

(5) THE POWER TO EXERCISE ANY OF THE POWERS PROSCRIBED IN THIS SUBSECTION WITH REGARD TO A BENEFICIARY OTHER THAN THE TRUSTEE TO THE EXTENT THAT SUCH BENEFICIARY COULD EXERCISE A SIMILAR PROHIBITED POWER IN CONNECTION WITH A TRUST WHICH BENEFITS THE TRUSTEE.

(B) IF A TRUSTEE IS PROHIBITED BY SUBSECTION (A)(1) OF THIS SECTION FROM EXERCISING A POWER CONFERRED UPON THE TRUSTEE, THE TRUSTEE MAY NEVERTHELESS EXERCISE THE POWER EXCEPT THAT THE TRUSTEE'S EXERCISE OF THAT POWER SHALL BE LIMITED BY AN ASCERTAINABLE STANDARD RELATING TO THE TRUSTEE'S HEALTH, EDUCATION, SUPPORT AND MAINTENANCE, AS DEFINED IN 26 U.S.C. §§ 2041 AND 2514 AND THE TREASURY REGULATIONS PROMULGATED UNDER THOSE SECTIONS.

(C) IF THE GOVERNING INSTRUMENT CONTAINS A POWER DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION, AND THERE IS NO TRUSTEE WHO CAN EXERCISE SUCH POWER, UPON APPLICATION OF ANY PARTY IN INTEREST, A COURT MAY APPOINT A TRUSTEE WHO IS NOT OTHERWISE DISQUALIFIED UNDER THIS SECTION TO EXERCISE ANY SUCH POWER DURING THE PERIOD OF TIME THAT THE COURT DESIGNATES.

(D) THIS SECTION DOES NOT APPLY IF:

(1) AS A RESULT OF APPLICATION OF SUBSECTION (A) OF THIS SECTION, A MARITAL DEDUCTION FOR THE TRUST PROPERTY WOULD NOT BE ALLOWED TO A SPOUSE WHO IS A TRUSTEE AND TO WHOM A MARITAL DEDUCTION WOULD OTHERWISE BE ALLOWED UNDER THE INTERNAL REVENUE CODE; OR

(2) THE TRUST IS REVOCABLE OR AMENDABLE, DURING THE TIME THAT THE TRUST REMAINS REVOCABLE OR AMENDABLE.

(E) (1) IN THIS SUBSECTION, "PARTIES IN INTEREST" MEANS:

(I) EACH TRUSTEE THEN SERVING; AND

(II) EACH INCOME BENEFICIARY AND REMAINDER BENEFICIARY THEN IN EXISTENCE OR, IF SUCH BENEFICIARY HAS NOT ATTAINED MAJORITY OR IS OTHERWISE INCAPACITATED, THE BENEFICIARY'S LEGAL REPRESENTATIVE UNDER APPLICABLE LAW OR THE BENEFICIARY'S DONEE UNDER A DURABLE POWER OF ATTORNEY THAT IS SUFFICIENT TO GRANT SUCH AUTHORITY.

(2) SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THIS SECTION APPLIES TO:

(I) ANY TRUST CREATED UNDER A GOVERNING INSTRUMENT EXECUTED AFTER SEPTEMBER 30, 1995, UNLESS THE TERMS OF THE GOVERNING INSTRUMENT PROVIDE EXPRESSLY THAT THIS SECTION DOES NOT APPLY; AND

(II) ANY TRUST CREATED UNDER A GOVERNING INSTRUMENT EXECUTED BEFORE OCTOBER 1, 1995, UNLESS ALL PARTIES IN INTEREST ELECT AFFIRMATIVELY NOT TO BE SUBJECT TO THE APPLICATION OF THIS SECTION ON OR BEFORE THE LATER OF OCTOBER 1, 1998, OR 3 YEARS AFTER THE DATE ON WHICH THE TRUST BECOMES IRREVOCABLE.