

Overview of State Statutes Permitting Modification of Irrevocable Trusts

Many states have enacted one or more statutes that expressly permit the modification of irrevocable trusts. Although there are many variations among the states, this chart organizes statutes into four general categories: (1) decanting statutes, (2) trust merger statutes, (3) consent modification and similar statutes, and (4) nonjudicial settlement agreements (“NJSA”) and similar statutes. The term “NJSA Wrapper,” which appears in the NJSA column of the chart, refers to a tool that is permitted under some NJSA statutes whereby interested parties may use an NJSA to appoint a trustee, grant a trustee a power, direct another trustee not to exercise that power, and/or address the liability and compensation of the trustee.

Overview of State Statutes Permitting Modification of Irrevocable Trusts [LAST UPDATED 3/11/19]

State	Decanting Permitted By Statute	Trust Merger Permitted By Statute	Express Modification of Trusts Generally Permitted By Statute	NJSA or Similar Statute
Alabama (UTC) [Ala. Code]	Yes [§§19-3d-1 to 19-3d-29]	Without a court order [§19-3B-417]	With consent and a court order [§19-3B-411]	Wrapper permitted [§19-3B-111]
Alaska [Alaska Stat.]	Yes [§§ 13.36.157 to 13.36.159]			
Arizona (UTC) [Ariz. Rev. Stat. Ann.]	Yes [§14-10819]	Without a court order [§14-10417]	With consent and a court order [§14-10411]	Wrapper permitted [§14-10111]
Arkansas (UTC) [Ark. Code. Ann.]		Without a court order [§28-73-417]	With consent only/with consent and a court order [§ 28-73-411]	Wrapper permitted [§28-73-111]
California [Cal. Prob. Code]	Yes [§§19501 to 19530]	Only with a court order [§15411]	With consent (but parties may seek a court order) [§15404]	
Colorado [Colo. Rev. Stat.]	Yes [§§15-16-901 to 15-16-930]	Without a court order [§15-5-417]	With consent and a court order/without consent if court is satisfied that interests of nonconsenting beneficiaries will be adequately protected [§15-5-411]	Wrapper permitted [§15-5-111]
Connecticut [Conn. Gen. Stat.]		Without a court order, but only if trusts are created under the same instrument [§45a-234(20)]		
Delaware [12 Del. C.]	Yes [§3528]	Without a court order [§3325(29)]	If Trustor is living, upon consent or non-objection of all interested persons [§3342]	Wrapper permitted [§3338]
District of Columbia (UTC) [D.C. Code Ann.]		Without a court order [§19-1304.17]	With consent only/with consent and a court order [§19-1304.11]	Wrapper permitted [§19-1301.11]
Florida (UTC) [Fla. Stat.]	Yes [§736.04117]	Without a court order [§736.0417]	With consent only/with consent and a court order [§736.0412; 736.04113] Through NJSA (but cannot modify a trust in an impermissible manner) [§736.0111(3)]	Wrapper permitted [§736.0111]
Georgia [Ga. Code Ann.]	Yes [§53-12-62]	Without a court order if permitted by instrument [§53-12-61]	With a court order [§53-12-61]	Wrapper possibly permitted [§53-12-9]
Hawaii				

Overview of State Statutes Permitting Modification of Irrevocable Trusts [LAST UPDATED 3/11/19]

