

Irrevocable Trusts: West Virginia

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A Q&A guide to the laws governing irrevocable trusts in West Virginia. This Q&A addresses state laws and customs that impact irrevocable trusts, including the key statutes and rules related to irrevocable trusts, the requirements for creating a valid irrevocable trust, common irrevocable trust provisions, information concerning trustees, and information on making changes to irrevocable trust instruments after execution. Answers to questions can be compared across a number of jurisdictions (see Irrevocable Trusts: State Q&A Tool). For similar information relating to revocable trusts in West Virginia, see State Q&A, Revocable Trusts: West Virginia.

For a Toolkit providing jurisdiction-neutral irrevocable trust forms that can be used with this Q&A, and other resources to help counsel draft irrevocable trust instruments under West Virginia law, see [State-Specific Irrevocable Trust Drafting Toolkit](#).

Key Statutes and Rules

1. What are the key statutes and rules that govern irrevocable trusts in your state?

State Law

The rules and laws pertaining to irrevocable trusts in West Virginia are found in:

- The West Virginia Uniform Trust Code (W. Va. Code §§ 44D-1-101 to 44D-11-1105).
- W. Va. Code §§ 44-5A-1 to 44-5A-7 (powers of fiduciaries).
- The West Virginia Uniform Fiduciary Access to Digital Assets Act (W. Va. Code §§ 44-5B-1 to 44-5B-19).
- W. Va. Code §§ 44-6-1 to 44-6-11 (investments by fiduciaries).
- The Uniform Product Management of Institutional Funds Act (institutional funds are generally those

used by certain persons exclusively for charitable purposes) (W. Va. Code §§ 44-6C-1 to 44-6C-15).

- West Virginia case law.

Other state laws, such as state tax laws, may apply to an irrevocable trust, depending on the circumstances and the trust purposes. West Virginia does not have an estate, gift, or inheritance tax. West Virginia trusts are subject to income tax (W. Va. Code §§ 11-21-1 to 11-21-97).

Federal Law

Federal law, including federal estate, gift, generation-skipping transfer (GST), and income tax rules frequently apply to irrevocable trusts, depending on the purpose and characteristics of the trust (26 U.S.C. §§ 1 to 2801; 26 C.F.R. §§ 1.0-1 to 26.7701-2). For specific information related to federal estate, gift, and GST taxes, see Practice Notes:

- [Federal Estate Tax](#).
- [Federal Gift Tax](#).
- [Federal Generation-Skipping Transfer Tax](#).

For examples of specific rules and provisions applicable to specific types of irrevocable trusts, see [Irrevocable Trust Creation, Funding, and Administration Toolkit](#).

Applicability of Rules to Revocable Trusts that Become Irrevocable

Many individuals (commonly referred to as settlors, though statute refers to them as grantors) create revocable trusts as will substitutes to dispose of their assets at death. These revocable trusts generally become irrevocable on the settlor's incapacity or death. Once a revocable trust becomes irrevocable, it is generally subject to the same rules as a trust that was irrevocable when created. For more information on revocable trusts, see State Q&A, [Revocable Trusts: West Virginia](#).

Applicability of Rules to Testamentary Trusts

A testamentary trust is a trust created under a testator's will that generally comes into existence and becomes irrevocable when the testator dies. Testamentary trusts are generally subject to the same rules as all irrevocable trusts once they are created at the settlor's death. For information on wills that may include testamentary trusts, see [State Q&A, Wills: West Virginia](#).

Trust Requirements

2. What are the requirements for a valid trust in your state?

In West Virginia, except for court order, to create a valid trust, either:

- The settlor (referred to under statute as the grantor) must indicate the settlor's intention to create the trust in writing.
- An agent creating the trust must create the trust in writing under a power of attorney containing express authorization.

(W. Va. Code §§ 44D-4-401(d) and 44D-4-402(a)(2), (d)(2).)

Methods of Creation

A trust may be created in West Virginia by:

- Transfer of property to another person as trustee during the settlor's lifetime by the settlor or by will

or by other disposition taking effect on the settlor's death.

