

## Article - Estates and Trusts

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§15-502.2.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if:

(1) The trustee receives a written request from a beneficiary to exercise the power conferred by this subsection to make an adjustment;

(2) The trustee invests and manages the trust assets in the manner set forth in § 15-114(b) and (c) of this title;

(3) The terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income;

(4) The trustee determines, after applying the rules in § 15-502(a) of this subtitle, that the trustee is unable to comply with § 15-502(b) of this subtitle;

(5) The trustee determines that conversion of the trust to a unitrust in accordance with § 15-502.1(a) of this subtitle is an inappropriate method to comply with § 15-502(b) of this subtitle based on a review of all factors relevant to the trust and its beneficiaries; and

(6) (i) The trustee complies with the notice requirements of § 15-502.3 of this subtitle and all qualified beneficiaries consent; or

(ii) A court reviews a petition filed under § 15-502.3 of this subtitle and approves the adjustment.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all the factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the creator of the trust;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust and:

(i) The extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;

(ii) The extent to which an asset is used by a beneficiary; and

(iii) Whether an asset was acquired by the trustee or received from the creator of the trust;

(6) The net amount allocated to income under other provisions of this subtitle and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and the effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) Unless authorized by a court order in accordance with a petition filed under § 15-502.3 of this subtitle, a trustee may not make an adjustment under subsection (a) of this section in any accounting period if the adjustment results in a distribution of net income to the income beneficiary:

(1) That is greater than 4% of the net fair market value of the trust assets on the first business day of that accounting period, if the net income for that accounting period is less than 4% as determined under this subtitle before application of the provisions of subsection (a) of this section; or

(2) That is less than 4% of the net fair market value of the trust assets on the first business day of that accounting period, if the net income for that accounting period is greater than 4% as determined under this subtitle before application of the provisions of subsection (a) of this section.

(d) A trustee may not make an adjustment under subsection (a) of this section:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be subject to estate or gift tax with respect to the individual and the assets would not be subject to estate or gift tax with respect to the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust; or

(8) If the trust has been converted to a unitrust in accordance with § 15-502.1 of this subtitle.

(e) If subsection (d)(5), (6), or (7) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment under subsection (a) of this section unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(f) (1) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (d)(1), (2), (3), (4), (5), or (6) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (d) of this section.

(2) The release authorized under paragraph (1) of this subsection may be permanent or for a specified period, including a period measured by the life of an individual.

(g) The terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

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