State	Decanting Permitted By Statute	Trust Merger Permitted By Statute	Express Modification of Trusts Generally Permitted By Statute	NJSA or Similar Statute
Idaho [Idaho Code]		Without a court order if proper consents are obtained [§15-7-402(2)]		Wrapper possibly permitted [§15-8-103(1); 15-8-302]
Illinois [760 Ill. Comp. Stat.]	Yes [§5/16.4]	Without a court order [§5/4.25]	Any provision pertaining to the administration of a trust through an NJSA [§5/16.1(d)(4)(K)]	Wrapper permitted [§5/16.1(d)]
Indiana [Ind. Code]	Yes [§30-4-3-36]	Without a court order [§30-4-3-3(27)(A)]		
Iowa [Iowa Code]		May or may not need a court order [§633A.2207]	With consent only [§633A.2202]	Wrapper permitted [§633A.6308]
Kansas (UTC) [Kan. Stat. Ann.]		Without a court order [§58a-417]	With consent only/with consent and court order [§58a-411]	Wrapper not permitted [§58a-111]
Kentucky (UTC) [Ky. Rev. Stat. Ann.]	Yes [§386.175]	Without a court order [§386B.4-170]	With consent only/with consent and court order [§386B.4-110]	Wrapper permitted [§386B.1-090]
Louisiana [La. Rev. Stat. Ann.]		Without a court order [§9:2030]		
Maine (UTC) [Me. Rev. Stat. Ann. tit 18-B]		Without a court order [§417]	With consent and court order [§411]	Wrapper permitted [§111]
Maryland (UTC) [Md. Code Ann. Est. & Trusts]		Only with a court order [§14.5-415]	With consent and court order [§14.5-410]	Wrapper permitted [§14.5-111]
Massachusetts (UTC) [Mass. Gen. Laws. ch. 203E]		Without a court order [§417]	With consent and court order [§411]	Wrapper permitted [§111]
Michigan (UTC) [Mich. Comp. Laws]	Yes [§§ 556.115a; 700.7820a]	Without a court order [§700.7417]	With consent only/with consent and court order [§700.7411]	Wrapper permitted [§700.7111]
Minnesota (UTC) [Minn. Stat.]	Yes [§502.851]	Without a court order [§501C.0417]	With consent only/with consent and court order [§501C.0411]	Wrapper permitted [§501C.0111]
Mississippi (UTC) [Miss. Code Ann.]		Without a court order [§91-8-417]	With consent only/with consent and court order [§91-8-411]	Wrapper permitted [§91-8-111]
Missouri (UTC) [Mo. Rev. Stat.]	Yes [§456.4-419]	Without a court order [§456.4-417]	Through an NJSA but only for reasons a court could modify [§456.4A-411] With consent [§456.4A-411]	Wrapper permitted [§456.1-111]
Montana (UTC) [Mont. Code Ann.]		Without a court order [§72-38-417]	With consent only/with consent and court order [§72-38-411]	Wrapper permitted [§72-38-111]
Nebraska (UTC) [Neb. Rev. Stat.]		Without a court order [§30-3843]	With consent only/with consent and court order [§30-3837]	Wrapper permitted [§30-3811]
Nevada [Nev. Rev. Stat.]	Yes [§163.556]			
New Hampshire (UTC) [N.H. Rev. Stat. Ann.]	Yes [§564-B:4-418]	Without a court order [§564-B:4-417]	Through an NJSA [§564-B:1-111(d)(7)] With consent only/with consent and court order [§564-B:4-411]	Wrapper permitted [§564-B:1-111]
New Jersey (UTC) [N.J. Rev. Stat. Ann.]		Without a court order [§3B:31-34]	With consent or court order [§3B:31-27]	Wrapper permitted [§3B:31-11]
New Mexico (UTC) [N.M. Stat. Ann.]	Yes [§§46-12-101 to 46-12-129]	Without a court order [§46A-4-417]	With consent only/with consent and court order [§46A-4-411]	Wrapper permitted [§46A-1-111]

Overview of State Statutes Permitting Modification of Irrevocable Trusts [LAST UPDATED 3/11/19]