- Written declaration by the property owner that the owner holds identifiable property as trustee.
- Exercise of a power of appointment in favor of a trustee.
- Court order.

(W. Va. Code §§ 44D-4-401(a) and 44D-4-402(a)(2).)

Trust Purposes

A trust may be created only to the extent the purposes of the trust are:

- Lawful.
- Not contrary to public policy.
- Possible to achieve.

A trust and its terms must be for the benefit of the beneficiaries. (W. Va. Code § 44D-4-403.)

Threshold Requirements

The threshold requirements to create a valid trust require that:

- The settlor has capacity to create a trust, which capacity is the same as the capacity to create a revocable trust (see State Q&A, [Revocable Trusts: West Virginia: Question 2 and 3](#)).
- The settlor indicates an intent, in writing, to create the trust.
- There is a definite beneficiary, unless the trust is:
 - a charitable trust;
 - for the benefit of an animal (W. Va. Code § 44D-4-408); or
 - a non-charitable trust with a specific intended use, in which case the trust may not be enforced for longer than the period allowable under the statutory rule against perpetuities period (W. Va. Code § 44D-4-409).
- A beneficiary is definite if the beneficiary can be ascertained currently or in the future subject to the applicable rule against perpetuities under W. Va. Code § 36-1a-1. A trustee's power to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons taking the property if the power was not conferred.

- The trustee has duties to perform.
- The same person is not the sole trustee and sole beneficiary. However, a trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are also beneficiaries of the trust (W. Va. Code § 44D-4-402(e)).

(W. Va. Code § 44D-4-402.)

A trust does not fail because it has no trustee (see Syl. Pt. 3, *Bond v. Bond*, 592 S.E.2d 801 (W. Va. 2003)). However, a vacancy in the trusteeship that leaves a trust without a trustee must be filled (see Question 7: Filling Vacancies in a Trusteeship).

Effect of Fraud, Duress, or Undue Influence

A trust is void to the extent its creation was induced by fraud, duress, or undue influence (W. Va. Code § 44D-4-406).

3. What provisions, if any, must be included for a trust to be irrevocable?

In West Virginia, unless the terms of a trust expressly provide that the trust is irrevocable, the trust is revocable (W. Va. Code § 44D-6-602(a)).

Terms of a Trust

The West Virginia Uniform Trust Code defines the terms of a trust to mean either:

- The manifestation of the settlor's intent regarding a trust's provisions as:
 - expressed in the trust instrument; or
 - established by other evidence admissible in a judicial proceeding.
- The trust's provisions as established, determined, or amended by:
 - a trustee or trust director under applicable law;
 - a court order; or
 - a nonjudicial settlement agreement (W. Va. Code § 44D-1-111).

(W. Va. Code § 44D-1-103(v).)

Counsel should always expressly indicate that a trust is irrevocable in the trust terms if that is the settlor's intention.

Trust Formalities and Execution Requirements

4. Must an irrevocable trust instrument be in writing to be valid?

To create a trust in West Virginia, the settlor must indicate the settlor's intention to create the trust in writing (W. Va. Code § 44D-4-402(a)(2)). Oral trusts are unenforceable in West Virginia (W. Va. Code § 44D-4-407).

5. What are the execution requirements for a valid written irrevocable trust instrument? In particular, please specify requirements for:

- The settlor's signature.
- The trustee's signature.
- Witnesses.
- Notarization.

Signature Requirements

West Virginia law does not explicitly state that:

- The settlor's signature is required to create a valid trust. However, to create a trust, the settlor must indicate the settlor's intention to create a trust in writing (W. Va. Code § 44D-4-402(a)(2)). The settlor generally indicates this intention by signing the written trust instrument.
- The trustee's signature is required to create a valid trust. However, a common method of indicating that the trustee accepted the trusteeship is to sign the trust instrument. (W. Va. Code § 44D-7-701; see State Q&A, Revocable Trusts: West Virginia: Question 14.)

Witness Requirements

West Virginia law does not require witnesses to sign an irrevocable trust instrument for the valid execution of a trust. Witnesses generally do not sign West Virginia trust instruments.

