# WEST VIRGINIA CODE: §44-5A-5

**§44-5A-5. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.**

(a) Where a will, trust or other governing instrument authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or a separate trust to be funded by a pecuniary amount or formula unless the will, trust or other governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution, and if any pecuniary bequests or separate trusts established under the will or trust by a pecuniary amount or formula is not entirely funded or an amount necessary to fund the bequest or trust completely is not irrevocably set aside within fifteen months after the date of the testator's or grantor's death, the fiduciary shall allocate to the bequest or trust a prorata share of the income earned by the estate of the testator or grantor or other fund from which the bequest or trust is to be funded between the date of death of the testator or grantor and the date or dates of the funding.

(b) Whenever a fiduciary under the provisions of a will, trust or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust and is authorized to satisfy the bequest or transfer by selection and distribution of assets in kind, and the will, trust or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will, trust or other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest or transfer. This section does not apply to prevent a fiduciary from carrying into effect the provisions of the will, trust or other governing instrument that the fiduciary, in order to implement the bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) (1) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust is authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of the bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of the bequest or transfer in trust and any such agreement heretofore entered

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into after April 1, 1964, is hereby validated. The fiduciary is authorized to enter into any other agreement not in conflict with the express terms of the will, trust or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction or other deduction or exemption available under the Internal Revenue laws of the United States of America, and to do and perform all acts incident to that purpose.

(2) Unless ordered by a court of competent jurisdiction, the bank or trust company operating a common trust fund, as provided in section six of this article, is not required to render an accounting with regard to the fund, before any fiduciary commissioner but it may, by application to the circuit court of the county in which is located the principal place of business of the bank or trust company, secure the approval of an accounting in the condition the court may fix: Provided, That nothing in this section relieves a fiduciary acquiring, holding or disposing of an interest in any common trust fund from making an accounting as required by law with respect of the interest.

(d) The fiduciary of any trust created by will, trust or other governing instrument may from time to time without need of court approval to divide the trust or trusts for purposes of the generation skipping transfer tax ("GST") of section 2601 of the Internal Revenue Code of 1986, as in effect on January 1, 2010, or any similar or successor law of like import, or for any other tax, administrative or other purposes. In exercising this authority for inclusion ratio, marital deduction election, reverse qualified terminal interest property election or other GST or other tax purposes, the power shall be exercised in a manner that complies with applicable Internal Revenue Code Treasury Regulations or other requirements for accomplishing the intended purposes. If that division is made for purposes of separating assets with respect to which the federal estate tax marital deduction election is to be made from those as to which the election is not to be made, the division shall be done on a fractional or percentage basis and the assets of the trust or other fund to be divided shall be valued for purposes of the division on the date or dates of division.

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