

386.617 Revocability of trusts.

A qualified trust shall not be deemed revocable on account of its inclusion of one (1) or more of the following:

- (1) A transferor's power to veto a distribution from the trust;
- (2) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate, either exercisable by written instrument of the transferor during the transferor's life or exercisable by will or other written instrument of the transferor effective upon the transferor's death;
- (3) The transferor's potential or actual receipt of income, including rights to the income retained in the trust;
- (4) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in 26 U.S.C. sec. 664 or any successor provision;
- (5) The transferor's receipt each year of an amount specified in the trust, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined from time to time pursuant to the trust;
- (6) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting:
 - (a) In the qualified trustee's or trustees' discretion. For purposes of this subsection, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust;
 - (b) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or 2514(c)(1), as amended; or
 - (c) At the direction of an advisor described in KRS 386.611 who is acting:
 1. In the advisor's discretion; or
 2. Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or 2514(c)(1), as amended;
- (7) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; provided, however, that the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of 26 U.S.C. sec. 672(c) or any successor provision;
- (8) The transferor's potential or actual use of real property held under a qualified

personal residence trust within the meaning of the term as described in 26 U.S.C. sec. 2702(c) or any successor provision;

- (9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly permits a distribution to the transferor as reimbursement for such taxes and if the distribution would be the result of a qualified trustee's or qualified trustees' acting:
 - (a) In the qualified trustee's or trustees' discretion or pursuant to a mandatory direction in the trust instrument; or
 - (b) At the direction of an advisor described in KRS 386.611 who is acting in that advisor's discretion;
- (10) The ability, whether pursuant to direction in the qualified trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; or
- (11) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subsection (3), (6), (9), or (10) of this section by direct payment to taxing authorities.

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