

386B.8-140 Discretionary powers -- Tax savings.

- (1) The judicial standard of review for a discretionary power is that the trustee shall exercise the power reasonably, in good faith, and in accordance with the terms and purposes of the trust and the interests of the beneficiaries, except that a reasonableness standard shall not be applied to the exercise of discretion by the trustee if the terms of the trust so provide. The words "sole," "absolute," "uncontrolled," or words of similar import in the absence of any standards to guide the trustee in exercising its discretion mean that a reasonableness standard will not apply. The greater the grant of discretion by the settlor to the trustee, the broader the range of permissible conduct by the trustee in exercising it.
- (2) Subject to subsection (4) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection shall 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
 - (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.
- (3) A power whose exercise is limited or prohibited by subsection (2) of this section 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.
- (4) Subsection (2) of this section shall 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 26 U.S.C. sec. 2056(b)(5) or 2523(e), as in effect on July 15, 2014, or as later amended, was previously allowed;
 - (b) Any trust during any period that the trust may be revoked or amended by its settlor; or
 - (c) A trust if contributions to the trust qualify for the annual exclusion under 26 U.S.C. sec. 2503(c), as in effect on July 15, 2014, or as later amended.

Effective: July 15, 2014

History: Created 2014 Ky. Acts ch. 25, sec. 73, effective July 15, 2014.