State	Decanting Permitted By Statute	Trust Merger Permitted By Statute	Express Modification of Trusts Generally Permitted By Statute	NJSA or Similar Statute
New York (N.Y. EPTL)	Yes [§10-6.6(b)]	Without a court order, but only if trusts are created under the same instrument [§11-1.1(b)(18)]	Creator of the trust may amend with consent of all persons beneficially interested [§7-1.9]	
North Carolina (UTC) [N.C. Gen. Stat.]	Yes [§36C-8-816.1]	Without a court order [§36C-4-417]	With consent only/with consent and court order [§36C-4-411]	Wrapper permitted [§36C-1-111]
North Dakota (UTC) [N.D. Cent. Code]		Without a court order [§59-12-17]	With consent and court order [§59-12-11]	Wrapper permitted [§59-09-11]
Ohio (UTC) [Ohio Rev. Code Ann.]	Yes [§5808.18]	Without a court order [§5804.17]	Through an NJSA if modification is not inconsistent with a material purpose [§5801.10(C)(4)] With consent and court order [§5804.11]	Wrapper permitted [§5801.10]
Oklahoma				
Oregon (UTC) [Or. Rev. Stat.]		Without a court order [§130.230]	Through an NJSA [§§130.045(5)(i); 130.200(6)] With consent and court order [§130.200]	Wrapper permitted [§130.045]
Pennsylvania (UTC) [20 Pa. Cons. Stat.]		Requires a court order in some cases [§7740.8]	Through an NJSA [§7710.1(d)(11)] With consent only/with consent and court order [§7740.1]	Wrapper permitted [§7710.1]
Rhode Island [R.I. Gen. Laws]	Yes [§18-4-31]	Only with a court order [§18-4-25]		
South Carolina (UTC) [S.C. Code Ann.]	Yes [§62-7-816A]	Without a court order [§62-7-417]	With consent and court order [§62-7-411]	Wrapper permitted [§62-7-111]
South Dakota [S.D. Codified Laws]	Yes [§§ 55-2-15 to 5-2-21]	Without a court order [§55-3-29]	With consent only [§55-3-24]	
Tennessee (UTC) [Tenn. Code Ann.]	Yes [§35-15-816(b)(27)]	Without a court order [§35-15-417]	With consent only/with consent and court order [§35-15-411]	Wrapper permitted [§35-15-111]
Texas [Tex. Prop Code Ann.]	Yes [§112.071]	Without a court order [§112.057(c)]		
Utah (UTC) [Utah Code Ann.]		Without a court order [§75-7-417]	With consent only/with consent and court order [§75-7-411]	Wrapper permitted [§75-7-110]
Vermont (UTC) [Vt. Stat. Ann. tit. 14A]		Without a court order [§417]	With consent only/with consent and court order [§411]	Wrapper permitted [§111]
Virginia (UTC) [Va. Code. Ann.]	Yes [§§64.2-779.1 to 64.2-779.25]	Without a court order [§64.2-735]	With consent and court order [§64.2-729]	Wrapper permitted [§64.2-709]
Washington [Wash. Rev. Code Ann.]	Yes [§§11.107.010 to 11.107.080]	Without a court order [§11.98.080]		Wrapper possibly permitted [§11.96A.220; 11.96A.030(2)]
West Virginia (UTC) [W. Va. Code]		Without a court order [§44D-4-417]	Through an NJSA [§44D-1-111(b)(12)] With consent and court order [§44D-4-411]	Wrapper permitted [§44D-1-111]
Wisconsin (UTC) [Wis. Stat.]	Yes [§701.0418]	Without a court order [§701.0417]	With consent only/with consent and court order [§701.0411]	Wrapper permitted [§701.0111]
Wyoming (UTC) [Wyo. Stat. Ann.]	Yes [§4-10-816(a)(xxviii)]	Without a court order [§4-10-418]	With consent only/with consent and court order [§4-10-412]	Wrapper permitted [§4-10-111]

Overview of State Decanting Statutes

Many states have enacted statutes that expressly permit the decanting of irrevocable trusts. This chart: (1) identifies relevant statutes, (2) describes jurisdictional nexus requirements provided by statute, (3) describes how a decanting power is exercised and the extent of the power, (4) identifies statutory notice and consent requirements, and (5) indicates whether and when court approval is required. This chart does not address common law decanting powers.

Overview of State Decanting Statutes [LAST UPDATED 3/11/19]

