

LAWS OF DELAWARE  
VOLUME 85  
CHAPTER 160  
153rd GENERAL ASSEMBLY  
FORMERLY  
HOUSE BILL NO. 103

AN ACT TO AMEND TITLE 12 AND TITLE 13 OF THE DELAWARE CODE RELATING TO DECEDENTS' ESTATES AND FIDUCIARY RELATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3301, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3301. Application of chapter; definitions.

(d) The term “fiduciary” shall mean trustees, personal representatives, guardians, custodians under the Uniform Transfers to Minors Act (Chapter 45 of this title), advisers or protectors acting in a fiduciary capacity under § 3313(a) of this title, agents acting in a fiduciary capacity under § 3322 of this title, designated representatives acting in a fiduciary capacity under § 3339 of this title, enforcers acting in a fiduciary capacity under § 3556(c) of this title, and other fiduciaries; while the term “nonfiduciary” shall mean advisers or protectors not acting in a ~~nonfiduciary~~ fiduciary capacity under § 3313(a) of this title, agents not acting in a ~~nonfiduciary~~ fiduciary capacity under § 3322 of this title, ~~or designated representatives not acting in a nonfiduciary fiduciary capacity under § 3339 of this title.~~ title, enforcers not acting in a fiduciary capacity under § 3556(c) of this title, and others that are not acting in a fiduciary capacity.

Section 2. Amend § 3315, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3315. Trustee’s exercise of discretion; review by court; discretionary interests.

(b) A beneficiary eligible to receive distributions from a trust in the discretion of a ~~trustee or other~~ fiduciary has a discretionary interest in the trust. ~~Discretionary~~ A discretionary interest in a trust is a mere expectancy, not a property right. A beneficiary eligible to receive distributions from a trust in the discretion of a ~~trustee or other~~ fiduciary, even if subject to an ascertainable standard (as defined in Treas. Reg. § 20.2041-1(c)(2) (26 CFR § 20.2041-1(c)(2)) or any successor provision thereto), has a discretionary interest in the trust. An interest that includes mandatory distribution language such as “shall” but is qualified by discretionary distribution language is a discretionary interest. A beneficiary that has a discretionary interest in a trust shall not be deemed to have a right to compel a distribution from the trust. Nothing within this subsection, however, shall be deemed to alter the standard of review of the discretion of the fiduciary under subsection (a) of this section. A creditor may not directly or indirectly compel the distribution of a discretionary interest except to the extent expressly granted by the terms of a governing instrument in accordance with § 3536(a) of this title. ~~Nothing within this subsection shall be deemed to alter the standard of review of the discretion of the trustee or other fiduciary under subsection (a) of this section.~~

Section 3. Amend § 3326, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3326. Resignation of an officeholder.

(a) For purposes of this section and § 3327 of this title, the term “officeholder” includes a trustee, an adviser as defined in § 3313 of this title, ~~and a designated representative as defined in § 3339 of this title.~~ title, and an enforcer under § 3556(c) of this title.

(b) An officeholder may resign:

(1) If the governing instrument expressly permits the officeholder to resign, in accordance with the terms of the governing instrument;

(2) If the governing instrument neither expressly permits nor prohibits the officeholder’s resignation, but establishes a procedure for the appointment of a successor officeholder ~~who~~ that shall be willing and able to serve as such, upon 30 days written notice to the beneficiaries, those holding the power to appoint a successor officeholder, and any other officeholders;  
~~or~~

(3) Alternatively, even if either paragraph (b)(1) or (b)(2) of this subsection applies, by a modification of a trust under § 3342 of this title;

(4) If paragraphs (b)(1), (b)(2), and (b)(3) of this subsection do not apply, by a nonjudicial settlement agreement under § 3338 of this title; or

~~(3)~~(5) In all other cases, with the approval of the Court of Chancery.

Section 4. Amend § 3556, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3556. Trust for other noncharitable purposes.

Without limiting the effectiveness of § 3555 of this title:

(a) ~~In addition to the provisions of § 3555 of this title, a~~ A trust for a declared purpose that is not impossible of attainment is valid notwithstanding that the trust might not be deemed to be for charitable purposes.

