WEST VIRGINIA CODE: §44D-8B-2

§44D-8B-2. Definitions.

In addition to the definitions contained in §44D-1-103 of this code which apply to this article:

- (1) "Appointive property" means the property or property interest subject to a power of appointment.
- (2) "Authorized fiduciary" means:
- (A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;
- (B) A special fiduciary appointed under §44D-8B-9 of this code; or
- (C) A special-needs fiduciary under §44D-8B-13 of this code.
- (3) "Charitable interest" means an interest in a trust which:
- (A) Is held by an identified charitable organization and makes the organization a qualified beneficiary;
- (B) Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or
- (C) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.
- (4) "Charitable organization" means:
- (A) A person, other than an individual, organized and operated exclusively for charitable purposes; or
- (B) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.
- (5) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.
- (6) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under this article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

- (7) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.
- (8) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.
- (9) "First-trust instrument" means the trust instrument for a first trust.
- (10) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.
- (11) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.
- (12) "Powerholder" means a person in which a donor creates a power of appointment.
- (13) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:
- (A) Includes a power of appointment exercisable only after:
- (i) The occurrence of the specified event;
- (ii) The satisfaction of the ascertainable standard; or
- (iii) The passage of the specified time; and
- (B) Does not include a power exercisable only at the powerholder's death.
- (14) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. §674(b)(5)(A) and any applicable regulations.
- (15) "Second trust" means:
- (A) A first trust after modification under this article: or
- (B) A trust to which a distribution of property from a first trust is or may be made under this article.
- (16) "Second-trust instrument" means the trust instrument for a second trust.