State	Extent of Power to Decant	Jurisdictional Nexus	How Exercised	Notice and Consent	Court Approval
Alabama (UTDA) Ala. Code §§19-3d-1 to 19-3d-29]	<ul style="list-style-type: none"> - Applies to power over principal - Applies to power over income with respect to a trust for a "beneficiary with a disability" - Adopts Uniform Trust Decanting Act 	Trusts administered in Alabama or governed by Alabama law	In a record signed by an authorized fiduciary, identifying the first trust and the second trust(s), and stating the property being distributed and the property that will remain with the first trust.	<ul style="list-style-type: none"> - An authorized fiduciary must provide 60 days' notice to the settlor, each "qualified beneficiary", each holder of a presently exercisable power of appointment, each person that currently has power to replace the authorized fiduciary, each other fiduciary of the first trust, each fiduciary of the second trust, and the Attorney General for charitable beneficiaries, unless all parties entitled to notice waive the notice period in a signed record. - Consent not required by statute except when decanting would result in an increase in compensation of, or a modification of the power to remove or replace, an authorized fiduciary. 	<ul style="list-style-type: none"> - Court approval not required by statute except when consent is required but not obtained. - An authorized fiduciary, a person entitled to notice, a beneficiary or the Attorney General may seek court approval.
Alaska [Alaska Stat. §§13.36.157 to 159]	<ul style="list-style-type: none"> - Applies to power over principal - Statute distinguishes between authorized trustees with unlimited or limited discretion - May not exercise if there is evidence of a contrary intent of settlor of invaded trust 	Trusts administered in Alaska or governed by Alaska law	In a written instrument signed, dated and acknowledged by the authorized trustee	<ul style="list-style-type: none"> - Must provide 30 days' notice to the settlor, any "qualified beneficiaries", and any person with the right to remove and replace the trustee exercising the power - Consent not required by statute 	<ul style="list-style-type: none"> - Court approval required if the decanting (i) decreases or indemnifies against trustee liability or exonerates failure of trustee to exercise reasonable care, prudence or diligence, (ii) eliminates power of another to remove and replace the authorized trustee, (iii) changes trustee compensation, or (iv) if a beneficiary objects during notice period - Trustee may seek court approval for any reason
Arizona [Ariz. Rev. Stat. Ann. §14-10819]	<ul style="list-style-type: none"> - Applies to power over principal and income - If the first trust has a standard, the standard in the second trust must be the same or more restrictive 	Testamentary and inter vivos trusts governed by Arizona law	No prescribed manner, but trustee may exercise the power by restating the first trust	Notice and consent not required by statute	<ul style="list-style-type: none"> - Court approval not required - Trustee may request court approval before and after the decanting
California (UTDA) [Cal. Prob. Code §§19501 to 19530]	<ul style="list-style-type: none"> - Applies to power over principal - Applies to power over income with respect to a trust for a "beneficiary with a disability" - Adopts Uniform Trust Decanting Act 	Trusts administered in California or governed by California law	In a writing signed by an authorized fiduciary, identifying the first trust and the second trust(s), and stating the property being distributed and the property that will remain in the first trust.	<ul style="list-style-type: none"> - An authorized fiduciary must provide 60 days' notice to the settlor, each "qualified beneficiary", each holder of a presently exercisable power of appointment, each person that currently has power to replace the authorized fiduciary, each other fiduciary of the first trust, each fiduciary of the second trust, and the Attorney General for charitable beneficiaries, unless all parties entitled to notice waive the notice period in a signed record. - Consent not required by statute except when decanting would result in an increase in compensation of, or a modification of the power to remove or replace, an authorized fiduciary. 	<ul style="list-style-type: none"> - Court approval not required by statute except when consent is required but not obtained. - An authorized fiduciary, a person entitled to notice, a beneficiary, or the Attorney General or other person with standing to enforce a charitable interest may seek court approval.

Overview of State Decanting Statutes [LAST UPDATED 3/11/19]

