

3B:14-23

LEGISLATIVE HISTORY CHECKLIST
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(Fiduciaries--divide trusts)

NJSA: 3B:14-23
LAWS OF: 1993 **CHAPTER:** 360
BILL NO: A1983
SPONSOR(S): Derman
DATE INTRODUCED: November 6, 1992
COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary
AMENDED DURING PASSAGE: No
DATE OF PASSAGE: **ASSEMBLY:** May 20, 1993
SENATE: December 13, 1993
DATE OF APPROVAL: December 30, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes
FISCAL NOTE: No
VETO MESSAGE: No
MESSAGE ON SIGNING: No
FOLLOWING WERE PRINTED:
REPORTS: No
HEARINGS: No

KBG:pp

P.L.1993, CHAPTER 360, approved December 30, 1993
1992 Assembly No. 1883

1 AN ACT concerning the power of fiduciaries to divide trusts into
2 two or more separate trusts and amending N.J.S.3B:14-23.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. N.J.S.3B:14-23 is amended to read as follows:

7 3B:14-23. Powers. In the absence of contrary or limiting
8 provisions in the judgment or order appointing a fiduciary, in the
9 will, deed or other instrument or in a subsequent court judgment
10 or order, every fiduciary shall, in the exercise of good faith and
11 reasonable discretion, have the power:

12 a. To accept additions to any estate or trust from sources
13 other than the estate of the decedent, minor, mental incompetent
14 or the settler of a trust;

15 b. To acquire the remaining undivided interest in an estate or
16 trust asset in which the fiduciary, in his fiduciary capacity, holds
17 an undivided interest;

18 c. To invest and reinvest assets of the estate or trust under
19 the provisions of the will, deed or other instrument or as
20 otherwise provided by law and to exchange assets for investments
21 and other property upon terms as may seem advisable to the
22 fiduciary;

23 d. To effect and keep in force fire, rent, title, liability,
24 casualty or other insurance to protect the property of the estate
25 or trust and to protect the fiduciary;

26 e. With respect to any property or any interest therein owned
27 by an estate or trust, including any real property belonging to the
28 fiduciary's decedent at death, except where the property or any
29 interest therein is specifically disposed of:

30 (1) To take possession of and manage the property and to
31 collect the rents therefrom, and pay taxes, mortgage interest and
32 other charges against the property;

33 (2) To sell the property at public or private sale, and on terms
34 as in the opinion of the fiduciary shall be most advantageous to
35 those interested therein;

