

CHAPTER 6

REVOCABLE TRUSTS

§601. Capacity of settlor of revocable trust

The capacity required to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§602. Revocation or amendment of revocable trust

1. Revocable unless expressly provided. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2005.

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

2. Revocable trust with more than one settlor. If a revocable trust is created or funded by more than one settlor:

A. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall notify the other settlors of the revocation or amendment. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

3. Revoke or amend. The settlor may revoke or amend a revocable trust:

A. By substantial compliance with a method provided in the terms of the trust; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(1) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(2) Any other method manifesting clear and convincing evidence of the settlor's intent. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

4. Delivery of property after revocation. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

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

5. Agent expressly authorized. A settlor's powers with respect to revocation, amendment or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

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

6. Conservator or guardian of settlor. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

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

7. Trustee without knowledge of revocation or amendment. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

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

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§603. Settlor's powers; powers of withdrawal

1. Revocable trust. To the extent a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

[PL 2019, c. 301, §3 (AMD).]

2. Rights of settlor of revocable trust. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

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

3. Revocable trust; direction of settlor. To the extent a trust is revocable by the settlor, the trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by the settlor in conjunction with a person other than the trustee or person holding an adverse interest, the trustee may follow a direction of the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

[PL 2019, c. 301, §4 (NEW).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §13 (AMD). PL 2019, c. 301, §§3, 4 (AMD).

§604. Limitation on action contesting validity of revocable trust; distribution of trust property

1. Revocable trust. A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

A. Three years after the settlor's death; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. One hundred and twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address and of the time allowed for commencing a proceeding. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

2. Trustee liability for distributions. Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

A. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Beneficiary to return distribution. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

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

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

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