State	Extent of Power to Decant	Jurisdictional Nexus	How Exercised	Notice and Consent	Court Approval
Colorado (UTDA) [Colo. Rev. Stat. §§15-16-901 to 15-16-930]	<ul style="list-style-type: none"> - Applies to power over principal - Applies to power over income with respect to a trust for a "beneficiary with a disability" - Adopts Uniform Trust Decanting Act 	Trusts administered in Colorado or governed by Colorado law	In a record signed by an authorized fiduciary, identifying the first trust and the second trust(s), and stating the property being distributed and the property that will remain with the first trust.	<ul style="list-style-type: none"> - An authorized fiduciary must provide 63 days' notice to the settlor, each "qualified beneficiary", each holder of a presently exercisable power of appointment, each person that currently has power to replace the authorized fiduciary, each other fiduciary of the first trust, each fiduciary of the second trust, and the Attorney General for charitable beneficiaries, unless all parties entitled to notice waive the notice period in a signed record. - Consent not required by statute except when decanting would result in an increase in compensation of, or a modification of the power to remove or replace, an authorized fiduciary. 	<ul style="list-style-type: none"> - Court approval not required by statute except when consent is required but not obtained. - An authorized fiduciary, a person entitled to notice, a beneficiary or the Attorney General may seek court approval.
Delaware [12 Del. C. §3528]	<ul style="list-style-type: none"> - Applies to power over principal and income - Decanting must abide by any standard in the first trust 	Trusts administered in Delaware	In a written instrument signed by the trustee	Notice and consent not required by statute	Statute does not require court approval
Florida [Fla. Stat. §736.04117]	<ul style="list-style-type: none"> - Applies to power over principal - Trustee must have "absolute" power over principal, and an ascertainable standard is not considered absolute 	Not addressed	In an instrument in writing, signed and acknowledged by the trustee of the first trust and filed with the records of the first trust	<ul style="list-style-type: none"> - Must provide 60 days' notice to all "qualified beneficiaries" - Consent not required by statute 	Statute does not require court approval
Georgia [Ga. Code Ann. §53-12-62]	<ul style="list-style-type: none"> - Applies to power over principal 	Not addressed	In an instrument in writing, signed and acknowledged by the trustee, and filed with the records of the original trust	<ul style="list-style-type: none"> - Consent not required if trustee provides written notice to any living settlor and those persons then entitled to annual reports from the trustee of the original trust. - Notice must describe manner in which the trustee intends to exercise the power, specify the date that the trustee proposes to distribute to the second trust, and be delivered at least 60 days before the proposed distribution 	Trustee may seek court approval
Illinois [760 Ill. Comp. Stat. §5/16.4]	<ul style="list-style-type: none"> - Applies to power over principal. - Statute distinguishes between authorized trustees with unlimited or limited discretion - Cannot be used to (i) decrease standard of care or exonerate trustee for failure to exercise reasonable care, diligence, and prudence unless new trust is "unbundled" or (ii) eliminate a provision granting a person the right to remove/replace a trustee unless independent party is given right 	Trusts administered in Illinois under Illinois law or governed by Illinois law	In an instrument in writing, signed and acknowledged by the authorized trustee and filed with the records of the first trust and second trust	<ul style="list-style-type: none"> - Must provide 60 days' notice to competent current beneficiaries and presumptive remainder beneficiaries (including the Attorney General for charitable beneficiaries) - Consent not required by statute 	<ul style="list-style-type: none"> - Trustee may seek court approval - Court approval not required unless decanting (i) is solely to change trustee compensation or (ii) a beneficiary objects within the notice period
Indiana [Ind. Code §30-4-3-36]	<ul style="list-style-type: none"> - Applies to power over principal - Absolute power to distribute principal no longer required 	Not addressed	In an instrument in writing, signed and acknowledged by the trustee and filed with the records of the first trust	<ul style="list-style-type: none"> - Must provide 60 days' notice to the "qualified beneficiaries" of the first trust - Consent not required by statute 	Statute does not require court approval

Overview of State Decanting Statutes [LAST UPDATED 3/11/19]

