

EXAMPLES FOR MISSISSIPPI UNIFORM TRUST CODE ON QUALIFIED BENEFICIARIES

Example 1.

Settlor creates a marital trust for spouse. Trust income is required to be paid to spouse for his or her lifetime. Discretionary principal distributions may also be payable to spouse during his or her lifetime. Only the spouse is a beneficiary of the trust during his or her lifetime. Upon the death of the spouse the trust assets are distributed, outright, in equal shares, to the two children of the Settlor. In the event a child of the Settlor is deceased at that time, his or her share remains in trust for the benefit of the children of that deceased child of the Settlor (being the grandchildren of the Settlor by that deceased child). On the testing date, spouse and two adult children are still living. The Spouse is a qualified beneficiary under Mississippi Code Section 91-8-103(21)(A). There are no qualified beneficiaries under Section 91-8-103(21)(B) because upon the death of the spouse, the only qualified beneficiary under Section 91-8-103(21)(A), the trust terminates. The two adult children are qualified beneficiaries under Section 91-8-103(21)(C). The grandchildren are not qualified beneficiaries.

Example 2.

Settlor creates a family trust under his Will for the benefit of his spouse and two adult children. Discretionary distributions of income and principal may be made to the spouse and the two adult children under an ascertainable standard during the lifetime of the spouse. Upon the death of the spouse the trust assets are distributed, outright, in equal shares, to the two children of the Settlor. In the event a child of the Settlor is

deceased at that time, his or her share remains in trust for the benefit of the children of that deceased child of the Settlor (being the grandchildren of the Settlor by that deceased child). On the testing date, the spouse, two adult children and four minor grandchildren are living. The Spouse and the two adult children are qualified beneficiaries of this trust under Section 91-8-103(21)(A). The four minor grandchildren are qualified beneficiaries under Section 91-8-103(21)(B) because upon the death of the spouse and two adult children, the qualified beneficiaries under Section 91-8-103(21)(A), the trust does not terminate and the four minor grandchildren would be permissible distributees of the amount that remains in trust.

Example 3.

The provisions of a family trust created by the Settlor under his Will are the same as those in Example 2, except that upon the death of the spouse and in the event a child of the Settlor is deceased at that time, the Will provides that the separate shares for the children of a deceased child be managed and invested as separate trusts. Since now under the provisions of the Will, the family trust will terminate upon the deaths of the Settlor's spouse and two adult children, and the trust assets will pass to independent and separate subtrusts for the benefit of the grandchildren of the Settlor, the four minor grandchildren would not be qualified beneficiaries under Section 91-8-103(21)(B). The Trustee or Trustees of the independent and separate subtrusts would be qualified beneficiaries under Section 91-8-103(21)(C). The Trustee or Trustees of the subtrust may be the same individual(s), bank or trust company as the Trustee or Trustees of the initial Family Trust.

Example 4.

Settlor creates a dynasty trust for the benefit of all of his descendants. The Trustee may make discretionary income and principal distributions to any living descendant of the Settlor during the term of this trust. The trust will not terminate until the end of the Rule against Perpetuities period and will be distributed at that time to the then living descendants of the Settlor, per stirpes. In the event that all of the Settlor's descendants die before the termination of the trust, the trust agreement provides that the trust assets are distributed outright to a Charity. On the testing date, the Settlor has seven living descendants. The Settlor's seven living descendants, are qualified beneficiaries of this trust under Section 91-8-103(21)(A), because they are all current distributees of trust income and principal. There are no qualified beneficiaries under Section 91-8-103(21)(B) because if all of the beneficiaries under Section 91-8-103(21)(A) are assumed to have died on the testing date, the trust terminates. The Charity is a qualified beneficiary of this trust under Section 91-8-103(21)(C), because the trust will terminate upon the earlier of the death of all the descendants or the end of the Rule against Perpetuities period, and if the trust terminates upon the death of all the descendants, the trust assets are distributed outright to the Charity. Since the trust will terminate upon the death of all descendants you assume that the death of all descendants occurs on the testing date to determine under Section 91-8-103(21)(C) who will receive the trust assets outright, even though the trust could be distributed to descendants if any are alive at the end of the Rule against Perpetuities. Unborn descendants are not qualified beneficiaries.

Example 5.

The provisions of the dynasty trust created by the Settlor are the same as those in Example 4, except that the trust agreement provides that in the event that all of the Settlor's descendants die before the termination of the trust, the trust assets are distributed outright to the Settlor's heirs-at-law rather than to the Charity. Also, on the testing date, the Settlor's heirs-at-law are his spouse and three adult children. In determining who is a qualified beneficiary of the trust, the heirs-at-law are those individuals who would be heirs-at-law of the Settlor on the testing date. In this case, the Settlor's spouse would be a qualified beneficiary under Section 91-8-103(21)(C).

Example 6.

The provisions of the dynasty trust created by the Settlor are the same as those in Examples 4 and 5, except that the trust agreement does not provide for a default contingent beneficiary if all of the Settlor's descendants are deceased. Under state law, if all of the Settlor's descendants are deceased, the trust assets will be distributed to the Settlor's heirs-at-law. In this case, since the Settlor's heirs-at-law are not specifically provided for under the trust agreement, the Settlor's heirs-at-law are not taken into account in determining the qualified beneficiaries of the trust. In determining the qualified beneficiaries of the trust, only those beneficiaries or class of beneficiaries named in the trust agreement are considered.

Example 7.

Settlor creates a child's trust for the benefit of his child. Discretionary distributions of income and principal may be made to the child under an ascertainable

standard. One-half of the trust assets are distributed outright to the child when the child attains the age of thirty-five, and the remainder of the trust is distributed outright to the child when the child attains the age of forty. In the event of the child's death before the termination of the trust, the trust assets shall remain in trust for the benefit of the children of the deceased child (being the grandchildren of the Settlor by that deceased child) until the youngest of the grandchildren reaches the age of 21 at which time the trust terminates and the assets are distributed outright and free of trust in equal shares to the grandchildren. On the testing date the Settlor's child is thirty-three years old with two minor children. The Settlor's child is a qualified beneficiary of this trust under Section 91-8-103(21)(A). The two minor children of the Settlor's child (being the grandchildren of the Settlor by that child) are qualified beneficiaries of this trust under Section 91-8-103(21)(B).