
By: **Delegate Finifter**
Introduced and read first time: February 9, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Fiduciary Powers - Incorporation by Reference**

3 FOR the purpose of allowing the maker of a will or trust instrument to incorporate
4 certain powers of fiduciaries in whole or in part in a will or trust instrument by
5 reference to certain provisions of this Act; authorizing a fiduciary upon whom a
6 document confers any of the powers set forth in this Act to disclaim irrevocably
7 the right to exercise any or all of the powers conferred; defining a certain term;
8 and generally relating to the incorporation of certain powers of fiduciaries into a
9 will or trust instrument.

10 BY adding to
11 Article - Estates and Trusts
12 Section 15-102.1
13 Annotated Code of Maryland
14 (1991 Replacement Volume and 2000 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Estates and Trusts**

18 15-102.1.

19 (A) (1) IN THIS SECTION, "FIDUCIARY" MEANS ONE OR MORE INDIVIDUALS
20 OR CORPORATIONS HAVING TRUST POWERS.

21 (2) ANY SUBSTITUTE, ADDED, OR SUCCESSOR FIDUCIARY SHALL HAVE
22 ALL OF THE POWERS DESCRIBED IN SUBSECTION (B) OF THIS SECTION PROVIDED
23 FOR THE FIDUCIARY NAMED IN THE WILL OR TRUST INSTRUMENT.

24 (3) THE PROVISIONS OF THIS SECTION MAY BY SPECIFIC REFERENCE TO
25 THIS SECTION BE MADE APPLICABLE TO A FIDUCIARY OF THE ESTATE OF A
26 DECEDENT AS WELL AS TO THE TRUSTEE OF AN INTER VIVOS OR TESTAMENTARY
27 TRUST.

1 (B) THE FOLLOWING FIDUCIARY POWERS, IN ADDITION TO ALL OTHER
2 POWERS GRANTED BY LAW, MAY BE INCORPORATED IN WHOLE OR IN PART IN ANY
3 WILL OR TRUST INSTRUMENT BY SPECIFIC REFERENCE TO THIS SECTION:

4 (1) TO KEEP AND RETAIN ANY OR ALL INVESTMENTS AND PROPERTY,
5 REAL, PERSONAL, OR MIXED, INCLUDING STOCK IN THE FIDUCIARY IF THE
6 FIDUCIARY IS A CORPORATION, REGARDLESS OF THE CHARACTER OF THE
7 INVESTMENTS AND PROPERTY, WHETHER THE INVESTMENTS AND PROPERTY
8 WOULD BE AUTHORIZED BY LAW FOR INVESTMENT BY FIDUCIARIES, OR WHETHER A
9 DISPROPORTIONATELY LARGE PART OF THE TRUST OR ESTATE REMAINS INVESTED
10 IN ONE OR MORE TYPES OF PROPERTY, FOR THE TIME THAT THE FIDUCIARY DEEMS
11 BEST, AND TO DISPOSE OF SUCH PROPERTY BY SALE, EXCHANGE, OR OTHERWISE AS
12 AND WHEN THE FIDUCIARY DETERMINES.

13 (2) AT THE DISCRETION OF THE FIDUCIARY, TO RECEIVE ADDITIONS TO
14 THE TRUST OR ESTATE FROM ANY SOURCE, IN CASH OR IN KIND, AND TO HOLD,
15 ADMINISTER, AND DISTRIBUTE THE ADDITIONS AS A PART OF AND UNDER THE SAME
16 TERMS AND CONDITIONS AS THE TRUST OR ESTATE THEN CURRENTLY HELD.

