

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 64.2-776 of the Code of Virginia, relating to Uniform Trust Code;*  
 3 *interested trustees subject to ascertainable standard.*

4 [S 758]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 64.2-776 of the Code of Virginia is amended and reenacted as follows:**8 **§ 64.2-776. Discretionary powers; tax savings.**

9 A. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including  
 10 the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary  
 11 power in good faith and in accordance with the terms and purposes of the trust and the interests of the  
 12 beneficiaries.

13 B. Subject to subsection D, and unless the terms of the trust expressly indicate that a rule in this  
 14 subsection does not apply:

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

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

20 *For purposes of this subsection, "trustee" includes a person who is deemed to have any power of a*  
 21 *trustee, whether because such person has the right to remove or replace any trustee or because a*  
 22 *reciprocal trust or power doctrine applies.*

23 C. A power whose exercise is limited or prohibited by subsection B may be exercised by a majority  
 24 of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all  
 25 trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise  
 26 the power.

27 D. Subsection B does not apply to:

28 1. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as  
 29 defined in § 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective  
 30 date of this chapter, or as later amended, was previously allowed;

31 2. Any trust during any period that the trust may be revoked or amended by its settlor; or

32 3. A trust if contributions to the trust qualify for the annual exclusion under § 2503(c) of the Internal  
 33 Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

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