

VIRGINIA BANKERS ASSOCIATION

VBA COMMITTEES

Agenda

VBA Trust & Wealth Management Committee Meeting
Friday, May 10, 2024
10:30 a.m. - 12:30 p.m. | 4490 Cox Rd. Glen Allen, VA 23060

Trust & Wealth Management Committee Mission Statement

To provide a venue for collaboration and sharing of ideas to foster a robust Trust and Wealth Management environment in the Commonwealth of Virginia so that Clients benefit by way of expanded competitive services and delivery options; Trust and Wealth Management Executives grow professionally through peer exchange and education; Banks benefit from developing ways to offer Trust and Wealth Management services as part of comprehensive relationships with clients; and the VBA promotes, represents and enhances the bank Trust and Wealth Management industry with the support of state legislative and regulatory officials.

- I. **Welcome – Jeff Hassler, Chairman**
- II. **General Assembly Wrap-up – Matthew Bruning, EVP, VBA Government & Member Relations**
 - HB332 – Termination of trust; notice requirements.
 - SB566 - Trusts; release or ratification of trustee by beneficiary, response of beneficiary in writing.
- III. **Roundtable Discussion**
- IV. **Adjourn & Lunch**

Zoom Link to Meeting:

<https://us02web.zoom.us/j/82971164699?pwd=d3dSbVRHTVh6cFdGem5pSE54eDdVQT09>

Meeting ID: 829 7116 4699

Passcode: 551834

2024 Meeting Dates:

September 13th (virtual) & November 15th (in person)

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 282

An Act to amend and reenact § 64.2-732 of the Code of Virginia, relating to modification or termination of uneconomic trust; notice.

[H 332]

Approved April 2, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-732 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-732. Modification or termination of uneconomic trust.

A. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000 may terminate the trust *without court approval* if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. *Notice required by this section shall be sent in accordance with § 64.2-707.*

B. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust *and may simultaneously utilize the provisions of § 64.2-779.*

D. This section does not apply to an easement for conservation or preservation.

E. *Expenses incurred by the trustee incident to the termination of a trust pursuant to this section shall be paid by the trust estate.*

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 600

An Act to amend and reenact § 64.2-800 of the Code of Virginia, relating to trusts; release or ratification of trustee by beneficiary.

[S 566]

Approved April 5, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-800 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-800. Beneficiary's consent, release, or ratification.

A. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

1. The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

2. At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

B. A beneficiary shall be deemed to have released a trustee and ratified all actions of a trustee for the administration of the trust if, when the trust terminates or the trustee ceases to serve:

1. The trustee sends the beneficiary the following:

a. A report as described in subsection C of § 64.2-775, for the immediately preceding two years;

b. The amount of any taxes, expenses, or fees, including trustee fees and any reserves, remaining to be paid;

c. Notice that (i) the trust is terminating or that the trustee is ceasing to serve; (ii) if the beneficiary does not object in writing to the trustee within 60 days after the trustee sent the notice and information, the beneficiary shall be deemed to have released the trustee and ratified all actions of the trustee; and (iii) the trustee is unaware of any undisclosed information that could give rise to a claim by the beneficiary; and

d. If the trust is terminating, a description of any trust property or interests reasonably anticipated but not yet received and a proposal for distribution; and

2. The beneficiary does not notify the trustee of the beneficiary's objection in writing within 60 days after the trustee sent the notice and information pursuant to subdivision 1.

C. The provisions of subsection B shall not apply to a transaction pursuant to Article 8.1 (§ 64.2-779.1 et seq.) of Chapter 7.

D. In the event the trustee is not released and his actions ratified pursuant to the process provided by subsection B, the trustee shall not be precluded from obtaining a release of liability by another permitted method.

E. When a trustee complies with the provisions of subsection B, has received no objection or has resolved any objection, and distributes the assets of a terminating trust to a beneficiary or to a successor trustee, such action shall have the same legal and preclusive effect as if a court had entered a final order approving the trustee's final account or approving the trustee's interim accounts. A beneficiary or other party who received the notice and statements and either consented or did not object shall be prohibited from bringing a claim against the trustee.



2024 Trust Legislation

SB 2256 (Stevens) / HB 2713 (Garrett)

Tennessee has become one of the leading trust jurisdictions in the country, frequently ranking in the top 3 states to locate a trust because of the strength of our laws. Part of this is due to the Tennessee Bankers Association (“TBA”) making comprehensive updates to Tennessee’s laws over the years. These updates have resulted in new trust companies coming to Tennessee and increased business opportunities for existing trust companies. In the past 8 years, the total trust assets under management in Tennessee increased from \$25 billion to \$270 billion.

TBA has a working committee of trust officers and lawyers from across the state that meets annually to review Tennessee’s trust laws and determine appropriate updates to (i) maintain Tennessee’s status as a leading trust jurisdiction, and (ii) enable trust officers to better serve their clients. The TBA committee developed the following legislative proposals for consideration during the 2024 session.

Sections 1-2. Clarify Power of Holder of Limited Power of Appointment

Updates current law by allowing holders of limited powers of appointment to represent and bind to the same extent as holders of general powers of appointment if there is a disinterested trustee, and defines “disinterested trustee”. States with similar laws are Florida, Illinois, Maryland, Missouri, Nebraska, Nevada, Pennsylvania, and Washington DC.

Section 3. Clarify When Representation by Fiduciaries is Permissible

Provides that guardians/conservators of the estate may represent and that if there is no guardian/conservator of the estate, a guardian/conservator of the person may represent clarifies when a person may represent a minor or unborn descendant; and adds grandparents and siblings to the list of family members who may represent an incapacitated adult.

Sections 4-5. Delete TCA § 35-15-505(b) & amend (e) – Creditors’ Claims against Settlor

Deletes subsection (b) in TCA § 35-15-505, which addresses creditors’ claims against settlors after previous amendments were made to the statute. Re-writes (e) to combine both subsections in regards to the holder of a power to withdrawal not being considered a settlor by failure to exercise the power to withdrawal, letting the power lapse, or releasing or waiving that power.

Section 6. Expand New TCA § 35-15-716 – Allocation of Trustee Duties to Create Directed Trusts

Provides that the power to appoint multiple successor trustees and additional trustees (which was passed in 2023) also includes the ability to allocate powers and certain responsibilities between a trustee and a chosen trust advisor.

Section 7. Clarify for a Private Trust Company, a Change in Trustee is Not a Change in Control

Clarifies in TCA § 45-2-2002, that relative to private trust companies, a change in trustee is not considered a change in control.

Sections 8-11. Family General Partnerships

Changes the default rule for family general partnerships so that partners would not have the default power to withdraw, although they could provide for this power in the written partnership agreement. This would allow families to get valuation discounts to reduce estate and gift taxes similar to how they can with family LLCs and limited partnerships. General partnerships are more favorable over LLCs and limited partnerships because they are not subject to F&E taxes or to the Corporate Transparency Act's beneficial ownership requirements. This would apply only to new or amended partnerships. This will make Tennessee more attractive as a trust destination because Tennessee will have a unique law that enables discounts for family general partnerships.

Section 12. Allow for Use of Other State's Perpetuities Period

Amend TCA § 66-1-202 to allow application of another state's perpetuities period to a trust administered in that state if Tennessee becomes the principal place of administration and the other state's perpetuities is longer than Tennessee's (360 years).

Section 13. Submission of Changes to Official Comments

Allows the Tennessee Bankers Association to submit revised official comments for relevant trust statutes to the Tennessee Code Commission by June 16, 2024, to be published in the Tennessee Code.

Section 14. Effective Date

July 1, 2024.

For more information:

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