17 (3) TO SELL, ASSIGN, EXCHANGE, TRANSFER, AND CONVEY OR
18 OTHERWISE DISPOSE OF, ANY OR ALL OF THE INVESTMENTS AND PROPERTY, THAT
19 MAY BE INCLUDED IN, OR MAY AT ANY TIME BECOME PART OF THE TRUST OR
20 ESTATE UPON THE TERMS AND CONDITIONS THAT THE FIDUCIARY CONSIDERS
21 ADVISABLE, AT PUBLIC OR PRIVATE SALE, EITHER FOR CASH OR DEFERRED
22 PAYMENTS OR OTHER CONSIDERATION, AS THE FIDUCIARY MAY DETERMINE; AND
23 TO SELL, ASSIGN, EXCHANGE, TRANSFER, OR CONVEY THE SAME, TO MAKE,
24 EXECUTE, ACKNOWLEDGE, AND DELIVER ANY AND ALL INSTRUMENTS OF
25 CONVEYANCE, DEEDS OF TRUST, OR ASSIGNMENTS IN THE FORM AND WITH THE
26 WARRANTIES AND COVENANTS AS THE FIDUCIARY MAY REQUIRE; AND IN THE
27 EVENT OF ANY SALE, CONVEYANCE, EXCHANGE, OR OTHER DISPOSITION OF ANY OF
28 THE TRUST OR ESTATE, THE PURCHASER MAY NOT BE OBLIGATED TO SEE TO THE
29 APPLICATION OF THE PURCHASE MONEY OR OTHER CONSIDERATION.

30 (4) TO GRANT, SELL, TRANSFER, EXCHANGE, PURCHASE, OR ACQUIRE
31 OPTIONS OF ANY KIND ON PROPERTY HELD BY THE TRUST OR ESTATE OR TO BE
32 ACQUIRED BY THE TRUST OR ESTATE OR HELD OR OWNED BY ANY OTHER PERSON.

33 (5) TO INVEST AND REINVEST ALL OF THE PROPERTY OF THE TRUST OR
34 ESTATE AS THE FIDUCIARY DETERMINES INCLUDING INVESTMENT IN STOCKS,
35 COMMON AND PREFERRED, SHARES OF MUTUAL FUNDS INTERESTS IN COMMON
36 TRUST FUNDS, AND INVESTMENT TRUSTS, AND ANNUITIES WITHOUT BEING
37 RESTRICTED TO THOSE INVESTMENTS EXPRESSLY APPROVED BY STATUTE FOR
38 INVESTMENT BY FIDUCIARIES; AND TO CHANGE INVESTMENTS FROM REALTY TO
39 PERSONALTY, AND VICE VERSA.

40 (6) TO LEASE ANY OR ALL OF THE REAL ESTATE THAT MAY BE
41 INCLUDED IN OR AT ANY TIME BECOME A PART OF THE TRUST OR ESTATE, ON TERMS
42 AND CONDITIONS THAT THE FIDUCIARY DETERMINES AND ANY LEASE MADE BY THE
43 FIDUCIARY MAY EXTEND BEYOND THE TERM OF THE TRUST OR ADMINISTRATION OF

1 THE ESTATE; AND FOR THE PURPOSE OF LEASING THE REAL ESTATE, TO MAKE,
2 EXECUTE, ACKNOWLEDGE, AND DELIVER ANY AND ALL INSTRUMENTS, IN SUCH
3 FORM AND WITH SUCH COVENANTS AND WARRANTIES AS THE FIDUCIARY
4 DETERMINES.

5 (7) TO VOTE ANY STOCKS, BONDS, OR OTHER SECURITIES HELD BY THE
6 FIDUCIARY AT ANY MEETING OF STOCKHOLDERS, BONDHOLDERS, OR OTHER
7 SECURITY HOLDERS, AND TO DELEGATE THE POWER TO VOTE TO ATTORNEYS IN
8 FACT OR PROXIES UNDER POWER OF ATTORNEY.

9 (8) TO BORROW MONEY, AND AS MAKER OR ENDORSER TO RENEW
10 EXISTING LOANS, FOR THE TIME AND ON THE TERMS AND CONDITIONS AS TO RATES,
11 MATURITIES, RENEWALS, AND SECURITY THAT THE FIDUCIARY DETERMINES,
12 INCLUDING THE POWER TO BORROW FROM THE FIDUCIARY, FOR THE PURPOSE OF
13 PAYING DEBTS, TAXES, OR OTHER CHARGES AGAINST THE TRUST OR ESTATE OR ANY
14 PART THEREOF, AND WITH PRIOR APPROVAL OF THE COURT FOR ANY PROPER
15 PURPOSE OF THE TRUST OR ESTATE; AND TO MORTGAGE, PLEDGE, OR OTHERWISE
16 ENCUMBER SUCH PORTION OF THE TRUST OR ESTATE AS MAY BE REQUIRED TO
17 SECURE SUCH LOAN OR LOANS.

