

**RCW 11.107.020 Decanting power under expanded discretion. (1)**

Subject to (a) of this subsection and RCW 11.107.070, a trustee that has expanded discretion to distribute the principal of a first trust to one or more current beneficiaries may exercise the decanting power over the principal of the first trust, subject to the following:

(a) Except as provided in RCW 11.107.060, a second trust may not in an exercise of the decanting power under this section:

(i) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in (b) of this subsection;

(ii) Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in (b) of this subsection; or

(iii) Reduce or eliminate a vested interest;

(b) Subject to (a)(iii) of this subsection and RCW 11.107.070, a second trust may in an exercise of the decanting power under this section:

(i) Retain a power of appointment granted in the first trust;

(ii) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(iii) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the trustee has expanded discretion to distribute principal to the current beneficiary; and

(iv) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary;

(c) A power of appointment described in (b) of this subsection may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust;

(d) In an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction; and

(e) If a trustee has expanded discretion to distribute part but not all of the principal of a first trust, the trustee may exercise the decanting power under this section only over that part of the principal.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(b) "Successor beneficiary" means a beneficiary that on the date of the beneficiary's qualification is determined not to be a qualified beneficiary. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(c) "Vested interest" means:

(i) A right to a mandatory distribution that is noncontingent as of the date of the exercise of the decanting power;

(ii) A current and noncontingent right, annually or more frequently, to either a mandatory distribution of income or to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust income or principal;

(iii) A presently exercisable general power of appointment; or

(iv) A right to receive an ascertainable part of the trust principal on trust termination that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. [2017 c 29 § 2.]