

386.355 Acts prohibited -- Policy of state regarding private foundations -- Split-interest trusts -- Charitable trusts.

- (1) In the administration of any trust which is a "private foundation" as defined in Section 509 of the Internal Revenue Code, a trust for charitable purposes described in Section 4947(a)(1) of the Internal Revenue Code to the extent that it is treated for federal tax purposes as such a private foundation, or a "split-interest trust" as described in Section 4947(a)(2) of the Internal Revenue Code, the following acts are prohibited:
 - (a) Engaging in any act of "self-dealing" (as defined in Section 4941(d) of the Internal Revenue Code) which would give rise to any liability for any tax imposed by Section 4941 of the Internal Revenue Code;
 - (b) Retaining any "excess business holdings" (as defined in Section 4943(c) of the Internal Revenue Code) which would give rise to any liability for any tax imposed by Section 4943 of the Internal Revenue Code;
 - (c) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of the Internal Revenue Code, so as to give rise to any liability for any tax imposed by Section 4944 of the Internal Revenue Code; and
 - (d) Making any "taxable expenditures" (as defined in Section 4945(d) of the Internal Revenue Code) which would give rise to any liability for any tax imposed by Section 4945 of the Internal Revenue Code; provided, however, that the prohibitions of this subsection shall not apply to split-interest trusts or to amounts thereof, to the extent that such prohibitions are made inapplicable thereto by Section 4947 of the Internal Revenue Code.
- (2) In the administration of any trust which is a "private foundation" as defined in Section 509 of the Internal Revenue Code, or a trust for charitable purposes described in Section 4947(a)(1) of the Internal Revenue Code to the extent that it is treated for federal tax purposes as such a private foundation, there shall, for the purposes specified in the governing instrument, be distributed at such time and in such manner, for each taxable year, amounts of income and principal at least sufficient to avoid liability for any tax imposed by Section 4942 of the Internal Revenue Code.
- (3) Subsections (1) and (2) of this section express the continuing policy of this state with respect to charitable trust interests and are enacted to assist such trusts in maintaining various tax benefits extended to them, and shall apply to all trusts described therein; provided, however, that subsections (1) and (2) of this section shall not apply to a trust in existence on July 1, 1972, to the extent that the Attorney General of this state, the trustor, or any beneficiary of such trust, on or before November 30, 1972, files with the trustee of such trust a written objection to the application to such trust of one (1) or more provisions of subsections (1) and (2) of this section and the trustee receiving such written objection commences an action on or before December 31, 1972, in the court having jurisdiction over such trust to reform its governing instrument or any other instrument in order to meet, or to excuse such trust from compliance with the requirements of subsections (1) and (2)

of this section. If a trustee receiving such written objection shall commence such an action, the one (1) or more provisions of subsections (1) and (2) of this section specified in such written objection shall not apply to such trust unless and until such court determines that their application to such trust is in the best interests of all parties in interest.

- (4) No trustee of a trust to which subsection (1) or (2) of this section is applicable shall be surcharged for a violation of a prohibition or requirement of said subsections unless he participated in such violation knowing that it was a violation, nor shall such a trustee be surcharged if such violation was not willful and was due to reasonable cause; provided, however, that this subsection does not exonerate a trustee from any responsibility or liability to which he is subject under any other rule of law, whether or not duplicated in subsections (1) and (2) of this section.
- (5) Except as provided in subsection (4) of this section, nothing in this section shall impair the rights and powers of the courts or the Attorney General with respect to any trust.
- (6) In furtherance of the continuing policy of this state to assist charitable trust interests in maintaining various tax benefits extended to them, the provisions of subsections (1) and (2) of this section shall be deemed to have been in force and effect on January 1, 1970; provided, however, the provisions of said subsections shall affect a trust organized before January 1, 1970, only on and after the first day of its first taxable year (for federal tax purposes) beginning on or after January 1, 1972.

History: Created 1972 Ky. Acts ch. 344, sec. 2.