18 (9) TO MAKE LOANS OR ADVANCES FROM TRUST ASSETS TO THE
19 PERSONAL REPRESENTATIVE OF THE ESTATE IN ORDER TO PROVIDE CASH WITH
20 WHICH TO PAY TAXES, CLAIMS, OR OTHER INDEBTEDNESS OF THE GRANTOR'S
21 ESTATE.

22 (10) TO SUE ON OR DEFEND, COMPROMISE, ADJUST, ARBITRATE,
23 ABANDON, OR OTHERWISE DEAL WITH AND SETTLE CLAIMS, IN FAVOR OF OR
24 AGAINST THE TRUST OR ESTATE AS THE FIDUCIARY DECIDES, AND THE DECISION
25 SHALL BE CONCLUSIVE.

26 (11) TO MAKE DISTRIBUTIONS OR ALLOCATIONS IN CASH OR IN KIND, OR
27 PARTLY IN EACH, EVEN IF SUCH SHARES BE COMPOSED DIFFERENTLY, AT SUCH
28 VALUES AND SUCH TIMES AND WITH SUCH COMPOSITIONS AS SHALL BE
29 DETERMINED BY THE FIDUCIARY IN HIS DISCRETION, PROVIDED, HOWEVER, THAT
30 UNLESS OTHERWISE STATED IN THE WILL OR TRUST INSTRUMENT, DATE OF
31 DISTRIBUTION OR ALLOCATION VALUES SHALL BE USED; AND TO DIVIDE ANY TRUST
32 INTO TWO OR MORE TRUSTS WITH IDENTICAL PROVISIONS AND TO MAKE
33 DISTRIBUTIONS OR ALLOCATIONS TO SUCH TRUSTS AS PROVIDED IN THIS SECTION.

34 (12) TO DETERMINE WHETHER ANY PART OF THE TRUST OR ESTATE OR
35 ANY ADDITION OR INCREMENT BE INCOME OR PRINCIPAL, OR WHETHER ANY COST,
36 CHARGE, EXPENSE, TAX, OR ASSESSMENT SHALL BE CHARGED AGAINST INCOME OR
37 PRINCIPAL, OR PART AGAINST INCOME AND PART AGAINST PRINCIPAL, PROVIDED
38 THAT THIS DETERMINATION BE MADE TO BALANCE FAIRLY THE INTERESTS OF THE
39 INCOME BENEFICIARY AND THE REMAINDERMAN.

40 (13) TO REPAIR, ALTER, IMPROVE, RENOVATE, RECONSTRUCT, AND
41 DEMOLISH ANY OF THE BUILDINGS ON THE REAL ESTATE HELD BY THE FIDUCIARY

1 AND TO CONSTRUCT THE BUILDINGS AND IMPROVEMENTS ON THE REAL ESTATE
2 THAT THE FIDUCIARY MAY DETERMINE.

3 (14) TO EMPLOY AND COMPENSATE, OUT OF THE PRINCIPAL OR THE
4 INCOME OR BOTH AS THE FIDUCIARY CONSIDERS PROPER, AGENTS, ACCOUNTANTS,
5 BROKERS, ATTORNEYS IN FACT, ATTORNEYS AT LAW, TAX SPECIALISTS, LICENSED
6 REAL ESTATE BROKERS, LICENSED SALESMEN, AND OTHER ASSISTANTS AND
7 ADVISORS SELECTED BY THE FIDUCIARY, INCLUDING FIRMS IN WHICH THE
8 FIDUCIARY HAS AN INTEREST FOR THE PROPER ADMINISTRATION OF THE TRUST OR
9 ESTATE, AND TO DO SO WITHOUT LIABILITY FOR ANY NEGLIGENCE, OMISSION,
10 MISCONDUCT, OR DEFAULT OF ANY AGENT OR PROFESSIONAL REPRESENTATIVE
11 WHO WAS SELECTED AND RETAINED WITH REASONABLE CARE.

