

§ 36C-7-703. Cotrustees.

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision if more than two are serving. Unanimity is required when only two cotrustees are serving.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust and exercise all trustee powers, except those powers that the remaining trustees are prohibited from exercising under the trust instrument or by law.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee with the consent of the cotrustee the performance of any function other than those the settlor reasonably expected the trustees to perform jointly. The following functions are not considered to be those that the settlor reasonably expected the trustees to perform jointly:

- (1) Establish and maintain bank accounts for the trust and issue checks for the trust.
- (2) Maintain inventories, accountings, and income and expense records of the trust.
- (3) Enter any safety deposit box rented by the trust.
- (4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.
- (5) List trust property for taxes and prepare and file tax returns for the trust.
- (6) Collect and give receipts for claims and debts of the trust.
- (7) Pay debts, claims, costs of administration, and taxes of the trust.
- (8) Compromise, adjust, or otherwise settle any claim by or against the trust and release, in whole or in part, a claim belonging to the trust.
- (9) Have custody of the trust property.
- (10) Perform any function relating to investment of trust assets.

The list of functions contained in this subsection is not intended to be exclusive of others that may be delegated to a cotrustee in accordance with this subsection.

(e1) Repealed by Session Laws 2015-205, s. 10, effective October 1, 2015.

(f) Repealed by Session Laws 2007-106, s. 27, effective October 1, 2007.

(g) Except as provided in subsection (g1) and (h) of this section, each cotrustee shall exercise reasonable care to:

- (1) Avoid enabling a cotrustee to commit a serious breach of trust; and
- (2) Compel a cotrustee to redress a serious breach of trust.

(g1) If the terms of the trust confer upon a cotrustee, to the exclusion of another cotrustee, the power to take certain actions with respect to the trust:

- (1) The excluded cotrustee is not liable, directly or indirectly, for the action taken by the cotrustee holding the exclusive power.
- (2) The excluded cotrustee has no duty to monitor the conduct of the cotrustee holding the exclusive power, provide advice to that cotrustee, or consult with or request directions from that cotrustee. The excluded trustee is not required

to give notice to any beneficiary of any action taken or not taken by that cotrustee.

(3) The cotrustee holding the exclusive power to take certain actions with respect to the trust:

- a. Shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office.
- b. Has the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.

(h) If the terms of the trust confer the power to take actions on both or all cotrustees but under the terms of the trust or this Chapter the decision of one or more of the cotrustees controls in the event of a disagreement, then, unless the dissenting cotrustee had actual knowledge that the action constituted a serious breach of trust, a cotrustee who dissents from the action taken by one or more of the other cotrustees is not liable for the action if either of the following apply:

- (1) The dissenting cotrustee does not join in the action.
- (2) The dissenting cotrustee joins in the action necessary to carry out the decision of the other cotrustee or cotrustees and gives notice of the dissent to the other cotrustee or cotrustees at or before joining in the action.

(i) Notwithstanding any other provision of this section to the contrary, if two or more trustees own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

- (1) If only one votes, in person or by proxy, the act binds all;
- (2) If more than one vote, in person or by proxy, the act binds all; and
- (3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately. (2005-192, s. 2; 2007-106, ss. 27, 28, 29; 2012-18, s. 3.2; 2015-205, s. 10.)