



Ohio Revised Code

Section 5812.03 Trustee's power to adjust.

Effective: January 1, 2007

Legislation: House Bill 416 - 126th General Assembly

(A) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages the trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying division (A) of section 5812.02 of the Revised Code, that the trustee is unable to comply with division (B) of that section.

(B) In deciding whether and to what extent to exercise the power conferred by division (A) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including all of the following factors to the extent they are relevant:

- (1) The nature, purpose, and expected duration of the trust;
- (2) The intent of the settlor;
- (3) The identity and circumstances of the beneficiaries;
- (4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) The net amount allocated to income under sections 5812.01, 5812.02, and 5812.07 to 5812.52 of the Revised Code; and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or



accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) The anticipated tax consequences of an adjustment.

(C) A trustee shall not make an adjustment if any of the following applies:

(1) The adjustment diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment.

(2) The adjustment reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(3) The adjustment changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside.

(5) If possessing or exercising the power to make the adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make the adjustment;

(6) If possessing or exercising the power to make the adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make the adjustment;



(7) If the trustee is a beneficiary of the trust;

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(D) If division (C)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(E) A trustee may release the entire power conferred by division (A) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in division (C)(1), (2), (3), (4), (5), (6), or (8) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in division (C) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(F) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by division (A) of this section.

(G) The liability of a trustee relative to the exercise of adjustment authority conferred by divisions (A) to (F) of this section shall be limited in the following manner:

(1) Unless a court determines that a trustee has acted in bad faith, no trustee shall be held liable for damages for choosing not to make an adjustment.

(2) Unless a court determines that a trustee has acted in bad faith with respect to an adjustment, the sole remedy to be ordered by a court shall be a prospective correction of the adjustment.

(3) For purposes of this section, and subject to division (C) of this section, from time to time a trustee may make a safe-harbor adjustment to increase net trust accounting income up to and including an



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amount equal to four per cent of the trust's fair market value determined as of the first business day of the current year. If a trustee determines to make this safe-harbor adjustment, the propriety of this adjustment shall be conclusively presumed. Nothing in division (G)(3) of this section prohibits any other type of adjustment authorized under any provision of this section.