12 (15) TO RELY ON ANY AFFIDAVIT, CERTIFICATE, LETTER, NOTICE,
13 TELEGRAM, OR OTHER PAPER OR ON ANY TELEPHONE CONVERSATION BELIEVED BY
14 THE FIDUCIARY TO BE GENUINE AND UPON ANY OTHER EVIDENCE BELIEVED BY
15 THE FIDUCIARY TO BE SUFFICIENT, AND TO BE PROTECTED AND SAVED HARMLESS
16 IN ALL PAYMENTS OR DISTRIBUTIONS REQUIRED TO BE MADE HEREUNDER IF MADE
17 IN GOOD FAITH AND WITHOUT ACTUAL NOTICE OR KNOWLEDGE OF THE CHANGED
18 CONDITION OR STATUS OF ANY PERSON RECEIVING PAYMENTS OR OTHER
19 DISTRIBUTIONS UPON A CONDITION.

20 (16) (I) TO RETAIN ANY INTEREST HELD BY THE FIDUCIARY IN ANY
21 BUSINESS, WHETHER AS A STOCKHOLDER OR SECURITY HOLDER OF A
22 CORPORATION, A PARTNER, A MEMBER OF A LIMITED LIABILITY COMPANY, A SOLE
23 PROPRIETOR, OR OTHERWISE, FOR ANY LENGTH OF TIME, WITHOUT LIMITATIONS,
24 SOLELY AT THE RISK OF THE TRUST OR ESTATE AND WITHOUT LIABILITY ON THE
25 PART OF THE FIDUCIARY FOR ANY LOSSES RESULTING THEREFROM; TO
26 PARTICIPATE IN THE CONDUCT OF SUCH BUSINESS AND TAKE OR DELEGATE TO
27 OTHERS DISCRETIONARY POWER TO TAKE ANY ACTION WITH RESPECT TO ITS
28 MANAGEMENT AND AFFAIRS WHICH AN INDIVIDUAL COULD TAKE AS THE OWNER OF
29 SUCH BUSINESS, INCLUDING THE VOTING OF STOCK, AND THE DETERMINATION OF
30 ANY OR ALL QUESTIONS OF POLICY; TO PARTICIPATE IN ANY INCORPORATION,
31 REORGANIZATION, MERGER, CONSOLIDATION, RECAPITALIZATION, OR LIQUIDATION
32 THEREOF; TO INVEST ADDITIONAL CAPITAL IN, SUBSCRIBE TO ADDITIONAL STOCK
33 OR SECURITIES OF, AND LOAN MONEY OR CREDIT WITH OR WITHOUT SECURITY TO,
34 SUCH BUSINESS OUT OF THE TRUST OR ESTATE PROPERTY; TO ELECT OR EMPLOY AS
35 DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OF SUCH BUSINESS, AND
36 COMPENSATE ANY PERSONS, INCLUDING THE FIDUCIARY OR A DIRECTOR, OFFICER,
37 OR AGENT OF THE FIDUCIARY, AND TO OBTAIN AND PAY FOR LIABILITY INSURANCE
38 FOR ACTS AND OMISSIONS OF SUCH PERSONS; TO ACCEPT AS CORRECT FINANCIAL
39 OR OTHER STATEMENTS RENDERED BY THE BUSINESS FROM TIME TO TIME AS TO
40 ITS CONDITIONS AND OPERATIONS EXCEPT WHEN HAVING ACTUAL NOTICE TO THE
41 CONTRARY; TO REGARD THE BUSINESS AS AN ENTITY SEPARATE FROM THE TRUST
42 OR ESTATE WITH NO DUTY TO ACCOUNT TO ANY COURT AS TO ITS OPERATIONS; TO
43 DEAL WITH AND ACT FOR THE BUSINESS IN ANY CAPACITY, INCLUDING ANY
44 BANKING OR TRUST CAPACITY AND THE LOANING OF MONEY OUT OF THE
45 FIDUCIARY'S OWN FUNDS, AND TO BE COMPENSATED THEREFOR; AND TO SELL OR
46 LIQUIDATE SUCH INTEREST OR ANY PART THEREOF AT ANY TIME BY PUBLIC OR

