

CHAPTER 35. Subchapter II. Accounting and Distribution of Trust Funds

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§ 3521. Trustees' accounts; filing; contents; approval.

Except as provided in §§ 3522 and 3523 of this title, all trustees named in wills, as well as trustees appointed by the Court of Chancery, shall file with the Register in Chancery in the county in which such wills are probated or in which such appointments are made and submit for the approval of the Court of Chancery just and true accounts, showing all receipts and disbursements of their trusts, as the Court requires, but not oftener than once in 2 years, unless there is special occasion. Such accounts shall also show the manner in which the principal of the trust is invested. Upon the request of the trustee or of any party in interest the Court shall, and upon its own motion may, proceed to approve or disapprove the investments, but otherwise the Court shall approve or disapprove the remainder of the account without passing upon the manner in which the principal of the trust is invested. Notwithstanding the foregoing provisions of this section, the trustee of an inter vivos trust, to whom property shall have been bequeathed or devised by a will, shall not be required to file any accounts with respect to such property so bequeathed or devised, except upon an order of the Court of Chancery, for cause shown, expressly requiring an accounting by such trustee nor shall a successor trustee of an inter vivos trust appointed by the Court of Chancery be required to file any accounts with respect to the property held in such trust, except as may be otherwise provided in the order of the Court of Chancery appointing such successor trustee or upon an order of the Court of Chancery, for cause shown, expressly requiring an accounting by such successor trustee.

25 Del. Laws, c. 226, § 2; 26 Del. Laws, c. 258, § 1; Code 1915, § 3874; 40 Del. Laws, c. 232, § 1; Code 1935, § 4400; 12 Del. C. 1953, § 3521; 51 Del. Laws, c. 326.;

§ 3522. Waiver of filing of accounts in will.

Trustees named in wills and trustees appointed by the Court shall be required to file accounts as described in § 3521 of this title only in accordance with the express terms, if any, of any such trust or upon order of the Court with respect to any such trust. A trustee who, pursuant to this section, is not required to file an account for a trust shall not be required to file an inventory with respect to such trust.

25 Del. Laws, c. 226, § 2; 26 Del. Laws, c. 258, § 1; Code 1915, § 3874; 40 Del. Laws, c. 232, § 1; Code 1935, § 4400; 12 Del. C. 1953, § 3522; 75 Del. Laws, c. 97, § 5; 76 Del. Laws, c. 90, § 20.;

§ 3523. Trustees' accounts in wills probated prior to April 5, 1909.

Trustees named in wills probated prior to April 5, 1909, may file and submit accounts of their trusts at such times as they deem necessary and they shall be required to file and submit accounts only upon a rule of the Register in Chancery issued upon them pursuant to the written request of any one beneficially interested in their trusts or upon the order of the Court of Chancery.

25 Del. Laws, c. 226, § 2; 26 Del. Laws, c. 258, § 1; Code 1915, § 3874; 40 Del. Laws, c. 232, § 1; Code 1935, § 4400; 12 Del. C. 1953, § 3523.;

§ 3524. [Reserved.]**§ 3525. Interest in lieu of other income on testamentary trusts pending payment or delivery to trustee of trust corpus.**

Repealed by 77 Del. Laws, c. 99, § 2, effective Aug. 1, 2009.

§ 3526. [Reserved.]**§§ 3527, 3527A. Total return unitrusts; express total return unitrusts.**

Transferred by 77 Del. Laws, c. 330, § 10, effective Aug. 1, 2010, to §§ 61-106 and 61-107 of this title.

§ 3528. Trustee's authority to invade principal in trust.

(a) Unless the terms of the instrument expressly provide otherwise, a trustee who has authority (whether acting at such trustee's discretion or at the direction or with the consent of an adviser), under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust (the "first trust") to make distributions to, or for the benefit of, one or more proper objects of the exercise of the power, may instead exercise such authority by appointing all or part of the principal subject to the power in favor of a trustee of a trust (the "second trust") under an instrument other than that under which the power to invade is created or under the same instrument, provided, however, that, except as otherwise provided in this subsection (a):

(1) The exercise of such authority is in favor of a second trust having only beneficiaries who are proper objects of the exercise of the power;

(2) In the case of any trust, contributions to which have been treated as gifts qualifying for the exclusion from gift tax described in

§ 2503(b) [26 U.S.C. § 2503(b)] of the Internal Revenue Code of 1986 (26 U.S.C. § 1, et seq.) (hereinafter referred to in this section as the "I.R.C."), by reason of the application of I.R.C. § 2503(c) [26 U.S.C. § 2503(c)], the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest and become distributable no later than the date upon which such interest would have vested and become distributable under the terms of the governing instrument for the first trust;

(3) The exercise of such authority does not reduce any income or unitrust interest of any beneficiary of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 [26 U.S.C. § 2056 or § 2523] or for state tax purposes under any comparable provision of applicable state law; and

(4) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary who is the only trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions.

Notwithstanding the foregoing provisions of this subsection (a) of this section, the governing instrument for the second trust may grant a power of appointment (including a power to appoint trust property to the powerholder, the powerholder's creditors, the powerholder's estate, the creditors of the powerholder's estate or any other person, whether or not such person is a trust beneficiary) to 1 or more of the trust beneficiaries who are proper objects of the exercise of the power in the first trust. Furthermore, notwithstanding the foregoing provisions of this subsection (a), the governing instrument of the second trust may provide that, at a time or upon an event specified in the governing instrument, the remaining trust assets shall thereafter be held for the benefit of the beneficiaries of the first trust upon terms and conditions concerning the nature and extent of each such beneficiary's interest that are substantially identical to the first trust's terms and conditions concerning such beneficial interests. The exercise of a trustee's authority granted under this subsection (a) shall in all respects comply with any standard that limits the trustee's authority to make distributions from the first trust but may be exercised whether or not the trustee would have been permitted to exercise the power to make a current outright distribution of all of the trust assets in compliance with any such standard. For purposes of this subsection (a), an open class of beneficiaries identified in the governing instrument for the first trust (such as, but not limited to, a class comprised of the descendants of a person who is living or who has living descendants) is a proper object of the exercise of a power to make distributions and the exercise of such a power in favor of a second trust having only beneficiaries, including unborn future beneficiaries, who are among the members of the open class satisfies the requirement of paragraph (1) of this subsection (a) provided that the governing instrument for the second trust permits distributions to

or among members of the class only when and to the extent permitted by the governing instrument for the first trust. A trustee's power, pursuant to this subsection (a), to appoint principal in favor of the trustee of a second trust shall include the power to create the second trust.

(b) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be by an instrument in writing, signed and acknowledged by the trustee and filed with the records of the trust.

(c) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be considered the exercise of a power of appointment (other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate) and shall be subject to the provisions of Chapter 5 of Title 25 covering the time at which the permissible period of the rule against perpetuities begins and the law which determines the permissible period of the rule against perpetuities.

(d) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust which arises under any other section of this chapter or under another statute or under common law.

(e) When exercising the authority granted under subsection (a) of this section, the trustee and any adviser directing or consenting to the trustee's exercise of such authority shall be held to the standard of care and the standard of liability applicable to the trustee and any such adviser when making outright distributions, free from trust, to or for the benefit of one or more permissible distributees.

(f) This section shall be available to any trust that is administered in this State.

74 Del. Laws, c. 81, § 3; 74 Del. Laws, c. 271, § 2; 75 Del. Laws, c. 300, § 2; 76 Del. Laws, c. 90, § 3; 77 Del. Laws, c. 98, § 13.; 78 Del. Laws, c. 117, §§ 6, 7.;