

386B.4-110 Modification or termination of noncharitable irrevocable trust by consent.

- (1) Except as otherwise provided in the terms of the trust, a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, without court approval, 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:
 - (a) By an agent under a power of attorney only to the extent expressly authorized by the power of attorney and not prohibited by the terms of the trust;
 - (b) By the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized and the conservator is not prohibited by the terms of the trust; or
 - (c) 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 and the guardian is not prohibited by the terms of the trust.
- (2) 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.
- (3) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.
- (4) Upon termination of a trust under subsection (1) or (2) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.
- (5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (1) or (2) of this section, the modification or termination may be approved by the court if the court is satisfied that:
 - (a) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
 - (b) The interests of a beneficiary who does not consent will be adequately protected.
- (6) Subsection (1) of this section shall not apply to the following types of trusts:
 - (a) First-party special needs or supplemental trusts created under KRS 387.855 to 387.910;
 - (b) Trusts created under 42 U.S.C. sec. 1396p(d)(4)(A);
 - (c) Trusts created under 42 U.S.C. sec. 1396p(d)(4)(C);
 - (d) Trusts created under 42 U.S.C. sec. 1396p(c)(2)(B); and
 - (e) Third-party special needs or supplemental trusts established by a will, trust, or similar document and created under the common law or any other law of the Commonwealth.
- (7) The District Court shall have exclusive jurisdiction over matters under subsection

(2) of this section.

Effective: July 15, 2014

History: Created 2014 Ky. Acts ch. 25, sec. 33, effective July 15, 2014.