1 PRIVATE SALE OR SALES WITHOUT A SOLICITATION OF OFFERS AS THE FIDUCIARY
2 SHALL DEEM APPROPRIATE.

3 (II) IF ANY BUSINESS SHALL BE UNINCORPORATED, CONTRACTUAL
4 AND TORT LIABILITIES ARISING OUT OF SUCH BUSINESS SHALL BE SATISFIED,
5 FIRST, OUT OF THE BUSINESS, AND SECOND, OUT OF THE TRUST OR ESTATE; BUT IT
6 IS INTENDED THAT IN NO EVENT SHALL THERE BE A LIABILITY OF THE FIDUCIARY,
7 AND IF THE FIDUCIARY SHALL BE HELD LIABLE, THE FIDUCIARY SHALL BE
8 ENTITLED TO INDEMNIFICATION FROM THE BUSINESS AND THE TRUST OR ESTATE
9 IN THE ORDER NAMED.

10 (III) THE FIDUCIARY SHALL BE ENTITLED TO SUCH ADDITIONAL
11 COMPENSATION AS IS COMMENSURATE WITH THE TIME, EFFORT, AND
12 RESPONSIBILITY INVOLVED IN HIS PERFORMANCE OF SERVICES WITH RESPECT TO
13 SUCH BUSINESS.

14 (IV) SUCH COMPENSATION FOR SERVICES RENDERED TO THE
15 BUSINESS MAY BE PAID BY THE FIDUCIARY FROM THE BUSINESS OR FROM OTHER
16 ASSETS OR FROM BOTH AS THE FIDUCIARY MAY DETERMINE TO BE ADVISABLE.

17 (V) THE AMOUNT OF THE ADDITIONAL COMPENSATION SHALL BE
18 SUBJECT TO THE FINAL APPROVAL OF THE COURT.

19 (17) TO HOLD PROPERTY IN THE FIDUCIARY'S NAME OR IN THE NAME OF
20 NOMINEES.

21 (18) IN THE FIDUCIARY'S SOLE DISCRETION, DURING THE MINORITY,
22 INCAPACITY, OR DISABILITY OF ANY BENEFICIARY, TO DISTRIBUTE INCOME AND
23 PRINCIPAL TO THE BENEFICIARY IN ANY ONE OF THE FOLLOWING WAYS:

24 (I) DIRECTLY TO THE BENEFICIARY;

25 (II) TO A RELATIVE, GUARDIAN, CONSERVATOR, OR COMMITTEE, TO
26 BE EXPENDED BY SUCH PERSON FOR THE EDUCATION, MAINTENANCE, SUPPORT, OR
27 BENEFIT OF THE BENEFICIARY;

28 (III) BY THE FIDUCIARY HIMSELF EXPENDING THE SAME FOR THE
29 EDUCATION, MAINTENANCE, SUPPORT, OR BENEFIT OF THE BENEFICIARY; OR

30 (IV) IF THE BENEFICIARY IS UNDER THE AGE OF 21 YEARS, TO AN
31 ADULT PERSON OR BANK AUTHORIZED TO EXERCISE TRUST POWERS SELECTED BY
32 THE FIDUCIARY TO SERVE AS CUSTODIAN UNDER THE MARYLAND UNIFORM
33 TRANSFERS TO MINORS ACT, TO BE HELD BY SUCH CUSTODIAN UNDER THE TERMS
34 OF SUCH ACT UNTIL THE BENEFICIARY ATTAINS THE AGE OF 21 YEARS.