Notary Requirements

West Virginia law does not require that an irrevocable trust instrument be notarized for the valid execution

of a trust. However, although not mandatory, it is common to notarize the settlor's and trustee's signatures, even though it is not required, especially if the trust may contain real property. Financial institutions often prefer the trust to be notarized to avoid fraud, and portions of the trust (or a trust certificate) may need to be recorded if the trust disposes of real property.

Common Irrevocable Trust Provisions

6. Discuss specific provisions commonly found in an irrevocable trust instrument and the rules that apply to these provisions in your state. In particular, please discuss the following provisions and their effect:

- No contest clause.
- Incorporation by reference of trustee powers.
- Virtual representation.
- Rule against perpetuities.
- Sample rule against perpetuities clause.
- Governing law.

Provisions included in irrevocable trust instruments in West Virginia are generally substantially the same as and subject to the same rules as those included in revocable trust instruments regarding:

- Incorporation by reference of trustee powers.
- Virtual representation.
- Governing law (though a provision regarding changing the governing law of a trust created under a revocable trust instrument may only be operative on the death of the settlor whereas a similar provision in an irrevocable trust instrument is generally immediately operative when the trust is created).

A rule against perpetuities provision is commonly included in both revocable and irrevocable trust instruments in West Virginia. However, a rule against perpetuities provision included in an irrevocable trust instrument is slightly different from a rule against perpetuities provision included in a revocable

trust instrument, largely because the rule against perpetuities begins to run for a trust created under:

- A revocable trust instrument, when the interest becomes irrevocable, which is generally when the settlor dies.
- An irrevocable trust instrument when the interest is created, which is generally when the trust instrument is executed.

(W. Va. Code § 36-1A-1.)

No contest clauses are more commonly included in wills in West Virginia than in trust instruments, whether revocable or irrevocable.

For more information on:

- Each of these types of provisions and the applicable rules, see [State Q&A, Revocable Trusts: West Virginia: Question 12](#).
- No contest clauses, see [State No Contest Clause Laws Chart](#) and [Standard Clause, No Contest Clause for Will or Trust](#).

Rule Against Perpetuities Sample Clause for Irrevocable Trust Instrument

"In no event may the Trustee withhold delivery of income and principal to any beneficiary in such a manner as would violate the rule against perpetuities or any duration of trust rules."

Trustee Appointment

7. What are the rules regarding appointment of trustees and acceptance and declination of trusteeship in your state? In particular, please discuss:

- Who is eligible to act as trustee.
- Priority rules for filling vacancies in a trusteeship if the named trustees fail to qualify or stop acting.
- How a nominated trustee accepts or declines the nomination.

Eligibility to Act as Trustee

The rules regarding eligibility to act as trustee in West Virginia (including the rules regarding the drafting attorney acting as trustee) for irrevocable trusts are identical to the rules regarding eligibility to act as trustee for a revocable trust. For more information, see State Q&A, Revocable Trusts: West Virginia: Question 13: Eligibility to Act as Trustee.

Filling Vacancies in a Trusteeship

Unless otherwise provided in the terms of the trust instrument, a vacancy in a trusteeship that must be filled is filled under West Virginia law, in order, by:

- For a noncharitable trusteeship, a person:
 - designated in the terms of the trust instrument to act as successor trustee;
 - appointed by unanimous written agreement of the qualified beneficiaries (see Question 7: Qualified Beneficiaries and Current Beneficiaries); or
 - appointed by the court with jurisdiction over the trust.

(W. Va. Code § 44D-7-704(c).)

- For a charitable trusteeship, a person:
 - designated in the terms of the trust instrument to act as successor trustee;
 - selected by the charitable organizations expressly designated to receive distributions under the terms of the trust instrument if the West Virginia Attorney General either concurs in writing or fails to make a written objection to the selection within 90 days after receiving by certified or registered mail a notice of the selection by the charitable organizations; or
 - appointed by the court with jurisdiction over the trust.

(W. Va. Code § 44D-7-704(d).)

For more information regarding appointing successor trustees and a jurisdiction-neutral form for appointing a successor trustee for an irrevocable trust, see [Standard Document, Appointment of Successor Trustee for Irrevocable Trust](#).

