

State "Decanting" Statutes

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State	Statute	Effective Date	Absolute Discretion Required?	May Reduce Fixed Income Interest?	Must Be a Current Beneficiary Entitled or Eligible to Receive Income In Order to Decant to New Trust?	Beneficiaries' Interests Must Be Identical in Both Trusts?	Identical Beneficiaries in Both Trusts Required?	Applies to Inter Vivos and Testamentary Trusts?	Can Be a New Trust Created Under a New Instrument or a Trust Under the Old Instrument?	Notice to or Consent of Beneficiaries Required?	Consent of Court Required?	Increase Trustee Commissions?	Filings Required	Same Trustee Required?	Rule Against Perpetuities Savings Provision?	Marital Deduction Savings Provision?	Unique Statutory Attributes
New York	NY EPTL §10-6.6(b)	July 24, 1992	Yes	No	No	Probably No; statute merely provides the power must be exercised "in favor of the proper objects of" its exercise; but see next column; perhaps changes to interests within a class okay	Probably No; statute merely provides the power must be exercised "in favor of the proper objects of" its exercise; probably can exclude beneficiaries of original trust, but cannot add new beneficiaries. However, query whether the new trust can change the nature of the interest of old trust's beneficiaries (e.g., move up presumptive remainderman to eligible beneficiary of discretionary principal distributions. Would doing this be "in favor of the proper objects of the exercise of the power" or would it violate that principle since the remainderman was not part of the class to whom discretionary principal distributions from the old trust could be made?)	Yes	Yes	Yes; trustee must serve written exercise of power on all interested parties, though no consent required	No, but may seek court approval	Only if directed by court	Trustee's written exercise must be filed with court having jurisdiction	No	No	No	
Alaska	AK Stat. §13.36.157	Sept. 15, 1998	No; but new trust must have same discretionary distribution standard (if any)	No	Yes	Probably No; statute merely provides the power must be exercised "in favor of the beneficiaries of the invaded [old] trust; see NY above Unclear under statute what meaning is to be given to provision stating that new trust may provide that upon the occurrence of "a time or event," the "nature and extent of the interests of the beneficiaries" of old trust can be "substantially identical" to those of old trust	Probably No; statute merely provides the power must be exercised "in favor of the beneficiaries of the invaded [old] trust"; See NY above	Yes	No; statute refers solely to "an instrument other than that under which the power to invade was created"	No	No	No reference	None	No	Yes	No	
Delaware	12 Del. C. §3528	June 30, 2003	No	No specific restriction provided in statute	No	Probably No; statute merely provides the power must be exercised "in favor of a second trust having only beneficiaries who are the proper objects of" its exercise; see NY above Unclear under statute what meaning is to be given to provision stating that new trust may provide that upon the occurrence of "a time or ... event specified" in new trust, the "nature and extent of each such beneficiary's interest" of old trust can be "substantially identical" to those of old trust	Probably No; statute merely refers to the second trust's having "only beneficiaries who are the proper objects" of the power's exercise; See NY above	Yes	Yes	No	No	No reference	Trustee's written exercise must be filed with trust records	No	Yes	Yes	Power cannot be exercised over the portion of a trust that is currently withdrawable by a beneficiary (e.g., Crummey or "5 and 5" power) who is the trust's sole beneficiary

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Tennessee	Tenn. Code Ann. §35-15-816(b)(27)	July 1, 2004	No	No	No	Probably No; statute merely provides the power must be exercised "in favor of the proper objects of" its exercise; see NY above	Probably No; statute merely provides the power must be exercised "in favor of the proper objects of" its exercise; See NY above	Yes	Yes	No	No	No reference	Trustee's written exercise must be filed with trust records	No	Yes	No	
Florida	Fla. Stat. §736.04117	July 1, 2007	Yes	No	No	Probably No; statute merely provides the power must be exercised "for the current benefit of one or more of such persons [persons to whom the trustee of the old trust could make principal distributions]"	Probably No; statute specifies that the new trust "may include only beneficiaries of the first trust" but does not provide whether beneficiaries can be excluded; statute also uses the phrase "in favor of a trustee of another trust ... for the current benefit of one or more of such persons."	Yes, although statute speaks to "trust instrument," such term is defined by FL Trust Code §736.0103(2) to be "an instrument executed by a settlor" and "settlor" is defined to include a testator (§736.0103(16))	Yes	Yes; trustee must notify all qualified beneficiaries of the first trust in writing at least 60 days prior to the effective date of the exercise; a copy of written exercise will satisfy the requirement. Notice period and requirement can be waived by all qualified beneficiaries.	No	No reference	Trustee's written exercise must be filed with trust records	No	No	Yes	(1) Includes charitable deduction savings provision; (2) Specifically states that the statute does not create or imply a duty to exercise the power; (3) Specifically provides that the exercise of the power in not prohibited by a spendthrift clause or by a provision in the instrument which prohibits amendment or revocation
South Dakota	S.D. Laws §§55-2-15 - 55-2-21	March 5, 2007 (?)	No	May not reduce a fixed income interest of trust for which a federal marital deduction has been taken	No	No; statute merely provides that "the second trust has as beneficiaries ... (1) those beneficiaries of the first trust to or for whom a discretionary distribution may be made from the first trust and who are the proper objects of the exercise of the power, or (2) those other beneficiaries of the first trust to or for whom a distribution of income or principal may have been made in the future from the first trust at a time or upon the happening of an event specified in the first trust." Presumably, the second criteria may permit a remainderman to move up to a current beneficiary; see NY above	No, statute provides that "second trust has as beneficiaries only one or more of those beneficiaries of the first trust"	Yes	Yes	No	No	No reference	Trustee's written exercise must be filed with trust records	No	Yes	No	(1) Power cannot be exercised if the trustee of the first trust is also a beneficiary of such trust, except if trust is for HEMS; (2) Cannot extend IRC Sec. 2503(c) vesting period; (3) Power cannot be exercised over the portion of a trust that is currently withdrawable by a beneficiary (e.g., Crumme or "5 and 5" power)