35 (19) (I) TO CONTINUE AND CARRY ON ANY FARMING OPERATION
36 TRANSFERRED TO THE FIDUCIARY AND TO OPERATE THE FARMS AND ANY OTHER
37 FARM WHICH MAY BE ACQUIRED AND, IN SO DOING, BY WAY OF ILLUSTRATION AND
38 NOT IN LIMITATION OF THE FIDUCIARY'S POWERS, TO OPERATE THE FARM WITH
39 HIRED LABOR, TENANTS, OR SHARECROPPERS; TO HIRE A FARM MANAGER OR A

1 PROFESSIONAL FARM MANAGEMENT SERVICE TO SUPERVISE THE FARMING
2 OPERATIONS; TO LEASE OR RENT THE FARM FOR CASH OR FOR A SHARE OF THE
3 CROPS; TO PURCHASE OR OTHERWISE ACQUIRE FARM MACHINERY AND EQUIPMENT
4 AND LIVESTOCK; TO CONSTRUCT, REPAIR, AND IMPROVE FARM BUILDINGS NEEDED
5 IN THE FIDUCIARY'S JUDGMENT FOR THE OPERATION OF THE FARM; TO MAKE
6 LOANS OR ADVANCES OR TO OBTAIN SUCH FROM ANY SOURCE, INCLUDING THE
7 FIDUCIARY AT THE PREVAILING RATE OR RATES OF INTEREST FOR FARM PURPOSES
8 SUCH AS FOR PRODUCTION, HARVESTING, OR MARKETING, OR FOR THE
9 CONSTRUCTION, REPAIR, OR IMPROVEMENT OF FARM BUILDINGS, OR FOR THE
10 PURCHASE OF FARM MACHINERY OR EQUIPMENT OR LIVESTOCK; TO EMPLOY
11 APPROVED SOIL CONSERVATION PRACTICES TO CONSERVE, IMPROVE, AND
12 MAINTAIN THE FERTILITY AND PRODUCTIVITY OF THE SOIL; TO PROTECT, MANAGE,
13 AND IMPROVE THE TIMBER AND FOREST ON THE FARM AND SELL THE TIMBER AND
14 FOREST PRODUCTS WHEN IT IS TO THE BEST INTEREST OF THE ESTATE OR TRUST;
15 TO DITCH AND DRAIN DAMP OR WET FIELDS AND AREAS OF THE FARM WHEN AND
16 WHERE NEEDED; TO ENGAGE IN LIVESTOCK PRODUCTION, IF IT IS DEEMED
17 ADVISABLE AND TO CONSTRUCT FENCES AND BUILDINGS AND PLANT PASTURES
18 AND CROPS THAT ARE NECESSARY TO CARRY ON A LIVESTOCK PROGRAM; TO
19 EXECUTE CONTRACTS, NOTES, AND CHATTEL MORTGAGES RELATING TO
20 AGRICULTURE WITH THE COMMODITY CREDIT CORPORATION, THE UNITED STATES
21 SECRETARY OF AGRICULTURE, OR ANY OTHER OFFICER OF THE FEDERAL OR STATE
22 GOVERNMENT; TO ENTER INTO ACREAGE REDUCTION AGREEMENTS, TO MAKE SOIL
23 CONSERVATION COMMITMENTS, AND TO DO ALL ACTS NECESSARY TO COOPERATE
24 WITH ANY GOVERNMENTAL AGRICULTURAL PROGRAM; AND TO EMPLOY THE
25 METHODS OF CARRYING ON THE FARMING OPERATION THAT ARE IN COMMON USE
26 BY THE COMMUNITY IN WHICH THE FARM IS LOCATED.

27 (II) THE FIDUCIARY IS ENTITLED TO ADDITIONAL REASONABLE
28 COMPENSATION THAT IS COMMENSURATE WITH THE TIME, EFFORT, AND
29 RESPONSIBILITY INVOLVED IN HIS PERFORMANCE OF SUCH SERVICES.

