

2012 -- S 2497

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LC00985
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO FIDUCIARIES -- POWERS OF FIDUCIARIES

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 16, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 18-4 of the General Laws entitled "Powers of Fiduciaries" is
2 hereby amended by adding thereto the following section:

3 **18-4-31. Power to invade principal in trust.** – (a)(1) Unless the trust instrument
4 expressly provides otherwise or unless the trust is a "Special Needs Trust" or "Supplemental
5 Needs Trust" created in accordance with 42 United States Code section 1396p(d)(4)(A), a trustee
6 who has absolute power under the terms of a trust to invade the principal of the trust, referred to
7 in this section as the "first trust," to make distributions to or for the benefit of one or more
8 persons, may instead exercise the power by appointing all or part of the principal of the trust
9 subject to the power in favor of a trustee of another trust, referred to in this section as the "second
10 trust," for the current benefit of one or more of such persons under the same trust instrument or
11 under a different trust instrument, provided:

12 (i) The beneficiaries of the second trust may include only beneficiaries of the first trust;

13 (ii) The second trust may not reduce any fixed income, annuity or unitrust interest in the
14 assets of the first trust; and

15 (iii) If any contribution to the first trust qualified for a marital or charitable deduction for
16 federal income, gift or estate tax purposes under the Internal Revenue Code of 1986, as amended
17 26 U.S.C. section 1, et seq., the second trust shall not contain any provisions which, if included in
18 the first trust, would have prevented the first trust from qualifying for such a deduction or would
19 have reduced the amount of such deduction.

1 (2) For purposes of this subsection, an absolute power to invade principal shall include a
2 power to invade principal that is not limited to specific or ascertainable purpose, such as health,
3 education, maintenance, and support whether or not the term “absolute” is used. A power to
4 invade principal for purposes such as best interests, welfare, comfort, or happiness shall constitute
5 an absolute power not limited to specific or ascertainable purposes.

6 (b) The exercise of a power to invade principal under subsection (a)(1) or (a)(2) shall be
7 by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of
8 the first trust.

9 (c) The exercise of a power to invade principal under subsection (a)(1) or (a)(2) shall be
10 considered the exercise of a power of appointment, other than a power to appoint to the trustee,
11 the trustee’s creditors, the trustee’s estate, or the creditors of the trustee’s estate.

12 (d) The trustee shall notify all qualified beneficiaries (as hereinafter defined) of the first
13 trust, in writing, at least sixty (60) days prior to the effective date of the trustee’s exercise of the
14 trustee’s power to invade principal pursuant to subsection (a)(1) or (a)(2) of the manner in which
15 the trustee intends to exercise the power. A copy of the proposed instrument exercising the
16 power shall satisfy the trustee’s notice obligation under this subsection. If all qualified
17 beneficiaries waive the notice period by signed written instrument delivered to the trustee, the
18 trustee’s power to invade principal shall be exercisable immediately. The trustee’s notice under
19 this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee’s
20 power to invade principal except as provided in other applicable provisions of this title.

21 (e) “Qualified Beneficiary” means a living beneficiary who, on the date the beneficiary’s
22 qualifications is determined:

23 (1) Is a distributee or permissible distribute of trust income or principal;

24 (2) Would be a distribute or permissible distribute of trust income or principal if the
25 interests of the distributes described in subsection (a) terminated on that date without causing the
26 trust to terminate; or

27 (3) Would be a distributee or permissible distribute of trust income or principal if the
28 trust terminated in accordance with its terms on that date.

29 (f) The exercise of the power to invade principal under subsection (a)(1) or (a)(2) is not
30 prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits
31 amendment or revocation of the trust.

32 (g) Nothing in this section is intended to create or imply a duty a exercise a power to
33 invade principal, and no inference of impropriety shall be made as a result of a trustee not
34 exercising the power to invade principal conferred under subsection (a)(1) or (a)(2).

1 (h) The provisions of this section shall not be construed to abridge the right of any trustee
2 who has a power of invasion to appoint property in further trust that arises under the terms of the
3 first trust or under any other section of this title or under another provisions of law or under
4 common law.

5 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO FIDUCIARIES -- POWERS OF FIDUCIARIES

- 1 This act would permit a trustee who has absolute power to invade principal of a trust to
- 2 make distributions to a second trust for the benefit of the same beneficiaries.
- 3 This act would take effect upon passage.

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