Qualified Beneficiaries and Current Beneficiaries

The qualified beneficiaries of a trust at any given time are:

- The current or permissible recipients of trust income or principal.
- Those who would be current or permissible recipients of trust income or principal if the interests of the current permissible recipients terminated at that time without causing the trust to terminate.
- Those who would be current or permissible recipients of trust income or principal if the trust terminated at that time.

(W. Va. Code § 44D-1-103(18).)

A current beneficiary is beneficiary that at the time of determination has a present permissible right to receive trust income or principal (W. Va. Code § 44D-1-103(7)). A current beneficiary is always a qualified beneficiary, but a qualified beneficiary is not always a current beneficiary.

Accepting a Nomination as Trustee

The rules for accepting a trusteeship for an irrevocable trust in West Virginia are identical to the rules regarding accepting a trusteeship for a revocable trust (see State Q&A, Revocable Trusts: West Virginia: Question 14).

For a jurisdiction-neutral form for accepting an appointment as trustee, see [Standard Document, Acceptance of Trusteeship](#).

Declining a Nomination as Trustee

The rules for declining a trusteeship for an irrevocable trust in West Virginia are identical to the rules regarding declining a trusteeship for a revocable trust (see State Q&A, Revocable Trusts: West Virginia: Question 15).

For a jurisdiction-neutral form for declining an appointment as trustee, see [Standard Document, Declination of Trusteeship](#).

Trustee Compensation

8. What are the rules, if any, regarding trustee compensation in your state?

The rules regarding trustee compensation in an irrevocable trust in West Virginia are identical to the rules regarding trustee compensation for a revocable trust (see State Q&A, Revocable Trusts: West Virginia: Question 16).

Multiple Trustees

9. Who has authority to act when there are multiple trustees?

The rules regarding authority to act when there are multiple trustees of an irrevocable trust in West Virginia are identical to the rules regarding authority to act when there are multiple trustees of a revocable trust (see State Q&A, Revocable Trusts: West Virginia: Question 17).

Removal and Resignation of Trustees

10. Can a trustee be removed from office, and if so, how?

In West Virginia, the settlor, a co-trustee, or beneficiary of an irrevocable trust, and in addition, in the case of a charitable trust, the Attorney General of West Virginia, may petition the court to remove a trustee, or the court may remove a trustee on its own initiative, based on the same criteria for removal that applies to removal of a trustee of a revocable trust (see State Q&A, Revocable Trusts: West Virginia: Question 18).

In addition, a trust instrument should generally include a trustee removal provision specifying who has authority to remove trustees and the method for doing so.

For jurisdictional-neutral information regarding removal of trustees, see [Standard Clause, Removal of Trustee Clause for Will or Trust: Incapacity of Trustee](#).

11. What rights does a trustee have to resign from office?

The rules regarding trustee resignation for an irrevocable trust in West Virginia are identical to the rules regarding trustee resignation for a revocable trust (see State Q&A, Revocable Trusts: West Virginia: Question 19).

For a jurisdiction-neutral trustee resignation form, see [Standard Document, Resignation of Trustee](#).

Trustee Liability

12. What is the standard of care applicable to the trustee?

The trustee has extensive duties set out under the West Virginia Uniform Trust Code (W. Va. Code §§ 44D-8-801 to 44D-8-813). Among these duties, the trustee must:

- Administer the trust and invest the trust assets in good faith, following its terms and purposes and the interest of the beneficiaries (W. Va. Code § 44D-8-801).
- Comply with the Uniform Prudent Investor Act under W. Va. Code §§ 44-6c-1 to 44-6c-15 (W. Va. Code § 44D-8-801).
- Comply with the Uniform Principal and Income Act under W. Va. Code § 44B-1-101 to 44b-6-606 (W. Va. Code § 44D-8-801).
- Administer the trust solely in the beneficiaries' interests (W. Va. Code § 44D-8-802(a)).
- If a trust has more than one beneficiary, act impartially in vesting, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests (W. Va. Code § 44D-8-803).
- Administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust and exercising reasonable care, skill, and caution (W. Va. Code § 44D-8-804).
- Incur only costs that are reasonable in relation to the trust property, the trust purposes, and the trustee's skill (W. Va. Code § 44D-8-805).

