WEST VIRGINIA CODE: §44D-8-814

§44D-8-814. Discretionary powers; tax savings.

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust instrument, including the use of such terms as "absolute," "sole" or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the general and specific terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust instrument expressly indicate that a rule in this subsection does not apply:

(1) A person other than a grantor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court having jurisdiction may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) A power held by the grantor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or Section 2523(e) of the Internal Revenue Code;

(2) Any trust during any period that the trust may be revoked or amended by its grantor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

WV Legislature