WEST VIRGINIA CODE: §44D-5-503C

§44D-5-503c. Vacancies; revocability of trust; right to withdraw.

(a) A vacancy in the position of qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be a qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee;

(2) By a person eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be a qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq*. of this code.

(b) A vacancy in the position of independent qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be an independent qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee; or

(2) By a person eligible to be an independent qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be an independent qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq*. of this code.

(c) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

(1) A power of appointment, exercisable by the grantor by will or other record effective only upon the grantor's death, other than a power to appoint to the grantor's estate or the creditors of the grantor's estate;

(2) The grantor's qualified interest in the trust;

(3) The grantor's right to receive income or principal pursuant to an ascertainable standard;

(4) The grantor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of Section 664(d) of the Internal Revenue Code) and the grantor's right, at any time, and from time to time, to release, in a record delivered to the qualified trustee, all or any part of the grantor's retained interest in such trust;

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(5) The grantor's receipt each year of a percentage, not to exceed five percent, specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument;

(6) The grantor's right to remove a qualified trustee or independent qualified trustee and to appoint a new trustee who meets the same criteria;

(7) The grantor's potential or actual use of real property held under a personal residence trust (within the meaning of Section 2702(c) of the Internal Revenue Code);

(8) The grantor's potential or actual receipt or use of a qualified annuity interest (within the meaning of Section 2702 of the Internal Revenue Code);

(9) The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the grantor's death, all or any part of the grantor's debts outstanding at the time of the grantor's death, the expenses of administering the grantor's estate, or any federal or state estate, inheritance, or death tax imposed on or with respect to the grantor's estate; and

(10) A grantor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the grantor for such tax payments.

(d) A beneficiary who has the right to withdraw his or her entire beneficial interest in a trust shall be treated as its grantor to the extent of such withdrawal right, when such right to withdraw has lapsed, been released, or otherwise expired, without regard to the limitations otherwise imposed by §44D-505(b) of this code.

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