**§814. Discretionary powers; tax savings**

**1. Discretionary power; interests of beneficiaries.**  Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole" or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust. A trustee's power to make distributions is discretionary notwithstanding terms of the trust providing that the trustee "shall" make distributions exercising a discretionary power, with or without standards.

[PL 2005, c. 184, §17 (AMD).]

**2. Discretionary distributions.**  Subject to subsection 4, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

A. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and [PL 2005, c. 184, §18 (AMD).]

B. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2005, c. 184, §18 (AMD).]

**3. Cotrustees; special fiduciary.**  A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

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

**4. Exceptions.**  Subsection 2 does not apply to:

A. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in the federal Internal Revenue Code of 1986, Section 2056(b)(5) or 2523(e), as in effect on July 1, 2005, or as later amended, was previously allowed; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Any trust during any period that the trust may be revoked or amended by its settlor; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. A trust if contributions to the trust qualify for the annual exclusion under the federal Internal Revenue Code of 1986, Section 2503(c) as in effect on July 1, 2005, or as later amended. [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).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §17 (AMD). PL 2005, c. 184, §18 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024
 . The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.