

CHAPTER 89
FORMERLY
SENATE BILL NO. 42

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO FIDUCIARY RELATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33, Title 12 of the Delaware Code as follows:

§ 3303 Effect of provisions of instrument [For application of this section, see 79 Del. Laws, c. 172, § 79 Del. Laws, c. 352 § 6]

(a) Notwithstanding any other provision of this Code or other law, the terms of a governing instrument may expand, restrict, eliminate, or otherwise vary any laws of general application to fiduciaries, trusts and trust administration, including, but not limited to, any such laws pertaining to:

(1) The rights and interests of beneficiaries, including, but not limited to, the right to be informed of the beneficiary's interest for a period of time, as set forth in subsection (c) of this section;

(2) The grounds for removal of a fiduciary;

(3) The circumstances, if any, in which the fiduciary must diversify investments; and

(4) A fiduciary's powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from that instrument; provided, however, that nothing contained in this section shall be construed to permit the exculpation or indemnification of a fiduciary for the fiduciary's own wilful misconduct or preclude a court of competent jurisdiction from removing a fiduciary on account of the fiduciary's wilful misconduct. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this section. It is the policy of this section to give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments.

(b) In furtherance of and not in limitation of the provisions of subsection (a) of this section, the terms of a governing instrument of a trust established and existing for religious, charitable, scientific, literary, or educational purposes or for noncharitable purposes shall not be modified by the court to change the trust's purposes unless the purposes of the trust have become unlawful under the Constitution of this State or the United States or the trust would otherwise no longer serve any religious, charitable, scientific, literary, educational, or noncharitable purpose, in which case the court shall proceed in the manner directed by § 3541 of this title. A settlor may maintain an action to enforce a charitable or noncharitable trust under this section and may designate a person or persons, whether or not born at the time of such designation, to enforce a charitable or noncharitable trust under this section. For purposes of this subsection, a "noncharitable purpose" is a purpose within the meaning of § 3555 or § 3556 of this title.

(c) The terms of a governing instrument may expand, restrict, eliminate, or otherwise vary the right of a beneficiary to be informed of the beneficiary's interest in a trust for a period of time, including but not limited to

(1) a period of time related to the age of a beneficiary;

(2) a period of time related to the lifetime of each trustor and/or spouse of a trustor;

(3) a period of time related to a term of years or specific date; and/or

(4) a period of time related to a specific event that is certain to occur.

(d) During any period of time that a governing instrument restricts or eliminates the right of a beneficiary to be informed of the beneficiary's interest in a trust, unless otherwise provided in the governing instrument, any designated representative (as defined in section 3339 of this chapter) then serving shall represent and bind such beneficiary for purposes of any judicial proceeding and for purposes of any nonjudicial matter, and shall have the authority to, and is a proper party to, initiate a proceeding relating to the trust before a court or administrative tribunal on behalf of any such beneficiary.

(e) For purposes of this section, "judicial proceeding" means any proceeding before a court or administrative tribunal, including but not limited to, a proceeding that involves a trust whether or not the administration of the trust is governed by the laws of this State, and "nonjudicial matter" includes, but is not limited

to, the grant of consents, releases or ratifications pursuant to § 3588 of this title and the receipt of a report for purposes of measuring the limitation period described in § 3585 of this title.

§ 3339 Designated representatives of trusts.

(a) For purposes of this title, the term “designated representative” means a person who is authorized to act as a designated representative in the manner described in at least one of the following paragraphs of this subsection (a) and who delivers to the trustee such person’s written acceptance of the office of designated representative. A person who is authorized to act as a designated representative in the manner described in this subsection:

(1) is expressly appointed under the terms of a governing instrument as a designated representative or by reference to this section;

(2) is authorized or directed under the terms of a governing instrument to represent or bind one or more beneficiaries in connection with a judicial proceeding or nonjudicial matter, as those terms are defined in § 3303(e) of this chapter;

(3) is a person appointed by one or more persons who are expressly authorized under a governing instrument to appoint a person who is described in paragraph (1) or (2) of this subsection (a);

(4) is a person appointed by a beneficiary to act as a designated representative of such beneficiary; and/or

(5) is a person appointed by the trustor to act as designated representative for one or more beneficiaries.

(b) A designated representative shall be presumed to be a fiduciary.

Section 2. The provisions of this Act shall become effective upon enactment and shall apply to all trusts whenever created.

Approved July 10, 2015