- Use any special skills or expertise, if the trustee has such skills or expertise, or is named trustee because of the trustee's representation that the trustee has special skills or expertise (W. Va. Code § 44D-8-806).
- Delegate only duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances and use reasonable care, skill, and caution in doing so (W. Va. Code § 44D-8-807(a)).

13. Under what circumstances is a successor trustee liable for the acts of a prior trustee?

The rules regarding successor trustee liability for an irrevocable trust in West Virginia are identical to the rules regarding successor trustee liability for a revocable trust (see State Q&A, Revocable Trusts: West Virginia: Question 21).

14. Under what circumstances is a trustee liable for the acts of a co-trustee?

The rules regarding co-trustee liability for an irrevocable trust in West Virginia are identical to the rules regarding co-trustee liability for a revocable trust. For more information, see State Q&A, Revocable Trusts: West Virginia: Question 22.

15. To what extent can the trust instrument waive trustee liability?

The rules regarding waiver of trustee liability in an irrevocable trust instrument in West Virginia are identical to the rules regarding waiver of trustee liability in a revocable trust instrument (see State Q&A, Revocable Trusts: West Virginia: Question 23).

16. Does your state have a statute authorizing directed trusts?

In West Virginia, effective July 1, 2020, the terms of a trust may grant an individual or entity other than the trustee (referred to as a trust director) a power of direction. A power of direction allows the settlor to indicate certain decisions or actions over which the director, rather than the trustee, has discretion. The trustee (referred to as a directed trustee) must then comply with the trust director's direction in most

circumstances but is generally not liable for those actions.

Trust Director Powers

The terms of a trust may grant a trust director a power of direction. A power of direction may include a power exercisable while a person is not acting as trustee over:

- The investment, management, or distribution of the trust property.
- The trust administration.

(W. Va. Code § 44D-8A-802(3), (4).)

A trust director also has any further powers appropriate to the exercise or non-exercise of the powers of direction, except as otherwise provided in the terms of the trust and under statute (W. Va. Code §§ 44D-8A-802(3) and 44D-8A-806). For example, a settlor can make the trust director's power of direction or the termination of a power of direction contingent on the occurrence of certain events. However, regarding the trust director's powers, the same rules apply to a trust director as apply to a trustee regarding:

- A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the Social Security Act (42 U.S.C. § 1396p(d)(4)(A)) and applicable regulations.
- A charitable interest in the trust, including notice regarding the interest to the West Virginia Attorney General.

(W. Va. Code § 44D-8A-807.)

A trustee subject to a trust director's power of direction is referred to as a directed trustee (W. Va. Code § 44D-8A-802(3)). A directed trustee must take reasonable action to comply with a trust director's exercise or non-exercise of a power of direction, except to the extent that the directed trustee is directed knowingly to violate the laws or regulations of any jurisdiction applicable to the trust (W. Va. Code § 44D-8A-809).

Eligibility to Serve as Trust Director

A trust director is subject to the same rules as a trustee (W. Va. Code § 44D-8A-807; see State Q&A, Revocable Trusts: West Virginia: Question 13: Eligibility to Act as Trustee). However, there are no specific

rules in West Virginia governing who is eligible to be a trustee. Nevertheless, common practice is that any competent adult or corporate entity with trust powers could serve.

Trust Director Rules

Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding:

- Acceptance under W. Va. Code § 44D-7-701 (see State Q&A, Revocable Trusts: West Virginia: Question 14).
- Giving of bond to secure performance under W. Va. Code § 44D-7-702.
- Reasonable compensation under W. Va. Code § 44D-7-708 (see State Q&A, Revocable Trusts: West Virginia: Question 16).
- Resignation under W. Va. Code § 44D-7-705 (see State Q&A, Revocable Trusts: West Virginia: Question 19).
- Removal under W. Va. Code § 44D-7-706 (see State Q&A, Revocable Trusts: West Virginia: Question 18).
- Vacancy and appointment of successor under W. Va. Code § 44D-7-704 (see State Q&A, Revocable Trusts: West Virginia: Question 13).

