

§ 36C-8B-15. Trust limitation on decanting.

(a) An authorized fiduciary shall not exercise the decanting power to the extent the terms of the first trust expressly prohibit exercise of the decanting power or a power granted by State law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power shall be subject to any restriction in the terms of the first trust that expressly applies to the exercise of the following powers:

- (1) The decanting power, and any such restriction contained in the terms of the first trust, shall be included in the terms of the second trust.
- (2) A power granted by State law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest shall not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under this Article even if the first trust permits the authorized fiduciary or another person to modify the terms of the first trust or to distribute part or all of the principal of the first trust to another trust. (2017-121, s. 1.)