WEST VIRGINIA CODE: §44D-5-503b

§44D-5-503b. Definitions.

As used in this article, unless the context requires a different meaning:

(a) "Qualified trustee" means any person who is a natural person residing within the state or a legal entity authorized to engage in trust business within the state and who maintains or arranges for custody within the state of some or all of the property that has been transferred to the trust by the grantor, maintains records within the state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation within the state of fiduciary income tax returns for the trust, or otherwise materially participates within the state in the administration of the trust. A trustee is not a qualified trustee if such trustee's authority to make distributions of income or principal or both are subject to the direction of someone who, were that person a trustee of the trust, would not meet the requirements to be a qualified trustee.

(b) "Independent qualified trustee" means a qualified trustee who is not, and whose actions are not, subject to direction by:

(1) The grantor;

(2) Any natural person who is not a resident of the state;

(3) Any entity that is not authorized to engage in trust business within the state;

(4) The grantor's spouse;

(5) A parent of the grantor;

(6) Any descendant of the grantor; or

(7) A sibling of the grantor.

(c) "Qualified interest" means a grantor's interest in a qualified self-settled spendthrift trust, to the extent that such interest entitles the grantor to receive distributions of income, principal, or both, in the sole discretion of an independent qualified trustee. A grantor may have a qualified interest in a qualified self-settled spendthrift trust and also have an interest in the same trust that is not a qualified interest, and the rules of section five hundred five of this article shall apply to each interest of the grantor in the same trust other than the grantor's qualified interest.

(d) "Qualified self-settled spendthrift trust" means a trust if:

(1) The trust is irrevocable;

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(2) The trust is created during the grantor's lifetime;

(3) There is, at all times when distributions could be made to the grantor pursuant to the grantor's qualified interest, at least one beneficiary other than the grantor:

(i) To whom income may be distributed, if the grantor's qualified interest relates to trust income;

(ii) to whom principal may be distributed, if the grantor's qualified interest relates to trust principal; or

(iii) to whom both income and principal may be distributed, if the grantor's qualified interest relates to both trust income and principal;

(4) The trust has at all times at least one qualified trustee, who may be, but need not be, an independent qualified trustee;

(5) The trust instrument expressly incorporates the laws of this state to govern the validity, construction and administration of the trust;

(6) The trust instrument includes a spendthrift provision, as defined in section five hundred two of this article, that restrains both voluntary and involuntary transfer of the grantor's qualified interest;

(7) The grantor does not have the right to disapprove distributions from the trust; and

(8) The grantor duly executes a qualified affidavit before or substantially contemporaneously with the making of the transfer of the asset or assets into the trust.

(e) "Qualified affidavit" means a duly executed affidavit of the grantor which contains under oath all of the following statements, or statements substantially to the effect:

(1) The property being transferred to the trust was not derived from unlawful activities;

(2) The grantor has full right, title, and authority to transfer the property to the trust;

(3) The grantor will not be rendered insolvent immediately after the transfer of the property to the trust;

(4) The grantor does not intend to defraud any creditor by transferring the property to the trust;

(5) There are no pending or threatened court actions against the grantor, except for any court action expressly identified in the affidavit or an attachment to the affidavit;

(6) The grantor is not involved in any administrative proceeding, except for any proceeding expressly identified in the affidavit or an attachment to the affidavit;

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(7) The grantor is not indebted on account of an agreement or order of court for the payment of support or alimony in favor of such transferor's spouse, former spouse or children, or for a division or distribution of property incident to a judicial proceeding with respect to a divorce or annulment in favor of such transferor's spouse or former spouse, except for any such indebtedness expressly identified in the affidavit or an attachment to the affidavit; and

(8) The grantor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code of the United States.

An affidavit is defective and is not a qualified affidavit if it materially fails to meet the requirements set forth in this subsection. An affidavit is not considered defective and is a qualified affidavit if it contains any nonsubstantive variances from the language set forth in this subsection, it contains statements or representations in addition to those required in this subsection which do not materially contradict the required statements or representations or there are any technical errors in the form, substance or method of preparation or execution of the affidavit if those errors were not the fault of the affiant and the affiant reasonably relied upon another person to prepare or notarize the affidavit.

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