36 (3) With respect to fiduciaries other than a trustee, to lease
37 the property for a term not exceeding 3 years, and in the case of
38 a trustee to lease the property for a term not exceeding 10 years,
39 even though the term extends beyond the duration of the trust,
40 and in either case including the right to explore for and remove
41 mineral or other natural resources, and in connection with
42 mineral leases to enter into pooling and unitization agreements;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (4) To mortgage the property;
- 2 (5) To grant easements to adjoining owners and utilities;
- 3 (6) A fiduciary acting under a will may exercise any of the
- 4 powers granted by this subparagraph e. notwithstanding the
- 5 effects upon the will of the birth of a child after its execution;
- 6 f. To make repairs to the property of the estate or trust for
- 7 the purpose of preserving the property or rendering it rentable or
- 8 saleable;
- 9 g. To grant options for the sale of any property of the estate
- 10 or trust for a period not exceeding 6 months;
- 11 h. With respect to any mortgage held by the estate or trust to
- 12 continue it upon and after maturity, with or without renewal or
- 13 extension, upon terms as may seem advisable to the fiduciary and
- 14 to foreclose, as an incident to collection of any bond or note, any
- 15 mortgage and purchase the mortgaged property or acquire the
- 16 property by deed from the mortgagor in lieu of foreclosure;
- 17 i. In the case of the survivor or survivors of two or more
- 18 fiduciaries to administer the estate or trust without the
- 19 appointment of a successor to the fiduciary or fiduciaries who
- 20 have ceased to act and to exercise or perform all of the powers
- 21 given unless contrary to the express provision of the will, deed or
- 22 other instrument;
- 23 j. As a new, alternate, successor, substitute or additional
- 24 fiduciary or fiduciaries, to have or succeed to all of the powers,
- 25 duties and discretion of the original fiduciary or fiduciaries, with
- 26 respect to the estate or trust, as were given to the original
- 27 fiduciary or fiduciaries named in or appointed by a will, deed or
- 28 other instrument, unless the exercise of the powers, duties or
- 29 discretion of the original fiduciary or fiduciaries is expressly
- 30 prohibited by the will, deed or other instrument to any successor
- 31 or substitute fiduciary or fiduciaries;
- 32 k. Where there are three or more fiduciaries qualified to act,
- 33 to take any action with respect to the estate or trust which a
- 34 majority of the fiduciaries shall determine; a fiduciary who fails
- 35 to act through absence or disability, or a dissenting fiduciary who
- 36 joins in carrying out the decision of a majority of the fiduciaries
- 37 if his dissent is expressed promptly in writing to his cofiduciaries,
- 38 shall not be liable for the consequences of any majority decision,
- 39 provided that liability for failure to join in administering the
- 40 trust or to prevent a breach of trust may not thus be avoided;
- 41 l. To employ and compensate attorneys for services rendered
- 42 to the estate or trust or to a fiduciary in the performance of his
- 43 duties;
- 44 m. To compromise, contest or otherwise settle any claim in
- 45 favor of the estate, trust or fiduciary or in favor of third persons
- 46 and against the estate, trust or fiduciary, including transfer
- 47 inheritance, estate, income and other taxes;
- 48 n. To vote in person or by proxy, discretionary or otherwise,
- 49 shares of stock or other securities held by the estate or trust;
- 50 o. To pay calls, assessments and any other sums chargeable or
- 51 accruing against or on account of shares of stock, bonds,
- 52 debentures or other corporate securities in the hands of a
- 53 fiduciary, whenever the payments may be legally enforceable
- 54 against the fiduciary or any property of the estate or trust or the

1 fiduciary deems payment expedient and for the best interests of
2 the estate or trust;

3 p. To sell or exercise stock subscription or conversion rights,
4 participate in foreclosures, reorganizations, consolidations,
5 mergers or liquidations, and to consent to corporate sales or
6 leases and encumbrances, and, in the exercise of those powers,
7 the fiduciary is authorized to deposit stocks, bonds or other
8 securities with any custodian, agent, protective or other similar
9 committee, or trustee under a voting trust agreement, under
10 terms and conditions respecting the deposit thereof as the
11 fiduciary may approve;

12 q. To execute and deliver agreements, assignments, bills of
13 sale, contracts, deeds, notes, receipts and any other instrument
14 necessary or appropriate for the administration of the estate or
15 trust;

16 r. In the case of a trustee[,] :

17 (1) to hold two or more trusts or parts of trusts created by the
18 same instrument, as an undivided whole, without separation as
19 between the trusts or parts of the trusts, provided that separate
20 trusts or parts of trusts shall have undivided interests and
21 provided further that no holding shall defer the vesting of any
22 estate in possession or otherwise;

23 (2) To divide a trust, before or after its initial funding, into
24 two or more separate trusts, provided that such division will not
25 materially impair the accomplishment of the trust purposes or
26 the interests of any beneficiary. Distributions provided for by
27 the governing instrument may be made from one or more of the
28 separate trusts;

29 s. To distribute in kind any property of the estate or trust as
30 provided in article 1 of chapter 23 of this title;

31 t. To join with the surviving spouse, the executor of his or her
32 will or the administrator of his or her estate in the execution and
33 filing of a joint income tax return for any period prior to the
34 death of a decedent for which he has not filed a return or a gift
35 tax return on gifts made by the decedent's surviving spouse, and
36 to consent to treat the gifts as being made one-half by the
37 decedent, for any period prior to a decedent's death, and to pay
38 taxes thereon as are chargeable to the decedent;

