

§ 36C-8B-7. Notice; exercise of decanting power.

(a) Except as otherwise provided in this Article, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(b) Except as otherwise provided in this section, an authorized fiduciary shall give written notice of the intended exercise of the decanting power at least 60 days prior to the effective date of the exercise of the decanting power to all of the following:

- (1) Any settlor as to whom the second trust would be a grantor trust.
- (2) Each qualified beneficiary of the first trust.
- (3) Each person that currently has the right to remove or replace the authorized fiduciary.
- (4) Each other fiduciary of the first trust.

(c) The notice required pursuant to subsection (b) of this section shall meet all of the following requirements:

- (1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power.
- (2) Specify the proposed effective date for exercise of the power.
- (3) Include a copy of the first trust.
- (4) Include a copy of all second trusts.

(d) The decanting power may be exercised before expiration of the notice period under subsection (b) of this section if all persons entitled to receive notice waive the period in a signed written instrument.

(e) The receipt of notice, waiver of the notice period, or expiration of the notice period shall not affect the right of a person to file an application pursuant to G.S. 36C-8B-9 asserting any of the following:

- (1) An attempted exercise of the decanting power is ineffective because it did not comply with this Article or was an abuse of discretion or breach of fiduciary duty.
- (2) The provisions of G.S. 36C-8B-22 apply to the exercise of the decanting power.

(f) An exercise of the decanting power shall not be ineffective because of the failure to give notice to one or more persons pursuant to subsection (b) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (b) of this section. (2017-121, s. 1.)