



Ohio Revised Code

Section 5804.11 Termination or modification of noncharitable irrevocable trust.

Effective: March 22, 2012

Legislation: Senate Bill 117 - 129th General Assembly

(A) If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, that all consents, including any given by representatives under Chapter 5803. of the Revised Code, are valid, and that all parties giving consent are competent to do so, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. An agent under a power of attorney may exercise a settlor's power to consent to a trust's modification or termination only to the extent expressly authorized by both the power of attorney and the terms of the trust. The settlor's guardian of the estate may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized. The guardian of the settlor's person may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized and a guardian of the estate has not been appointed. This division does not apply to a noncharitable irrevocable trust described in 42 U.S.C. 1396p(d)(4).

(B) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified, but not to remove or replace the trustee, upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. A spendthrift provision in the terms of the trust may, but is not presumed to, constitute a material purpose of the trust. In determining what constitutes a material purpose of a trust, a court may but is not required to consider extrinsic evidence indicating a settlor's intent at the time the instrument was executed.

(C) Upon termination of a trust under division (A) or (B) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(D) If not all of the beneficiaries consent to a proposed modification or termination of the trust



under division (A) or (B) of this section, the court may approve the modification or termination if the court is satisfied of both of the following:

- (1) That if all of the beneficiaries had consented, the trust could have been modified or terminated under this section;
- (2) That the interests of a beneficiary who does not consent will be adequately protected.