39 u. To acquire or dispose of an asset, including real or personal
40 property in this or another State, for cash or on credit, at public
41 or private sale, and to manage, develop, improve, exchange,
42 partition, change the character of, or abandon an estate asset;

43 v. To continue any business constituting the whole or any part
44 of the estate for so long a period of time as the fiduciary may
45 deem advisable and advantageous for the estate and persons
46 interested therein;

47 w. In the case of a qualified bank as defined in section 1 of
48 P.L.1948, c.67 (C.17:9A-1), to purchase, sell and maintain for any
49 fiduciary account, securities issued by an investment company
50 which is operated and maintained in accordance with the
51 "Investment Company Act of 1940," 15 U.S.C.80a-1 et seq., and
52 for which the qualified bank is providing services as an
53 investment advisor, investment manager, custodian or otherwise,
54 provided that:

1 (1) the investment is otherwise in accordance with applicable
2 fiduciary standards;

3 (2) unless the investment of trust assets in an investment
4 company to which the qualified bank provides services as an
5 investment manager, custodian or otherwise is provided for by
6 the instrument creating the fiduciary account:

7 (a) all current income beneficiaries are provided with 30 days
8 written notice of the qualified bank's intent to so invest the
9 assets prior to the initial investment; and

10 (b) the qualified bank does not receive written objection
11 thereto from any such beneficiary within the 30 day period; and

12 (3) unless otherwise specifically permitted by the trust
13 instrument creating the fiduciary account:

14 (a) the investment advisory fees, commissions or similar fees
15 to which the qualified bank is entitled as fiduciary shall be
16 reduced by the amount of any investment advisory fees,
17 commissions or similar fees paid to the qualified bank by the
18 investment company; or

19 (b) the investment advisory fees, commissions or similar fees
20 paid to the qualified bank by the investment company are
21 received in lieu of any investment advisory fees, commissions or
22 similar fees that the qualified bank would otherwise be entitled
23 to receive for the investment management of the fiduciary
24 account.

25 Such investment shall not be deemed self-dealing or a fiduciary
26 conflict; nor shall the fact that other beneficiaries of fiduciary
27 accounts of the qualified bank have similar investments be
28 deemed to be an improper commingling of assets by the qualified
29 bank.

30 For purposes of this subsection, "fiduciary account" shall
31 include a trust, estate, agency or other account in which funds,
32 property, or both, are held by a qualified bank pursuant to section
33 28 of P.L.1948, c.67 (C.17:9A-28), or an account for which a
34 qualified bank acts as investment advisor or manager; and

35 x. The powers set forth in this section are in addition to any
36 other powers granted by law, and by a will, deed or other
37 instrument.

38 (cf: P.L.1991, c.503, s.2)

39 2. This act shall take effect immediately and shall apply to all
40 trusts, regardless of whether they are funded.

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44 STATEMENT

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46 This bill amends N.J.S.3B:14-23 by adding a new paragraph to
47 authorize fiduciaries to divide trusts into two or more separate
48 trusts without prior court approval. The New Jersey Supreme
49 Court recently authorized such a division for tax purposes in In re
50 Estate of Branigan, (A-114), decided August 3, 1992. In that
51 opinion, the Court stated "the splitting of the trust does not
52 entail modification of a material or significant administrative
53 provision or structural feature of the will. Rather, the
54 modification constitutes only a technical alteration relating to
an aspect of estate administration that does not otherwise appear to

1 have any material bearing on the decedent's testamentary plan."
2 (Slip opinion at p. 15).

3 The need to divide trusts has become particularly important in
4 light of changes in the federal generation-skipping transfer tax
5 law in order to maximize the benefit of each person's
6 generation-skipping transfer tax exemption. This bill is
7 consistent with the Branigan decision and will avoid the expense
8 and delay of a court proceeding to accomplish a predictable
9 result.

