

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 839

An Act to amend and reenact § 55-19.4 of the Code of Virginia, relating to petition for the modification of a trust.

[H 488]

Approved April 8, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 55-19.4 of the Code of Virginia is amended and reenacted as follows:

§ 55-19.4. Petition for modification of trust.

A. Upon petition by a trustee, personal representative or beneficiary in the circuit court in which the trustee or personal representative qualified, or if there is no such qualification, the circuit court for the jurisdiction in which the trustee, personal representative or beneficiary resides, or if the trustee is a corporate trustee and there is no resident beneficiary, the circuit court where the trust account is administered, the circuit court may, for good cause shown, ~~reform~~ *modify* a trust in any manner, including, without limitation, dividing a trust into two or more separate trusts, consolidating two or more separate trusts into a single trust, or terminating the trust and ordering distribution of the trust property ~~regardless of any. However, termination shall not be ordered if the creator of a trust has included a spendthrift or similar protective provision unless the costs of administration are such that the establishment or continuance of the trust would impair the trust purposes.~~

B. Before taking any action permitted under subsection A, the court must first find that:

1. In the case of consolidation, the dispositive provisions of the trusts to be consolidated are substantially similar; and

2. In the case of any ~~reformation other than modification, including~~ termination, such action will neither (i) materially impair the accomplishment of the trust purposes nor (ii) adversely affect the interests of any beneficiary.

C. The court may order that the ~~reformation~~ *modification* be effective prospectively only or be retroactive to the date of the trust's creation, the date of death of the trustor or testator or such other date as the court may direct. The court may make such other and further orders as the court deems proper to protect the interests of the beneficiaries, the trustee, the personal representative, or any party in interest. The court may order distribution of the interest of a minor or incapacitated beneficiary, or any portion thereof, upon termination or other ~~reformation~~ *modification* of a trust, to a custodian under the Virginia Uniform Transfers to Minors Act (§ 31-37 et seq.) or to a custodial trustee under the Virginia Uniform Custodial Trust Act (§ 55-34.1 et seq.).

D. In the interpretation, construction and application of this section, the following rules shall apply:

1. For purposes of any ~~reformation~~ *modification* of a trust, good cause may be shown by evidence of (i) changes in any federal or Virginia tax laws, or the construction of such laws, whether by statute, court decision, regulation, ruling or otherwise, which, in the absence of ~~reformation~~ *modification*, would materially impair the purposes of the trust or adversely affect the interests of the trustor or any beneficiary, or which, if ~~reformation~~ *modification* were made, would materially benefit the trust or the interests of the trustor or any beneficiary or (ii) existing circumstances such that the purposes of the trust will be impaired or the interests of the trustor or any beneficiary adversely affected if the ~~reformation~~ *modification* is not made or that ~~reformation~~ *modification* if made would benefit the trust or interests of the trustor or any beneficiary.

2. For purposes of termination of a trust, good cause may be shown as set forth in subdivision 1 of this subsection or by evidence that ~~(i) the costs of administration are such that the establishment or the continuance of the trust would impair the purposes of the trust or (ii) the value of the trust principal is \$25,000 or less, with no expectation of additions to the principal other than from interest or other earnings.~~

3. ~~Any beneficiary or other party in interest to the proceeding may execute a written waiver of any requirement for reformation of a trust, whether pursuant to this section or by the court, provided such waiver shall apply only to such party's interest in the trust.~~

E. This section shall apply to all trusts, whether inter vivos or testamentary, whether created by the same or different instruments or by the same or different persons, and regardless of the time, place or method of creation or administration.

F. This section shall not be construed to restrict or limit the right of a trustee or personal representative, acting in such capacity, to divide, consolidate, terminate or otherwise reform trusts without judicial approval in accordance with applicable provisions of the governing instrument or existing law.