

**§7-405. Power to convert to unitrust**

**1. Convert to unitrust; requirements.** Unless expressly prohibited by the terms of the trust, a trustee may release the power to adjust under section 7-404 and convert a trust into a unitrust as described in this section if all of the following apply:

A. The trustee determines that the conversion will improve the ability of the trustee to carry out the intent of the settlor and the purposes of the trust; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to the following beneficiaries:

(1) All beneficiaries who are currently eligible to receive income from the trust; and

(2) All beneficiaries who would receive, if no power of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. There is at least one beneficiary eligible to receive income and at least one beneficiary who would receive principal as described in paragraph B; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice required under paragraph B. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**2. Petition to convert.** If a beneficiary timely objects to the conversion to a unitrust under subsection 1 or if the requirements of subsection 1, paragraph C are not met, the trustee may petition the court to approve the conversion to a unitrust. A beneficiary may request a trustee to convert to a unitrust and, if the trustee does not convert, the beneficiary may petition the court to order the conversion. Upon receipt of a petition by the trustee or a beneficiary, the court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will better enable the trustee to carry out the intent of the settlor and the purposes of the trust.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3. Factors.** In deciding whether to exercise the power conferred by subsection 1, a trustee shall consider the following factors to the extent they are relevant:

A. The nature, purpose and expected duration of the trust; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The needs for liquidity, regularity of income and preservation and appreciation of capital; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and

the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. The anticipated tax consequences of the conversion. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**4. After conversion; requirements.** After a trust is converted to a unitrust, all of the following apply:

A. The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital, from earnings and distributions from capital or from both; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The trustee shall make regular distributions in accordance with the terms of the trust construed in accordance with the provisions of this section; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Income" in the terms of the trust means an annual distribution, known as the "unitrust distribution," equal to 4%, known as the "payout percentage," of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this Part, averaged over the lesser of the 3 preceding years and the period during which the trust has been in existence. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**5. Trustee's determination.** The trustee of a unitrust subject to this section may in the trustee's discretion from time to time determine all of the following:

A. The effective date of a conversion to a unitrust; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payment commences or ceases; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The frequency of unitrust distributions during the year; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The effect of other payments from or contributions to the trust on the trust's valuation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Whether to value the trust's assets annually or more frequently; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. What valuation dates to use; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. How frequently to value nonliquid assets and whether to estimate their value; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Whether to omit from the calculation of the unitrust distribution trust property occupied or possessed by a beneficiary; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Any other matters necessary for the proper functioning of the unitrust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. F, §1 (AFF); PL 2019, c. 417, Pt. B, §14 (NEW).]

**6. After conversion; allocation provisions.** After a trust is converted to a unitrust, the following allocation provisions apply to the trust:

A. Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid from net income, as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution must be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution must be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution must be paid from the principal of the trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**7. Petition for changes.** The trustee of a unitrust subject to this section or, if the trustee declines to do so, a beneficiary may petition the court to do any of the following:

A. Select a payout percentage other than 4%; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Average the valuation of the trust's net assets over a period other than 3 years; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 7-404 is revived. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**8. Conversion does not affect certain trust provisions.** A conversion to a unitrust does not affect a provision in the terms of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.  
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**9. Conversion not permitted.** A trustee may not convert a trust into a unitrust if any of the following applies:

A. Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under a will or the terms of the trust unless both income and principal are so set aside; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The trustee's possession or exercise of the power to convert would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The trustee's possession or exercise of the power to convert would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to convert; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed if the trustee did not have the power to convert; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The trustee is a beneficiary of the trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**10. Conversion by cotrustee.** If subsection 9, paragraph C, D or F applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from exercising the power to convert. If subsection 9, paragraph C, D or F applies to all the trustees, the trustees may petition the court to direct a conversion.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**11. Release of power to convert.** A trustee may release the power conferred by subsection 1 to convert to a unitrust if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection 9, paragraph C, D or E or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 9. The release of the power to convert to a unitrust may be permanent or for a specified period, including a period measured by the life of an individual.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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