**A** **BILL**

TO AMEND SECTION 62‑7‑903, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ALLOCATION BY A FIDUCIARY OF RECEIPTS AND DISBURSEMENTS BETWEEN PRINCIPAL AND INCOME FOR PURPOSES OF THE SOUTH CAROLINA UNIFORM PRINCIPAL AND INCOME ACT, SO AS TO EXTEND THE APPLICATION OF THE FIDUCIARY’S RESPONSIBILITIES TO THE INSTANCE OF A FIDUCIARY EXERCISING A DISCRETIONARY POWER IN CONNECTION WITH THE CONVERSION OF AN INCOME TRUST TO A TOTAL RETURN UNITRUST; AND BY ADDING SECTIONS 62‑7‑904A, 62‑7‑904B, AND 62‑7‑904C SO AS TO ALLOW THE TRUSTEE OF AN INCOME TRUST TO CONVERT THE INCOME TRUST TO A TOTAL RETURN UNITRUST, RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST, AND TO CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE METHOD OF DETERMINING THE FAIR MARKET VALUE OF THE TRUST, TO PROVIDE THE REQUIREMENTS FOR A TRUSTEE TO MAKE THESE CHANGES, TO PROVIDE FOR SUCH CHANGES TO BE ORDERED BY THE PROBATE COURT UPON PETITION BY THE TRUSTEE, TO ALLOW A QUALIFIED BENEFICIARY OF A TRUST TO PETITION THE PROBATE TO MAKE THESE CHANGES IF THE TRUSTEE WILL NOT, AND TO PROVIDE DEFINITIONS FOR PURPOSES OF THE TRUST CHANGES ALLOWED PURSUANT TO THE ADDED SECTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑7‑903 of the 1976 Code, as last amended by Act 244 of 1010, is further amended to read:

“Section 62‑7‑903. (A) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Sections 62‑7‑905 through 62‑7‑909, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in ~~this part~~ the South Carolina Uniform Principal and Income Act;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by ~~this part~~ the South Carolina Uniform Principal and Income Act;

(3) shall administer a trust or estate in accordance with ~~this part~~ the South Carolina Uniform Principal and Income Act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and ~~this part~~ the South Carolina Uniform Principal and Income Act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(B) In exercising:

(1) the power to adjust pursuant to Section 62‑7‑904(A);

(2) a discretionary power in connection with the conversion or administration of a unitrust pursuant to Sections 62‑7‑904A through Section 62‑7‑904C; or

(3) a discretionary power of administration regarding a matter within the scope of ~~this part~~ the South Carolina Uniform Principal and Income Act, whether granted by the terms of a trust, a will, or ~~this part~~ the South Carolina Uniform Principal and Income Act, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with ~~this part~~ the South Carolina Uniform Principal and Income Act is presumed to be fair and reasonable to all of the beneficiaries.”

SECTION 2. Part 9, Article 7 (the South Carolina Trust Code), Title 62 of the 1976 Code, is amended by adding:

“Section 62‑7‑904A. The definitions in this section apply to Sections 62‑7‑904B and 62‑7‑904C.

(1) ‘Code’ means the Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the Code in this section and Sections 62‑7‑904B and 62‑7‑904C are considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

(2) ‘Disinterested person’ means a person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

(3) ‘Express total return unitrust’ means a trust created by the terms of a governing instrument requiring the distribution at least annually of a unitrust amount equal to a fixed percentage of not less than three percent nor more than five percent a year of the net fair market value of the amounts of the trust, valued at least annually.

(4) ‘Income trust’ means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.

(5) ‘Interested distributee’ means a living beneficiary who is a distributee or permissible distributee of trust income or principal who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

(6) ‘Interested trustee’ means any of the following:

(a) an individual trustee who is a qualified beneficiary;

(b) a trustee who may be removed and replaced by an interested distributee;

(c) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(7) ‘Legal disability’ means a person under a legal disability who is a minor, an incompetent or incapacitated person, or an unborn individual, or whose identity or location is unknown.

(8) ‘Qualified beneficiary’ means a qualified beneficiary as defined in Section 62‑7‑103(12).

(9) ‘Related or subordinate party’ means a related or subordinate party as defined in Section 672(c) of the Code.

(10) ‘Representative’ means a person who may represent and bind another as provided in Part 3 of this article, the provisions of which apply for purposes of this section and Sections 62‑7‑904B and 62‑7‑904C.

(11) ‘Settlor’ means an individual, including a testator, who creates a trust.

(12) ‘Total return unitrust’ means an income trust that has been converted under and meets the provisions of this section and Sections 62‑7‑904B and 62‑7‑904C.

(13) ‘Treasury regulations’ means the regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.

(14) ‘Trustee’ means a person acting as trustee of the trust, except as otherwise expressly provided in this section and Sections 62‑7‑904B and 62‑7‑904C whether acting in that person’s discretion or on the direction of one or more persons acting in a fiduciary capacity.