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2 fiduciary standards;
- 3 (2) unless the investment of trust assets in an investment
4 company to which the qualified bank provides services as an
5 investment manager, custodian or otherwise is provided for by
6 the instrument creating the fiduciary account:
- 7 (a) all current income beneficiaries are provided with 30 days
8 written notice of the qualified bank's intent to so invest the
9 assets prior to the initial investment; and
- 10 (b) the qualified bank does not receive written objection
11 thereto from any such beneficiary within the 30 day period; and
- 12 (3) unless otherwise specifically permitted by the trust
13 instrument creating the fiduciary account:
- 14 (a) the investment advisory fees, commissions or similar fees
15 to which the qualified bank is entitled as fiduciary shall be
16 reduced by the amount of any investment advisory fees,
17 commissions or similar fees paid to the qualified bank by the
18 investment company; or
- 19 (b) the investment advisory fees, commissions or similar fees
20 paid to the qualified bank by the investment company are
21 received in lieu of any investment advisory fees, commissions or
22 similar fees that the qualified bank would otherwise be entitled
23 to receive for the investment management of the fiduciary
24 account.
- 25 Such investment shall not be deemed self-dealing or a fiduciary
26 conflict; nor shall the fact that other beneficiaries of fiduciary
27 accounts of the qualified bank have similar investments be
28 deemed to be an improper commingling of assets by the qualified
29 bank.
- 30 For purposes of this subsection, "fiduciary account" shall
31 include a trust, estate, agency or other account in which funds,
32 property, or both, are held by a qualified bank pursuant to section
33 28 of P.L.1948, c.67 (C.17:9A-28), or an account for which a
34 qualified bank acts as investment advisor or manager; and
- 35 x. The powers set forth in this section are in addition to any
36 other powers granted by law, and by a will, deed or other
37 instrument.
- 38 (cf: P.L.1991, c.503, s.2)
- 39 2. This act shall take effect immediately and shall apply to all
40 trusts, regardless of whether they are funded.

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48 Court recently authorized such a division for tax purposes in In re
49 Estate of Branigan, (A-114), decided August 3, 1992. In that
50 opinion, the Court stated "the splitting of the trust does not
51 entail modification of a material or significant administrative
52 provision or structural feature of the will. Rather, the
53 modification constitutes only a technical alteration relating to an
54 aspect of estate administration that does not otherwise appear to

1 have any material bearing on the decedent's testamentary plan."
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4 light of changes in the federal generation-skipping transfer tax
5 law in order to maximize the benefit of each person's
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15 Authorizes fiduciaries to divide trusts into two or more separate
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ASSEMBLY JUDICIARY, LAW AND
PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1983

STATE OF NEW JERSEY

DATED: MARCH 22, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Bill No. 1983.

This bill amends N.J.S.3B:14-23 by adding a new paragraph to authorize fiduciaries to divide trusts into two or more separate trusts without prior court approval. The New Jersey Supreme Court recently authorized such a division for tax purposes in In re Estate of Branigan, 129 N.J. 324 (1992). In that opinion, the Court stated "the splitting of the trust does not entail modification of a material or significant administrative provision or structural feature of the will. Rather, the modification constitutes only a technical alteration relating to an aspect of estate administration that does not otherwise appear to have any material bearing on the decedent's testamentary plan." 129 N.J., at 336.

The need to divide trusts has become particularly important in light of changes in the federal generation-skipping transfer tax law in order to maximize the benefit of each person's generation-skipping transfer tax exemption. This bill is consistent with the Branigan decision and will avoid the expense and delay of a court proceeding to accomplish a predictable result.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1983

STATE OF NEW JERSEY

DATED: JUNE 21, 1993

The Senate Judiciary Committee reports favorably Assembly Bill No. 1983.

This bill would amend N.J.S.3B:14-23 by adding a new paragraph authorizing fiduciaries to divide trusts into two or more separate trusts prior to court approval provided that such division will not materially impair the accomplishment of the trust purposes or the interest of any beneficiary. The need to divide trusts has become particularly import in light of recent changes in federal estate tax laws.

The bill is consistent with the recent decision of the New Jersey Supreme Court in Estate v. Branigan 129 N.J.324 (1992). In that case, the court permitted the executors of a will to divide a testamentary trust into two trusts in order to take advantage of changes in federal estate tax laws.