

§1207. Notice; exercise of decanting power

1. Notice period. For purposes of this section, a notice period begins on the day notice is given under subsection 3 and ends 59 days after the day notice is given.

[PL 2021, c. 235, §1 (NEW).]

2. Exercise without consent or approval. Except as otherwise provided in this Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

[PL 2021, c. 235, §1 (NEW).]

3. Notice. Except as otherwise provided in subsection 4 or 6, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

A. Each settlor of the first trust, if living or then in existence; [PL 2021, c. 235, §1 (NEW).]

B. Each qualified beneficiary of the first trust; [PL 2021, c. 235, §1 (NEW).]

C. Each holder of a presently exercisable power of appointment over any part or all of the first trust; [PL 2021, c. 235, §1 (NEW).]

D. Each person that currently has the right to remove or replace the authorized fiduciary; [PL 2021, c. 235, §1 (NEW).]

E. Each other fiduciary of the first trust; [PL 2021, c. 235, §1 (NEW).]

F. Each fiduciary of the 2nd trust; and [PL 2021, c. 235, §1 (NEW).]

G. The Attorney General, if section 1213, subsection 2 applies. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

4. Notice not required. An authorized fiduciary is not required to give notice under subsection 3 to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

[PL 2021, c. 235, §1 (NEW).]

5. Requirements of notice. A notice under subsection 3 must:

A. Specify the manner in which the authorized fiduciary intends to exercise the decanting power; [PL 2021, c. 235, §1 (NEW).]

B. Specify the proposed effective date for exercise of the decanting power; [PL 2021, c. 235, §1 (NEW).]

C. Include a copy of the first-trust instrument; and [PL 2021, c. 235, §1 (NEW).]

D. Include a copy of all 2nd-trust instruments. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

6. Waiver of notice period. The decanting power may be exercised before expiration of the notice period under subsection 1 if all persons entitled to receive notice waive the notice period in a signed record.

[PL 2021, c. 235, §1 (NEW).]

7. Right to file application. The receipt of notice, waiver of the notice period or expiration of the notice period does not affect the right of a person to file an application under section 1208 asserting that:

A. An attempted exercise of the decanting power is ineffective because the exercise did not comply with this Act or was an abuse of discretion or breach of fiduciary duty; or [PL 2021, c. 235, §1 (NEW).]

B. Section 1221 applies to the exercise of the decanting power. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

8. Failure to give notice; reasonable care. An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection 3 if the authorized fiduciary acted with reasonable care to comply with subsection 3.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

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