

RCW 11.104B.070 Fiduciary duties—Power to adjust. (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust is necessary to administer the trust or estate in accordance with the requirements of RCW 11.104B.050(1).

(2) This section does not create a duty to exercise or consider the power to adjust under subsection (1) of this section or to inform a beneficiary about the applicability of this section.

(3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (1) of this section is not liable to a person affected by the exercise or failure to exercise.

(4) In deciding whether and to what extent to exercise the power to adjust under subsection (1) of this section, a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in RCW 11.104B.050(5) and the application of RCW 11.104B.200(9), 11.104B.270, or 11.104B.320.

(5) A fiduciary may not exercise the power under subsection (1) of this section to make an adjustment or under RCW 11.104B.270 to make a determination that an allocation is insubstantial if:

(a) The adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(b) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(c) The adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(d) Possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;

(e) Possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(f) Possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(g) The fiduciary is not an independent person;

(h) The trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public benefit program; or

(i) The trust is a unitrust under Article 3 of this chapter.

(6) If subsection (5)(d), (e), (f), or (g) of this section applies to a fiduciary:

(a) A cofiduciary to which subsection (5)(d) through (g) of this section does not apply may exercise the power to adjust, unless the exercise of the power by the remaining cofiduciary or cofiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(b) If there is no cofiduciary to which subsection (5)(d) through (g) of this section does not apply, the fiduciary may appoint a

cofiduciary to which subsection (5) (d) through (g) of this section does not apply, which may be a special fiduciary with limited powers, and the appointed cofiduciary may exercise the power to adjust under subsection (1) of this section, unless the appointment of a cofiduciary or the exercise of the power by a cofiduciary is not permitted by the terms of the trust or law other than this chapter.

(7) A fiduciary may release or delegate to a cofiduciary the power to adjust under subsection (1) of this section if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(a) Cause a result described in subsection (5) (a) through (f) or (h) of this section; or

(b) Deprive the trust of a tax benefit or impose a tax burden not described in subsection (5) (a) through (f) of this section.

(8) A fiduciary's release or delegation to a cofiduciary under subsection (7) of this section of the power to adjust under subsection (1) of this section:

(a) Must be in a record;

(b) Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(i) From income to principal;

(ii) From principal to income;

(iii) For specified property; or

(iv) In specified circumstances;

(c) For a delegation, may be modified by a redelegation under this subsection by the cofiduciary to which the delegation is made; and

(d) Subject to (c) of this subsection (8), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

(9) Terms of a trust which deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (1) of this section.

(10) The exercise of the power to adjust under subsection (1) of this section in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.

(11) A description of the exercise of the power to adjust under subsection (1) of this section must be:

(a) Included in a report, if any, sent to all beneficiaries; or

(b) Communicated at least annually to all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised. [2021 c 140 s 2203.]