

1 SB35
2 208749-2
3 By Senator Albritton
4 RFD: Finance and Taxation General Fund
5 First Read: 02-FEB-21
6 PFD: 01/07/2021

1 SB35

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4 ENROLLED, An Act,

5 Relating to the Alabama Uniform Trust Decanting Act;
6 to amend Sections 19-3D-7 and 19-3D-9, Code of Alabama 1975,
7 to provide further for the failure to receive notice.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 19-3D-7 and 19-3D-9, Code of
10 Alabama 1975, are amended to read as follows:

11 "§19-3D-7.

12 "(a) In this section, a notice period begins on the
13 day notice is given under subsection (c) and ends 59 days
14 after the day notice is given.

15 "(b) Except as otherwise provided in this chapter,
16 an authorized fiduciary may exercise the decanting power
17 without the consent of any person and without court approval.

18 "(c) Except as otherwise provided in subsection (f),
19 an authorized fiduciary shall not exercise the decanting power
20 prior to 60 days after giving ~~record~~ notice in a record of the
21 intended exercise of the decanting power to:

22 "(1) each settlor of the first trust, if living or
23 then in existence;

24 "(2) each qualified beneficiary of the first trust;

1 "(3) each holder of a presently exercisable power of
2 appointment over any part or all of the first trust;

3 "(4) each person that currently has the right to
4 remove or replace the authorized fiduciary;

5 "(5) each other fiduciary of the first trust;

6 "(6) each fiduciary of the second trust; and

7 "(7) the Attorney General, if Section 19-3D-14(b)
8 applies.

9 "(d) An authorized fiduciary may give notice under
10 subsection (c) to a qualified beneficiary who is a minor or
11 incapacitated individual by giving notice to such individual's
12 representative. An authorized fiduciary is not required to
13 give notice under subsection (c) to a person that is not known
14 to the fiduciary or is known to the fiduciary but cannot be
15 located by the fiduciary after reasonable diligence.

16 "(e) A notice under subsection (c) must:

17 "(1) specify the manner in which the authorized
18 fiduciary intends to exercise the decanting power;

19 "(2) specify the proposed effective date for
20 exercise of the power;

21 "(3) include a copy of the first-trust instrument;

22 "(4) include a copy of all second-trust instruments;

23 "(5) include a statement indicating the capacity in
24 which the intended recipient is being given notice; and

1 "(6) include a statement that any application under
2 Section 19-3D-9 must be filed within six months from the day
3 notice is given.

4 "(f) The decanting power may be exercised before
5 expiration of the notice period under subsection (a) if all
6 persons entitled to receive notice waive the period in a
7 signed record.

8 "(g) The receipt of notice, waiver of the notice
9 period, or expiration of the notice period does not affect the
10 right of a person to file an application under Section
11 19-3D-9.

12 "(h) An exercise of the decanting power is not
13 ineffective because of the failure to give notice to one or
14 more persons under subsection (c) if the authorized fiduciary
15 acted with reasonable care to comply with subsection (c).

16 "§19-3D-9.

17 "(a) On application of an authorized fiduciary, a
18 person entitled to notice under Section 19-3D-7(c), a
19 beneficiary, or with respect to a charitable interest that is
20 not entirely held by or for the benefit of one or more
21 identified and existing charitable organizations, the Attorney
22 General or other person that has standing to enforce the
23 charitable interest, the court may:

24 "(1) provide instructions to the authorized
25 fiduciary regarding whether a proposed exercise of the

1 decanting power is permitted under this chapter and consistent
2 with the fiduciary duties of the authorized fiduciary;

3 "(2) appoint a special fiduciary and authorize the
4 special fiduciary to determine whether the decanting power
5 should be exercised under this chapter and to exercise the
6 decanting power;

7 "(3) approve an exercise of the decanting power;

8 "(4) subject to the limitations set forth in
9 subsection (c), determine that a proposed or attempted
10 exercise of the decanting power is ineffective because:

11 "(A) after applying Section 19-3D-22, the proposed
12 or attempted exercise does not or did not comply with this
13 chapter; or

14 "(B) the proposed or attempted exercise would be or
15 was an abuse of the fiduciary's discretion or a breach of
16 fiduciary duty;

17 "(5) determine the extent to which Section 19-3D-22
18 applies to a prior exercise of the decanting power;

19 "(6) provide instructions to the trustee regarding
20 the application of Section 19-3D-22 to a prior exercise of the
21 decanting power; or

22 "(7) order other relief to carry out the purposes of
23 this chapter.

24 "(b) On application of an authorized fiduciary, the
25 court may approve:

1 "(1) an increase in the fiduciary's compensation
2 under Section 19-3D-16; or

3 "(2) a modification under Section 19-3D-18 of a
4 provision granting a person the right to remove or replace the
5 fiduciary.

6 "(c) A proceeding under subsection (a) (4) may not be
7 commenced by a person entitled to notice under Section
8 19-3D-7(c), or by a beneficiary, unless such proceeding is
9 commenced within six months from the day notice is given under
10 Section 19-3D-7(a). Failure to receive notice shall not extend
11 the ~~notice period~~ time by which such proceeding must be
12 commenced if the authorized fiduciary acted with reasonable
13 diligence to comply with the requirements of Section
14 19-3D-7(c)."

15 Section 2. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB35
Senate 11-FEB-21
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 16-MAR-21

By: Senator Albritton