30 (20) TO PURCHASE AND HOLD POLICIES OF LIFE INSURANCE ON THE
31 LIFE OF ANY BENEFICIARY, OR ANY PERSON IN WHOM THE BENEFICIARY HAS AN
32 INSURABLE INTEREST, AND PAY THE PREMIUMS THEREON OUT OF INCOME OR
33 PRINCIPAL AS DEEMED APPROPRIATE; PROVIDED THAT THE DECISION OF THE
34 BENEFICIARY OF ANY TRUST OTHERWISE MEETING THE REQUIREMENTS OF §
35 2056(B)(5) OR (B)(7) OF THE INTERNAL REVENUE CODE SHALL CONTROL IN RESPECT
36 TO THE PURCHASE OR HOLDING OF A POLICY OF LIFE INSURANCE BY THE TRUSTEE
37 OF SUCH TRUST.

38 (21) TO MAKE ANY ELECTION AUTHORIZED UNDER ANY LAW REQUIRING,
39 OR RELATING TO THE REQUIREMENT FOR, PAYMENT OF ANY TAXES OR
40 ASSESSMENTS ON ASSETS OR INCOME OF THE ESTATE OR IN CONNECTION WITH ANY
41 FIDUCIARY CAPACITY, REGARDLESS OF WHETHER ANY PROPERTY OR INCOME IS
42 RECEIVED BY OR IS UNDER THE CONTROL OF THE FIDUCIARY, INCLUDING, BUT NOT
43 LIMITED TO, ELECTIONS CONCERNING THE TIMING OF PAYMENT OF ANY SUCH TAX
44 OR ASSESSMENT, THE VALUATION OF ANY PROPERTY SUBJECT TO ANY SUCH TAX OR
45 ASSESSMENT, THE ALTERNATIVE USE OF ITEMS OF DEDUCTION IN COMPUTING ANY
46 TAX OR ASSESSMENT, AND INCLUDING SPECIFICALLY ELECTIONS PERMITTED BY

1 STATUTES ENACTED AFTER THE DATE OF EXECUTION OF THE WILL OR TRUST
2 INSTRUMENT.

3 (22) TO TAKE ANY ACTION THE FIDUCIARY CONSIDERS APPROPRIATE TO
4 COMPLY WITH AN ENVIRONMENTAL LAW AS PROVIDED IN § 7-401(CC) OR § 15-102(Z)
5 OF THIS ARTICLE.

6 (23) TO COLLECT PROCEEDS FROM LIFE INSURANCE, RETIREMENT
7 PLANS, ANNUITIES, RETIREMENT ACCOUNTS, AND OTHER BENEFITS FOR WHICH
8 THE FIDUCIARY, THE TRUST, OR ESTATE IS THE BENEFICIARY AND TO EXERCISE
9 OPTIONAL METHODS OF PAYMENT FOR SUCH BENEFITS.

10 (24) TO RESIGN AS A FIDUCIARY IF THE FIDUCIARY REASONABLY
11 BELIEVES THAT THERE IS OR MAY BE A CONFLICT OF INTEREST BETWEEN ACTING IN
12 A FIDUCIARY CAPACITY AND ACTING IN AN INDIVIDUAL CAPACITY BECAUSE OF
13 POTENTIAL CLAIMS OR LIABILITIES THAT MAY BE ASSERTED AGAINST THE
14 FIDUCIARY ON BEHALF OF THE TRUST OR ESTATE BECAUSE OF THE TYPE OR
15 CONDITION OF ASSETS HELD.

16 (25) TO DO ALL OTHER ACTS AND THINGS NOT INCONSISTENT WITH THE
17 PROVISIONS OF THE TRUST INSTRUMENT OR WILL INTO WHICH THESE POWERS ARE
18 INCORPORATED WHICH THE FIDUCIARY MAY DEEM NECESSARY OR DESIRABLE FOR
19 THE PROPER MANAGEMENT OF THE TRUST OR ESTATE, IN THE SAME MANNER AND
20 TO THE SAME EXTENT AS AN INDIVIDUAL MIGHT OR COULD DO WITH RESPECT TO
21 HIS OWN PROPERTY.

