

59-22a01. Order for administration in accordance with intent; order of change to qualify for federal estate tax deduction. (a) If a trust for charity is or becomes illegal or impossible or impracticable of fulfillment or if a devise or bequest for charity, at the time it was intended to become effective is illegal or impossible or impracticable of fulfillment, and if the settlor or testator, manifested a general intention to devote the property to charity, any judge, on application of any trustee, executor, administrator, any interested party or the attorney general, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the manifested general charitable intention of the settlor or testator. In every such proceeding, the attorney general, as representative of the public interest, shall be notified and given an opportunity to be heard. The provisions of this act shall not be applicable if the settlor or testator has provided, either directly or indirectly, for an alternative plan in the event the charitable trust, devise or bequest is or becomes illegal or impossible or impracticable of fulfillment. If the alternative plan is also a charitable trust or devise or bequest for charity and such trust, devise or bequest for charity fails, the intention shown in the original plan shall prevail in the application of this act.

(b) In the case of a will, trust or other governing instrument, if a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in section 2055(a) of the internal revenue code of 1986, to meet the requirements of section 170(f)(3)(B) or 2055(e)(2) of the internal revenue code of 1986, then in order that such deduction shall nevertheless be allowable under section 2055(a) of the internal revenue code of 1986, any judge, on application of any trustee, executor, administrator or any interested party may:

(1) With the written consent of the charitable beneficiaries, the noncharitable beneficiaries not under any legal disability and duly appointed guardians or guardians *ad litem* acting on behalf of any beneficiaries under legal disability or conservator; or

(2) upon a finding that the interest of such beneficiaries is substantially preserved, order a change to the governing instrument by reformation, amendment, construction or otherwise, which changes a reformable interest into a qualified interest within the meaning of section 2055(e)(3) of the internal revenue code of 1986. In every such proceeding, the attorney general, as representative of the public interest, shall be notified and given an opportunity to be heard.

(c) As used in this act:

(1) "Charity" and "charitable" includes, but is not limited to, any eleemosynary, religious, benevolent, educational, scientific, artistic or literary purpose.

(2) "Impracticable of fulfillment" includes, but is not limited to, the failure of any trust for charity, testamentary or *inter vivos*, including, without limitation, trusts described in section 509 of the internal revenue code of 1986 and charitable remainder trusts described in section 664 of the internal revenue code of 1986, to include, if required to do so by section 508(e) or section 4947(a) of the internal revenue code of 1986, the provisions relating to governing instruments set forth in section 508(e) of the internal revenue code of 1986.

(d) The provisions of this act shall be effective as to all wills and trusts not construed prior to the effective date of this act.

History: L. 1988, ch. 199, § 1; L. 1991, ch. 168, § 1; May 2.