(W. Va. Code § 44D-8A-816.)

Duties and Liabilities of Trust Director and Directed Trustee

Unless otherwise provided in statute, a trust director generally has the same duties and liabilities, if the power is held:

- Individually, as a sole trustee in a like position and under similar circumstances.
- Jointly with a trustee or another trust director, as a co-trustee in a like position and under similar circumstances

(W. Va. Code § 44D-8A-808(a)(1).)

When the trust director has the power to, and does, direct the trustee, the directed trustee is not liable for those actions, unless the trustee knowingly violated the laws or regulations of any jurisdiction applicable to the trust. The directed trustee may reasonably rely on the advice of legal counsel to determine what actions would be consistent with, or contrary to,

applicable law, and may be reimbursed for the costs of reasonable legal advice obtained in good faith. (W. Va. Code § 44D-8A-809(a), (b).)

The terms of the trust may:

- Vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances (W. Va. Code § 44D-8A-808(a)(2)).
- Impose a duty or liability on:
 - a trust director in addition to the duties and liabilities under W. Va. Code § 44D-8A-808 (W. Va. Code § 44D-8A-808(c)); and
 - a trustee in addition to the duties and liabilities under W. Va. Code § 44D-8A-809 (W. Va. Code § 44D-8A-809(e)).

Duty to Inform in Certain Circumstances but Not Generally

Unless the terms of a trust provide otherwise:

- A trustee does not have a duty to:
 - monitor a trust director; or
 - inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director.

(W. Va. Code § 44D-8A-811(a)(1).) By taking an action above, a trustee does not assume that duty (W. Va. Code § 44D-8A-811(a)(2)).

- A trust director does not have a duty to:
 - monitor a trustee or another trust director; or
 - inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director.

(W. Va. Code § 44D-8A-811(b)(1).) By taking an action above, a trust director does not assume that duty (W. Va. Code § 44D-8A-811(b)(2)).

Otherwise:

- A trustee must provide information to a trust director to the extent the information is reasonably related to the powers or duties of the trustee or director.
- A trust director must provide information to a trustee or another trust director to the extent the

information is reasonably related both the powers or duties of the director, trustee, or other director.

(W. Va. Code § 44D-8A-810(a), (b).)

A trustee acting in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by acting the trustee engages in willful misconduct (W. Va. Code § 44D-8A-810(c)). A trust director acting in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by acting the trust director engages in willful misconduct (W. Va. Code § 44D-8A-810(d)).

For more information regarding directed trusts see [Practice Note, Directed Trusts](#) and [State Directed Trust Laws Chart](#).

Court Supervision

17. Is an irrevocable trust court supervised?

Irrevocable trusts and trustees are normally not subject to court supervision in West Virginia unless ordered by the court (W. Va. Code § 44D-2-201(b)). The court may intervene in the administration of a trust to the extent an interested person invokes the court's jurisdiction or as provided by law (W. Va. Code § 44D-2-201(a)). A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights (W. Va. Code § 44D-2-201(c)).

Trust Modification and Early Termination

18. What are the options for modifying or early termination of an irrevocable trust?

Trust Modification and Termination

In West Virginia, a court may:

- Modify the administrative or dispositive terms of an irrevocable trust (or terminate the trust) if because

of circumstances not anticipated by the settlor, modifying or terminating will further the purpose of the trust. Modification must be made according to the settlor's probable intention. (W. Va. Code § 44D-4-412(a).)

- Modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable, wasteful, or impair the trust's administration (W. Va. Code § 44D-4-412(b)).
- Conform the terms, even if unambiguous, to the settlor's intent if it is proved by a preponderance of the evidence that the accomplishment of the settlor's intent and the terms of the trust were affected by a mistake of fact or law (W. Va. Code § 44D-4-415).
- Modify the terms of a trust, even retroactively, to achieve the settlor's tax objectives, if the modification is in a manner that is not contrary to the settlor's probable intent (W. Va. Code § 44D-4-416).

In addition:

- A trust terminates to the extent:
 - the trust is revoked or expires by its terms;
 - no purpose of the trust remains to be achieved; or
 - the purposes of the trust became unlawful, contrary to public policy, or impossible to achieve.

