386B.13-130 Protection of charitable interest.

(1) As used in this section:

(a) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes; and

(b) "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(2) If a first trust contains a determinable charitable interest, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(3) If a first trust contains a charitable interest, the second trust or trusts shall not:

(a) Diminish the charitable interest;

(b) Diminish the interest of an identified charitable organization that holds the charitable interest;

(c) Alter any charitable purpose stated in the first-trust instrument; or

(d) Alter any condition or restriction related to the charitable interest.

(4) If there are two (2) or more second trusts, the second trusts shall be treated as one (1) trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (3) of this section.

(5) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (3) of this section shall be administered under the law of this Commonwealth unless:

(a) The Attorney General, after having received notice under KRS 386B.13-060, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(b) The Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(c) The court approves the exercise of the decanting power.

(6) KRS 386B.13-010 to 386B.13-280 do not limit the powers and duties of the Attorney General under the law of this Commonwealth other than the provisions of KRS 386B.13-010 to 386B.13-280.

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