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HOUSE BILL NO. 1008

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 55-544.11 and 55-551.06 of the Code of Virginia, relating to the prospective application of the trust laws.

 Patron—Hurt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-544.11 and 55-551.06 of the Code of Virginia are amended and reenacted as follows:**

§ 55-544.11. (Effective July 1, 2006) Modification or termination of noncharitable irrevocable trust by consent.

A. If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. *This subsection applies only to irrevocable trusts created on or after July 1, 2006, and to revocable trusts that become irrevocable on or after July 1, 2006.*

B. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

C. Upon termination of a trust under subsection A or B, the trustee shall distribute the trust property as agreed by the beneficiaries.

D. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection A or B, the modification or termination may be approved by the court if the court is satisfied that:

1. If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

2. The interests of a beneficiary who does not consent will be adequately protected.

§ 55-551.06. (Effective July 1, 2006) Application to existing relationships.

A. Except as otherwise provided in this chapter:

1. This chapter applies to all trusts created ~~before~~, on, or after July 1, 2006;

2. This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2006; *and*

3. ~~This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2006, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;~~

4. ~~Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust; and~~

5. ~~An act done before July 1, 2006, is not affected by this chapter;~~

B. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded.

INTRODUCED

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