(W. Va. Code § 44D-4-410(a).)

- A noncharitable irrevocable trust may be modified or terminated on the consent of the settlor and all beneficiaries, even if modification or termination is inconsistent with a material purpose of the trust, or may be terminated on consent of all beneficiaries if the court concludes that continuing the trust is not necessary to achieve a material purpose of the trust (W. Va. Code § 44D-4-411(a), (b)). If not all qualified beneficiaries consent, the court may approve a modification or termination if the court is satisfied that:

- had all beneficiaries consented, the trust could have been modified or terminated under these rules; and
- the interests of a beneficiary not consenting will be adequately protected.

(W. Va. Code § 44D-4-411(e).) These beneficiaries includes all beneficiaries with a present or future

beneficial interest in the trust, vested, or contingent (W. Va. Code § 44D-1-103(3)).

- The court or trustee may modify a charitable trust under different rules (W. Va. Code § 44D-4-413).

Effective July 1, 2020, if the applicable requirements are met, the trustee can decant the property of an irrevocable trust into a new trust (W. Va. Code §§ 44D-8B-1 to 44D-8B-31). For additional information on decanting, see [State Decanting Laws Chart](#) and [Practice Note, Trust Decanting](#)

Early Termination of Uneconomic Trusts

A trustee may terminate a trust if there is less than \$200,000 of property in the trust and the trustee:

- Notifies the qualified beneficiaries (see Question 7: Qualified Beneficiaries and Current Beneficiaries).
- Determines that the value of the trust property is insufficient to justify the cost of administration.

In addition, the court can modify or terminate a trust, or remove the trustee or appoint a different trustee, if the court determines that the value of the trust property is insufficient to justify the cost of administration. (W. Va. Code § 44D-4-414.)

West Virginia trust instruments frequently include a provision indicating the settlor's intent regarding early termination.

Information Provided to Trust Beneficiaries

19. What information are the beneficiaries of an irrevocable trust entitled to when the trust is created and throughout its administration?

In West Virginia, the trustee has several duties to provide information to irrevocable trust beneficiaries. The trustee must generally keep the current beneficiaries of the trust reasonably informed of the trust and its administration. Specifically, the trustee's duty to inform and account includes (but is not

limited to) the requirement that the trustee provide current beneficiaries with:

- **Notice of acceptance of trusteeship.** Within a reasonable time after the trustee's acceptance of the trust, the trustee must give notice to the current beneficiaries of:

- the trustee's acceptance of the trust; and
- the trustee's name, address, and telephone number.

(W. Va. Code § 44D-8-813(b)(2).)

- **Notice of creation of irrevocable trustor trust becoming irrevocable.** Within a reasonable time after the date the trustee acquires knowledge of the creation of an irrevocable trust or that a formerly revocable trust has become irrevocable, the trustee must give notice to the current beneficiaries of:

- the trust's existence;
- the settlor's identity;
- their right to request a copy of the trust instrument; and
- their right to trustee reports, with the information as required under statute.

(W. Va. Code § 44D-8-813(b)(3).)

- **A copy of the trust instrument.** On a beneficiary's request, the trustee must within a reasonable time provide a beneficiary with a copy of the trust instrument (W. Va. Code § 44D-8-813(b)(1)).

- **Trustee's report.** The trustee must provide a report to each current beneficiary of trust income or principal, at least annually, and on the trust's termination or a change of trustee. The report must include:

- the trust's liabilities, receipts, and disbursements;
- the source and amount of trustee compensation; and
- The trust assets and their respective market values, if feasible.

(W. Va. Code § 44D-8-813(c).) A beneficiary can waive their right to receive a trustee's report and withdraw a waiver previously given (the withdrawal

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is effective only for future reports or other information) (W. Va. Code § 44D-8-813(d)).

For the definition of qualified beneficiaries and current beneficiaries, see Question 7: Qualified Beneficiaries and Current Beneficiaries.

Trust directors and directed trustees also have certain duties to provide information when dealing with directed trusts (see Question 16: Duty to Inform in Certain Circumstances but Not Generally).

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