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HOUSE BILL NO. 488

Offered January 18, 1996

A BILL to amend and reenact § 55-19.4 of the Code of Virginia, relating to petition for the reformation of a trust.

Patron—Diamonstein (By Request)

Referred to Committee for Courts of Justice

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 reformation 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 ~~except when the testator has included a spendthrift or similar protective provision.~~

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~~ modification 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.

INTRODUCED

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