(15) ‘Unitrust amount’ means an amount computed as a percentage of the fair market value of the assets of the trust.

Section 62‑7‑904B. (A) A trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter ‘trustee’) in the trustee’s sole discretion and without court approval, may:

(1) convert an income trust to a total return unitrust;

(2) reconvert a total return unitrust to an income trust; or

(3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

(a) The trustee adopts a written policy for the trust providing:

( i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined pursuant to the South Carolina Uniform Principal and Income Act;

(ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(b) The trustee gives written notice of its intention to take the action, including copies of the written policy, this section, and Sections 62‑7‑904A and 62‑7‑904C, to:

( i) the settlor of the trust, if living; and

(ii) all persons who are the qualified beneficiaries of the trust at the time the notice is given. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

(c) There is at least:

( i) one qualified beneficiary described in Section 62‑7‑103(12)(A) or (B) who is not under a legal disability or a representative of a qualified beneficiary so described; or

(ii) one qualified beneficiary described in Section 62‑7‑103(12)(C) who is not under a legal disability or a representative of a qualified beneficiary so described.

(d) No person receiving notice of the trustee’s intention to take the proposed action objects to the action within ninety days after notice has been given. The objection must be by written notice to the trustee.

(B) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval:

(1) convert an income trust to a total return unitrust;

(2) reconvert a total return unitrust to an income trust; or

(3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

(a) The trustee adopts a written policy for the trust providing:

( i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined pursuant to the South Carolina Uniform Principal and Income Act;

(ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined pursuant to the South Carolina Uniform Principal and Income Act rather than unitrust amounts; or

(iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(b) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

( i) the percentage to be used to calculate the unitrust amount;

(ii) the method to be used in determining the fair market value of the trust; and

(iii) which assets, if any, are to be excluded in determining the unitrust amount.

(c) The trustee gives written notice of its intention to take the action, including copies of the written policy, this section, and Sections 62‑7‑904A and 62‑7‑904C and the determinations of the disinterested person to:

( i) the settlor of the trust, if living; and

(ii) all persons who are the qualified beneficiaries of the trust at the time of the giving of the notice. If a qualified beneficiary is under a legal disability, notice must be given to the representative of the qualified beneficiary if a representative is available without court order.

(d) There is at least:

( i) one qualified beneficiary described in Section 62‑7‑103(12)(A) or (B) or a representative of a beneficiary so described; or

(ii) one qualified beneficiary described in Section 62‑7‑103(12)(C) or a representative of a qualified beneficiary so described.

(e) No person receiving notice of the trustee’s intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within ninety days after notice has been given. The objection must be by written instrument delivered to the trustee.

(C) A trustee may act under subsection (A) or (B) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, if all of the following apply:

(1) Instead of sending written notice to the persons described in subsection (A)(3)(b) or subsection (B)(3)(b), as the case may be, the trustee shall send written notice to each charitable organization expressly designated to receive the income of the trust under the governing instrument and, if no charitable organization is expressly designated to receive all of the income of the trust under the governing instrument, to the Attorney General of this State.

(2) Subsection (A)(3)(d) or subsection (B)(3)(d) of this subsection, as the case may be, does not apply to this action.

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by Section 4942 of the Code.

(D) The provisions of Section 62‑7‑109 regarding notices and the sending of documents to persons under this article shall apply for purposes of notices and the sending of documents under this section.

Section 62‑7‑904C. (A) If a trustee desires to:

(1) convert an income trust to a total return unitrust;

(2) reconvert a total return unitrust to an income trust; or

(3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust assets, but does not have the ability to or elects not to do it under Section 62‑7‑904B, the trustee may petition the court for an order as the trustee considers appropriate. If there is only one trustee of the trust and the trustee is an interested trustee or if there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as necessary to enable the court to make its determinations under this section and Sections 62‑7‑904A and 62‑7‑904B.

(B) A qualified beneficiary or a representative of a qualified beneficiary may request the trustee to:

(1) convert an income trust to a total return unitrust;

(2) reconvert a total return unitrust to an income trust; or

(3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the qualified beneficiary or a representative of the qualified beneficiary may petition the court to order the trustee to take the action.

(C) All proceedings under this section must be conducted as provided in Part 2 of this article.”

SECTION 3. (A) This act takes effect on July 1, 2013.

(B) Except as otherwise provided in this act, on the effective date of this act:

(1) this act applies to all trusts created before, on, or after its effective date;

(2) the act applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this act applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

(4) subject to (B)(5) and (C) of this section, any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date of the act unless there is a clear indication of a contrary intent in the terms of the governing instrument; and

(5) an act done and any right acquired or accrued before the effective date of the act is not affected by this act. Unless otherwise provided in this act, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust.

(C) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the act, that statute continues to apply to the right even if it has been superseded.

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