WEST VIRGINIA CODE: §44D-1-103

§44D-1-103. Definitions.

In this chapter:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent;

(B) In a capacity other than that of trustee, holds a power of appointment over trust property; or

(C) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in §44D-4-405 of this code.

(5) "Conservator" means a person appointed by the court to administer the estate and financial affairs of a protected person.

(6) "Court" means a court of this state having proper jurisdiction under §44D-2-203 of this code, and venue under §44D-2-204 of this code.

(7) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

(8) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(9) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(10) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health, and welfare of a minor. The term does not include a guardian ad litem.

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(11) "Interested person" means heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust or the property in a trust. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved, in any proceeding.

(12) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(13) "Internal Revenue Code" or "Internal Revenue Code of 1986" has the same meaning as when used in a comparable context in the laws of the United States then in effect relating to income, estate, generation-skipping transfer, and other taxes, including all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature in §11-21-9 of this code.

(14) "Jurisdiction" with respect to a geographic area, includes a state or country.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, unincorporated nonprofit association, charitable organization, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(16) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(A) Exercisable by a trustee and limited by an ascertainable standard; or

(B) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(17) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(18) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (B) of this subdivision terminated on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

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(19) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. “Record” does not include a will of the grantor, unless the will is duly admitted to probate.

(20) "Revocable", as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

(21) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(22) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(24) "Terms of a trust" means:

(A) Except as otherwise provided in paragraph (B); and the manifestation of the grantor’s intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) Established by other evidence that would be admissible in a judicial proceeding; or

(B) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) A court order; or

(iii) A nonjudicial settlement agreement under §44D-1-111 of this code.

(25) "Trust instrument" means a will of the grantor which is duly admitted to probate, or a record, signed by the grantor, that contains terms of the trust, including any amendments thereto.

(26) "Trustee" includes an original, additional, successor trustee and a cotrustee.

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