22 (26) TO EXERCISE ANY AND ALL OF THE POWERS LISTED IN THIS
23 SUBSECTION WITHOUT COURT APPROVAL UNLESS COURT APPROVAL IS
24 SPECIFICALLY REQUIRED.

25 (C) (1) ANY FIDUCIARY UPON WHOM A DOCUMENT CONFERS ANY OR ALL
26 OF THE POWERS SET FORTH IN SUBSECTION (B) OF THIS SECTION MAY IRREVOCABLY
27 DISCLAIM THE RIGHT TO EXERCISE ANY OR ALL OF THE POWERS CONFERRED BY
28 FILING A SUITABLE WRITTEN DISCLAIMER WITH THE REGISTER OF WILLS WHERE
29 THE DOCUMENT IS PROBATED OR, IF THE DOCUMENT IS NOT PROBATED, BY
30 SENDING A WRITTEN DISCLAIMER BY REGISTERED OR CERTIFIED MAIL TO THE LAST
31 KNOWN ADDRESS OF ALL PERSONS THEN LIVING AND ELIGIBLE TO RECEIVE
32 DISTRIBUTION OF THE PRINCIPAL OR INCOME.

33 (2) THE DISCLAIMER SHALL RELATE BACK TO THE TIME WHEN THE
34 DISCLAIMING FIDUCIARY ORIGINALLY ASSUMED SUCH FIDUCIARY CAPACITY AND
35 SHALL BE BINDING UPON ANY SUCCESSOR FIDUCIARY.

36 (3) FOR THE PURPOSE OF THIS SUBSECTION, A FIDUCIARY IS NOT
37 DEEMED TO HAVE ASSUMED A FIDUCIARY CAPACITY UNDER A REVOCABLE
38 DOCUMENT UNTIL THE SAME BECOMES IRREVOCABLE.

39 (D) FOR THE PURPOSES OF THIS SECTION, UNLESS THE WILL OR TRUST
40 INSTRUMENT EXPRESSES A CONTRARY INTENTION, THE INCORPORATION BY
41 REFERENCE OF POWERS ENUMERATED BY THIS STATUTE SHALL REFER TO THOSE

1 POWERS EXISTING AT THE TIME OF DEATH OR THE TIME THAT THE TRUST
2 INSTRUMENT OTHERWISE BECOMES IRREVOCABLE.

3 (E) THIS SECTION IS NOT INTENDED AND MAY NOT BE CONSTRUED TO
4 AFFECT THE APPLICATION OF THE STANDARD OF JUDGMENT AND CARE AS SET
5 FORTH IN § 15-114 OF THIS SUBTITLE.

6 (F) (1) IF THE WILL OR TRUST INSTRUMENT CONTAINS A PROVISION IN
7 FAVOR OF A SURVIVING SPOUSE OF THE TESTATOR OR GRANTOR, THE POWERS
8 LISTED IN THIS SECTION MAY NOT BE CONSTRUED OR INTERPRETED TO CAUSE THE
9 BEQUEST TO FAIL TO QUALIFY FOR THE MARITAL DEDUCTION PERMITTED UNDER
10 THE FEDERAL ESTATE TAX LAW, UNLESS THE WILL OR TRUST INSTRUMENT SHALL
11 SPECIFICALLY PROVIDE TO THE CONTRARY.

12 (2) A FIDUCIARY ACTING REASONABLY UNDER A CONSTRUCTION OR
13 INTERPRETATION OF A POWER MAY NOT INCUR RESPONSIBILITY FOR ACTS TAKEN
14 IN GOOD FAITH WHICH ARE THEREAFTER CONTENTED TO BE IN A FASHION WHICH
15 MIGHT CAUSE DISQUALIFICATION FOR THE MARITAL DEDUCTION.

16 (3) THIS SUBSECTION APPLIES WITHOUT REGARD TO THE TIME THE
17 WILL OR TRUST WAS EXECUTED OR PROBATED OR THE TESTATOR DIED IN RELATION
18 TO THE EFFECTIVE DATE OF THIS SECTION.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
20 effect October 1, 2001.