(b) A trust authorized by subsection (a) of this section ~~shall~~ is not be invalid because it lacks an identifiable person as beneficiary. Except as otherwise provided by the terms of the governing instrument, a person is not deemed to be a beneficiary of a trust authorized by subsection (a) of this section solely because the person received or receives disbursements from the trust in furtherance of the declared purpose of the trust.

(c) A trust authorized ~~by~~ under subsection (a) of this section may be enforced by a person appointed ~~in~~ for such purpose by the terms of the ~~trust~~ trust, as permitted under § 3303(b) of this title, or, if ~~there is no such person~~ none, or if the last such person is no longer ~~is~~ willing and able to serve, by a person appointed for such purpose by the Court of Chancery. ~~A person who~~ Chancery (each such person so appointed, an “enforcer”). Except as otherwise provided by the terms of the governing instrument, a person that has an interest in the declared purpose of the trust other than a general public interest may petition the Court of Chancery for an order that appoints a person as enforcer to enforce the terms of the trust or to remove ~~that person~~. any person previously nominated to serve as an enforcer or currently serving as an enforcer. A governing instrument of a trust authorized under subsection (a) of this section may provide that the enforcer or some other person has exclusive standing to enforce the terms of such trust.

(d) Property of a trust authorized ~~by~~ under subsection (a) of this section may be applied only to ~~its~~ the property’s intended use. ~~Upon~~ On the termination of the trust, any property of the trust remaining ~~shall~~ must be distributed ~~in accordance with~~ under the terms of the trust or, in the absence of such terms, as provided in § 3592 of this title.

(e) Except as otherwise provided by the terms of the governing instrument, a person serving as an enforcer of a trust authorized under subsection (a) of this section is considered a fiduciary when exercising such authority.

(f) A person that accepts appointment as an enforcer of a trust authorized under subsection (a) of this section submits to the personal jurisdiction of this State regarding any matter related to the trust. This subsection does not preclude other methods of obtaining jurisdiction over the enforcer of a trust.

(g) Except as otherwise provided by the terms of the governing instrument, with respect to a trust authorized under subsection (a) of this section that lacks an identifiable person as beneficiary, §§ 3338 and 3342 of this title may be utilized without the need for any beneficiary as an “interested person” for purposes of § 3338 of this title or the written consent or written nonobjection of any beneficiary for purposes of § 3342 of this title.

(h) Except as otherwise provided by the terms of the governing instrument, with respect to trusts authorized by subsection (a) of this section that lack an identifiable person as beneficiary, if one or more enforcers are serving, all of the following apply:

(1) To effectuate a nonjudicial settlement agreement with respect to the trust under § 3338 of this title, each enforcer then serving is an “interested person” of the trust.

(2) To effectuate a modification of the trust under § 3342 of this title, the written consent or written nonobjection of each enforcer then serving is required.

Section 5. Amend § 3580, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3580. Definition.

In this subchapter, the term “trustee” includes fiduciaries and other persons exercising, or directing or consenting to the exercise of, ~~or who that~~ are required to be consulted before the exercise of, powers or duties under a trust's governing instrument or under this title, as well as designated representatives under § 3339 of this ~~title~~, title and enforcers under § 3556 of this title.

Section 6. Amend § 1513, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1513. Disposition of marital property; imposition of lien; insurance policies.

(b) For purposes of this chapter only, “marital property” means all of the following:

(1) All property acquired by either party subsequent to the marriage, except any of the following:

a. Property acquired by an individual spouse by bequest, devise, or descent or by gift, including a gift in trust ~~and (but excluding gifts between spouses, spouses that are made outright and free from trust),~~ if any of the following apply:

1. The gifted property is titled and maintained in the sole name of the donee spouse;
2. The gifted property is held in a trust created by another person, of which trust the donee spouse is a beneficiary, regardless of whether other individuals are beneficiaries of the same trust;
3. A gift tax return is filed reporting the transfer of the gifted property in the sole name of the donee spouse or in a trust of which the donee spouse is a beneficiary;~~or~~
4. A notarized or other validly-executed document, executed before or contemporaneously with the transfer, is offered demonstrating the nature of the ~~transfer.~~ transfer; or
5. Unless the trust instrument expressly provides otherwise, the gifted property is held in a trust created by a donor spouse, of which trust the donee spouse is a beneficiary, regardless of whether other individuals are beneficiaries of the same trust.

Section 7. This Act is effective upon enactment and applies to trusts whenever created.

Approved August 21, 2025