

§1214. Trust limitation on decanting

1. Decanting power prohibited. An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

A. The decanting power; or [PL 2021, c. 235, §1 (NEW).]

B. A power granted by state law to the authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

2. Decanting power restricted. Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

A. The decanting power; or [PL 2021, c. 235, §1 (NEW).]

B. A power granted by state law to an authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

3. Decanting power not precluded. A general prohibition on amendment or revocation of a first trust, a spendthrift provision or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

[PL 2021, c. 235, §1 (NEW).]

4. First trust permits modification or distribution. Subject to subsections 1 and 2, an authorized fiduciary may exercise the decanting power pursuant to this Act even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

[PL 2021, c. 235, §1 (NEW).]

5. Express prohibition or restriction included in 2nd trust. If a first-trust instrument contains an express prohibition described in subsection 1 or an express restriction described in subsection 2, the provision must be included in the 2nd-trust instrument.

[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

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