WEST VIRGINIA CODE CHAPTER 44D ARTICLE 4

WV Legislature

§44D-4-401. Methods of creating trust.

(a) A trust may be created by:

(1) Transfer of property to another person as trustee during the grantor's lifetime by the grantor or by will or by other disposition taking effect upon the grantor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

(3) Exercise of a power of appointment in favor of a trustee; or

(4) An order of the court.

(b) During the grantor's lifetime, a trust may also be created by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf or which expressly authorizes the agent to fund an existing trust of the grantor on the grantor's behalf.

WV Legislature

§44D-4-402. Requirement for creation.

(a) Except as created by an order of the court, a trust is created only if:

(1) The grantor has capacity to create a trust;

(2) The grantor indicates an intention, in a trust instrument, to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in §44D-4-408 of this code; or

(C) A trust for a noncharitable purpose, as provided in §44D-4-409 of this code;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Notwithstanding the foregoing:

(1) In accordance with §41-3-8 of this code, a trust is valid regardless of the existence, value, or character of the corpus of the trust.

(2) The grantor need not have capacity to create a trust if the trust is created in a record during the grantor's lifetime by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf.

(e) A trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

WV Legislature

§44D-4-403. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The grantor was domiciled, had a place of abode, or was a national;

(2) A trustee was domiciled or had a place of business; or

(3) Any trust property was located.

WV Legislature

§44D-4-404. Trust purposes.

A trust may be created only to the extent its purposes are lawful, not contrary to public policy and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

WV Legislature

§44D-4-405. Charitable purposes; enforcement.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, upon petition by the trustee or a person having a special interest in the trust, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the grantor's intention to the extent it can be ascertained.

(c) The grantor of a charitable trust, trustee or a person having a special interest in the trust, may maintain a proceeding to enforce the trust.

(d) This section is not intended to override the provisions of section four, article one, chapter thirty-five of this code or section two, article two of said chapter, concerning conveyances, devises, dedications, gifts or bequests to religious organizations, and to the extent there is a conflict with those sections, this section controls.

WV Legislature

§44D-4-406. Creation of trust induced by fraud, duress or undue influence.

A trust is void to the extent its creation was induced by fraud, duress or undue influence. As used in this section, "fraud", "duress" and "undue influence" have the same meanings for trust validity purposes as they have for purposes of determining the validity of a will.

WV Legislature

§44D-4-407. Oral trusts unenforceable.

Oral trusts are unenforceable in this state.

WV Legislature

§44D-4-408. Trust for care of animal.

(a) A trust may be created to provide for the care of an animal alive during the grantor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the grantor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use must be distributed to the grantor, if then living, otherwise to the grantor's successors in interest.

WV Legislature

§44D-4-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in section four hundred eight of this article, or by the provisions of article five-a, chapter thirty-five of this code, or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than the period set forth in section one, article one-a, chapter thirty-six of this code.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use must be distributed to the grantor, if then living, otherwise to the grantor's successors in interest.

WV Legislature

§44D-4-410. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by sections four hundred eleven through four hundred fourteen, article four of this chapter, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections four hundred eleven through four hundred sixteen of this article, or trust combination or division under section four hundred seventeen of this article, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section four hundred eleven of this article may be commenced by the grantor. The grantor of a charitable trust may maintain a proceeding to modify the trust under section four hundred thirteen of this article.

WV Legislature

§44D-4-411. Modification or termination of noncharitable irrevocable trust by consent.

(a) If, upon petition, the court finds that the grantor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A grantor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust instrument; by the grantor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the grantor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust instrument is presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If all of the beneficiaries do not consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination including any distributions of the trust property, may be approved by the court if the court is satisfied that:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a beneficiary who does not consent will be adequately protected.

WV Legislature

§44D-4-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the grantor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the grantor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

WV Legislature

§44D-4-413. Cy pres.

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) The charitable trust does not fail, in whole or in part;

(2) The charitable trust property does not revert to the grantor or the grantor's successors in interest; and

(3) Upon petition by a trustee or a person having a special interest in the trust, the court shall apply cy pres to fulfill as nearly as possible the grantor's charitable intention, whether it be general or specific.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) The charitable trust property is to revert to the grantor and the grantor is still living; or

(2) Fewer than twenty-one years have elapsed since the date of the trust's creation.

WV Legislature

§44D-4-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of a noncharitable trust property having a total value less than $200,000 may terminate the trust, without the necessity of court approval, if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

WV Legislature

§44D-4-415. Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the grantor's intention if it is proved by preponderance of the evidence that both the grantor's intent and the terms of the trust instrument were affected by a mistake of fact or law, whether in expression or inducement.

WV Legislature

§44D-4-416. Modification to achieve grantor's tax objectives.

To achieve the grantor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the grantor's probable intention. The court may provide that the modification has retroactive effect.

WV Legislature

§44D-4-417. Combination and division of trusts.

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

WV Legislature