

18-B §105. DEFAULT AND MANDATORY RULES

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1. Code governs. Except as otherwise provided in the terms of the trust, this Code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Terms prevail; exceptions. The terms of a trust prevail over any provision of this Code except:

A. The requirements for creating a trust; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

B. The duty of a trustee to act in good faith and in accordance with the purposes of the trust; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

C. The requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

D. The power of the court to modify or terminate a trust under sections 410 to 416; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

E. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

F. The power of the court under section 702 to require, dispense with, modify or terminate a bond; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

G. The power of the court under section 708, subsection 2 to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

H. Subject to subsection 3, the duty under section 813, subsection 2, paragraphs B and C to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee and of their right to request trustee's reports; [2005, c. 184, §5 (AMD).]

I. Subject to subsection 3, the duty under section 813, subsection 1 to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust; [2005, c. 184, §5 (AMD).]

J. The effect of an exculpatory term under section 1008; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

K. The rights under sections 1010 to 1013 of a person other than a trustee or beneficiary; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

L. Periods of limitation for commencing a judicial proceeding; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

M. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

N. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 203 and 204. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

[2005, c. 184, §5 (AMD) .]

3. Waiver or modification. The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 813, subsection 1 or 2 to give notice, information and reports to qualified beneficiaries in either or both of the following ways:

A. Waiving or modifying such duties as to all qualified beneficiaries except the settlor's surviving spouse during the lifetime of the settlor or the lifetime of the settlor's surviving spouse; and [2005, c. 184, §6 (NEW).]

B. Designating a person or persons, any of whom may or may not be a beneficiary, to act in good faith to protect the interests of the qualified beneficiaries who are not receiving notice, information or reports and to receive any notice, information or reports required under section 813, subsection 1 or 2 in lieu of providing such notice, information or reports to the qualified beneficiaries. The person or persons designated under this paragraph are deemed to be representatives of the qualified beneficiaries not receiving notice, information or reports for the purposes of the time limitation for a beneficiary to commence an action against the trustee for breach of trust as provided in section 1005, subsection 1. [2005, c. 184, §6 (NEW).]

[2005, c. 683, Pt. C, §7 (AMD) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF). 2005, c. 184, §§5,6 (AMD). 2005, c. 683, §C7 (AMD).

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