

QUALIFIED DISPOSITIONS IN TRUST ACT (EXCERPT)
Act 330 of 2016

700.1044 Powers and rights of transferor.

Sec. 4.

(1) A transferor has only the powers and rights that are conferred by the trust instrument. Except as otherwise provided in subsection (2), a transferor does not have powers or rights with respect to the property that is the subject of a qualified disposition or the income from the property, and any agreement or understanding that purports to grant or permit the retention of any greater powers or rights is void.

(2) A trust instrument may provide for 1 or more of the following rights, powers, or interests, none of which grants or is considered, either alone or in any combination, a power to revoke a trust:

(a) The transferor's power to direct the investment decisions of the trust.

(b) The transferor's power to veto a distribution from the trust.

(c) A special power of appointment exercisable by will or other written instrument of the transferor effective only on the transferor's death.

(d) The transferor's potential or actual receipt of income, including rights to the income retained in the trust instrument.

(e) 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 section 664 of the internal revenue code of 1986, 26 USC 664; and the transferor's right, at any time by written instrument delivered to the trustee, to release the transferor's interest in the trust, in whole or in part, in favor of a charitable organization that has or charitable organizations that have a succeeding beneficial interest in the trust.

(f) The transferor's potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust as those terms are described in section 2702 of the internal revenue code of 1986, 26 USC 2702, or the transferor's receipt each year of a percentage, not to exceed 5%, as provided in the governing instrument of the initial value of the trust property which value may be described either as a percentage or a fixed amount or determined from time to time under the governing instrument.

(g) 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 trustee's acting under any of the following:

(i) A discretionary trust provision.

(ii) A support provision.

(iii) The direction of an advisor acting under a discretionary trust provision or support provision.

(h) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor.

(i) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of that term as described in section 2702(c) of the internal revenue code of 1986, 26 USC 2702(c), or the transferor's possession and enjoyment of a qualified annuity interest within the meaning of that term as described in 26 CFR 25.2702-5(c)(8).

(j) 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 under a provision in the trust instrument that expressly provides for the payment of those taxes and if the potential or actual receipt of income or principal would be the result of a qualified trustee's or qualified trustees' acting in any of the following ways:

(i) In the qualified trustee's or qualified trustees' discretion or under a mandatory direction in the trust instrument.

(ii) At the direction of an advisor who is acting in the advisor's discretion.

(k) After the transferor's death, the power of a qualified trustee to pay the transferor's debts, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate, without regard to the source of the payment.

(l) The transferor's actual or potential receipt of a minimum required distribution as defined in 26 USC 4974(b) with respect to a retirement benefit.

History: 2016, Act 330, Eff. Mar. 8, 2017