration of the trust and further provides that the laws governing the administration of the trust shall not change on account of a change in the place of administration of the trust.

(c) Notwithstanding the foregoing, if a fiduciary takes or fails to take any action, based upon a good faith belief that the laws of a foreign jurisdiction govern the administration of a trust while the trust is administered in this State, the fiduciary's liability under the governing instrument for the action or inaction shall be determined in accordance with the laws of the foreign jurisdiction.

Credits

Added by 75 Laws 2006, ch. 300, § 3, eff. Aug. 1, 2006. Amended by 80 Laws 2015, ch. 153, § 3, eff. Aug. 1, 2015; 81 Laws 2017, ch. 149, § 1, eff. Aug. 30, 2017.

Notes of Decisions (1)

12 Del.C. § 3332, DE ST TI 12 § 3332

Current through 81 Laws 2017, chs. 1-179 Revisions to 2017 Acts by the Delaware Code Revisors were unavailable at the time of publication.

West's Delaware Code Annotated
Title 12. Decedents' Estates and Fiduciary Relations
Part V. Fiduciary Relations
Chapter 33. Administrative Provisions

12 Del.C. § 3340

§ 3340. Place of administration

Effective: August 1, 2015
Currentness

<Text of section applicable as provided by 80 Laws 2015, ch. 153, § 5.>

For purposes of this title, a trust shall be deemed to be administered in this State if:

- (1) The sole trustee is an individual residing in this State or a corporation or other entity having an office for the conduct of trust business in this State;
- (2) The trust has more than 1 trustee only 1 of which is a corporation or other entity and that corporation or other entity has an office for the conduct of trust business in this State; or
- (3) The trust has more than 1 trustee all of whom are individuals and ½ or more of whom reside in this State.

Credits

Added by 80 Laws 2015, ch. 153, § 3, eff. Aug. 1, 2015.

12 Del.C. § 3340, DE ST TI 12 § 3340

Current through 81 Laws 2017, chs. 1-179 Revisions to 2017 Acts by the Delaware Code Revisors were unavailable at the time of publication.

West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part IV. Special Proceedings
Chapter 65. Declaratory Judgments (Refs & Annos)

10 Del.C. § 6504

§ 6504. Persons entitled to declaration of rights or legal relations in respect to trust or estate of decedent

Effective: August 17, 2011
Currentness

Any person interested as or through an executor, administrator, trustee, guardian or fiduciary, creditor, devisee, legatee, heir, next-of-kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, a person with a mental condition, may have a declaration of rights or legal relations in respect thereto:

- (1) To ascertain any class of creditors, devisees, legatees, heirs, next-of-kin or others; or
- (2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Credits

63 Laws 1981, ch. 63, § 1; 78 Laws 2011, ch. 179, § 25, eff. Aug. 17, 2011.

10 Del.C. § 6504, DE ST TI 10 § 6504

Current through 81 Laws 2017, chs. 1-179 Revisions to 2017 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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