

## **Title 12 of the Delaware Code**

### **§ 3313A Excluded Co-trustee [For application of this section, see 81 Del. Laws, c. 149, § 6]**

(a) If the terms of a governing instrument confer upon a co-trustee, to the exclusion of another co-trustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the duty and liability of the excluded trustee is as follows:

(1) If the terms of the governing instrument confer upon the co-trustee the power to direct certain actions of the excluded trustee, the excluded trustee must act in accordance with the direction and shall have no duty to act in the absence of such direction and is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction unless compliance with the direction constitutes wilful misconduct on the part of the directed co-trustee;

(2) If the terms of the governing instrument confer upon the co-trustee exclusive authority to exercise any power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by the co-trustee in the exercise of the power; and

(3) The excluded trustee has no duty to monitor the conduct of the co-trustee, provide advice to the co-trustee or consult with or request directions from the co-trustee. The excluded trustee is not required to give notice to any beneficiary of any action taken or not taken by the co-trustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the co-trustee, including confirming that the directions of the co-trustee have been carried out, do not constitute monitoring of the co-trustee nor do they constitute participation in decisions within the scope of the co-trustee's authority.

(b) The co-trustee holding the power to take certain actions with respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office and shall have the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.