WEST VIRGINIA CODE: §44-5A-6

§44-5A-6. Restrictions on exercise of power for fiduciary' benefit.

(a) A power conferred upon a person in his or her capacity as fiduciary to make discretionary distributions of principal or income to himself or herself or to make discretionary allocations in his or her favor of receipts or expenses between income and principal cannot be exercised by him or her. If the power is conferred on two or more fiduciaries, it may be exercised by the fiduciaries who are not so disqualified. If there is no fiduciary qualified to exercise the power, it may be exercised by a special fiduciary appointed by the court authorized under article fourteen of this chapter, and in accordance with the procedure described therein, to appoint a successor or substitute trustee. Except as provided in subsection (c) of this section this section applies to all trusts now in existence and to all trusts which are created later.

(b) Unless either: (1) Mandatory; (2) limited by an ascertainable standard relating to the health, education, support or maintenance of the fiduciary; or (3) exercisable by the fiduciary only in conjunction with another person having a substantial interest in the trust which is adverse to the interest of the fiduciary, a power to make distributions of principal or income is a discretionary power for purposes of this section.

(c) This section does not apply to trusts that come into existence or are amended after the effective date of this section which show a clear intent that this section does not apply.

WV Legislature