

# WEST VIRGINIA CODE: §44B-1-105

## **§44B-1-105. Trustee's right to give notice.**

(a) A trustee may but is not required to give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

(1) The name and mailing address of the trustee;

(2) The name and telephone number of a person who may be contacted for additional information;

(3) A description of the action proposed to be taken and an explanation of the reasons for the action;

(4) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action;

(5) The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed

action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

(h) In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under section one hundred four, the sole remedy is to direct, deny, or devise an adjustment between principal and income.

(i) Nothing in this section is intended to create or imply a duty to give notice and a trustee is not liable for choosing not to give notice or for not considering whether to give notice.

(j) This chapter applies to any will and trust established under an instrument executed on or after the effective date of this chapter except as otherwise expressly provided in the will or terms of the trust or in this chapter, or if the trustee or personal representative elects in either's sole discretion to administer the trust or will under this chapter. With respect to any will or trust established under an instrument executed prior to the effective date of this chapter, this chapter applies if the trustee or personal representative elects, in either's sole discretion, to administer the trust or will under this chapter.