State	Extent of Power to Decant	Jurisdictional Nexus	How Exercised	Notice and Consent	Court Approval
Kentucky [Ky. Rev. Stat. Ann. §386.175]	<ul style="list-style-type: none"> - Applies to power over principal or income - If trustee power is limited to a standard, standard in new trust must be the same or more restrictive 	Not addressed	In an instrument signed and acknowledged by the trustee and filed with records of the original trust	<ul style="list-style-type: none"> - Must provide 60 days' notice to (i) all current beneficiaries, and (ii) the oldest generation of remainder beneficiaries of the original trust - Consent not required by statute 	Court approval not required unless a beneficiary entitled to notice objects within 30 days of receipt of notice
Michigan [Mich. Comp. Laws §§ 556.115a; 700.7820a]	<ul style="list-style-type: none"> - Applies to power over principal or income - Bifurcated standard for decanting if trustee has a "presently exercisable discretionary power" as opposed to a "discretionary trust provision" - May not indemnify the trustee of the first trust for actions taken in bad faith or with reckless disregard 	Not addressed	If the first trust contains a "discretionary trust provision", a written instrument required	<ul style="list-style-type: none"> - No notice required if trustee of first trust has a presently exercisable discretionary power - Must give 63 days' notice to the settlor and "qualified beneficiaries" if the first trust has a discretionary trust provision - Consent not required by statute 	Statute expressly provides that court approval is not required
Minnesota [Minn. Stat. Ann. § 502.851]	<ul style="list-style-type: none"> - Applies to power over principal - Statute distinguishes between authorized trustees with unlimited or limited discretion 	Trusts governed by Minnesota law	In an instrument in writing, signed, dated, and acknowledged by the authorized trustee	<ul style="list-style-type: none"> - Must give 60 days' notice to all persons interested in the invaded trust and all persons with power to remove and replace the trustee exercising the power - Consent not required by statute 	Court approval required if the decanting changes compensation provisions
Missouri [Mo. Rev. Stat. §456.4-419]	<ul style="list-style-type: none"> - Applies to power over principal or income - Distribution standard does not have to be unlimited, but limitations on distribution standard must be included in second trust - Trustee has affirmative duty to determine that decanting is necessary or desirable 	Any trust governed by Missouri law	No specific manner described, but may be exercised in an instrument other than the instrument creating the first trust	<ul style="list-style-type: none"> - Must give 60 days' notice to the "permissible beneficiaries" of second trust or, if none, to the "qualified beneficiaries" of second trust - Consent not required 	Statute does not require court approval
Nevada [Nev. Rev. Stat. §163.556]	Applies to power over principal or income	Testamentary and inter vivos trusts situated in Nevada or administered under Nevada law	In a written instrument signed by the trustee and filed with records of the original trust	<ul style="list-style-type: none"> - May (but not required to) give notice to trust beneficiaries and, if so, notice must contain opinion of trustee of how trustee compensation and other trust expenses affected - A beneficiary specifically allocated property in first trust and no longer allocated under either or both trusts after decanting must consent in writing 	Not required, but the trustee may petition court for approval and, if so, petition must contain opinion of trustee of how trustee compensation and other trust expenses affected
New Hampshire [N.H. Rev. Stat. Ann. §564-B:4-418]	<ul style="list-style-type: none"> - Applies to power over principal or income - Absolute discretion not required - Trustee has a duty to administer, invest and manage the trust and distribute the trust property in good faith when exercising the power to decant - Decanting cannot violate a material purpose of the first trust 	Not addressed	No specified manner of exercise	<ul style="list-style-type: none"> - Must give 30 days' notice to the NH Director of Charitable Trusts if a charity is a "qualified beneficiary" - Consent not required by statute 	Statute does not require court approval

Overview of State Decanting Statutes [LAST UPDATED 3/11/19]

State	Extent of Power to Decant	Jurisdictional Nexus	How Exercised	Notice and Consent	Court Approval
New Mexico (UTDA) [N.M. Stat. Ann. §§46-12-101 to 46-12-129]	<ul style="list-style-type: none"> - Applies to power over principal - Applies to power over income with respect to a trust for a "beneficiary with a disability" - Adopts Uniform Trust Decanting Act 	Trusts administered in New Mexico or governed by New Mexico law	In a record signed by an authorized fiduciary, identifying the first trust and the second trust(s), and stating the property being distributed and the property that will remain with the first trust.	<ul style="list-style-type: none"> - An authorized fiduciary must provide 60 days' notice (inclusive of the notice date) to the settlor, each "qualified beneficiary", each holder of a presently exercisable power of appointment, each person that currently has power to replace the authorized fiduciary, each other fiduciary of the first trust, each fiduciary of the second trust, and the Attorney General for charitable beneficiaries, unless all parties entitled to notice waive the notice period in a signed record. - Consent not required by statute except when the decanting would result in an increase in compensation of, or a modification of the power to remove or replace, an authorized fiduciary. 	<ul style="list-style-type: none"> - Court approval not required by statute except when consent is required but not obtained. - An authorized fiduciary, a person entitled to notice, a beneficiary or the Attorney General may seek court approval.
New York [N.Y. EPTL §10-6.6(b)]	<ul style="list-style-type: none"> - Applies to power over principal - Statute distinguishes between authorized trustees with unlimited or limited discretion - Cannot be used to decrease standard of care beyond or exonerate trustee for failure to exercise reasonable care, diligence, and prudence 	Inter vivos and testamentary trusts governed by New York law	<ul style="list-style-type: none"> - In an instrument signed, dated and acknowledged by the trustee and filed with the records of the invaded trust - Court filing required if invaded trust was a testamentary trust or inter vivos trust subject to a prior court proceeding 	<ul style="list-style-type: none"> - Notice must be given to the trust creator, any persons interested in the invaded trust and appointed trust, and any person having the right to remove or replace the trustee of the invaded trust - Consent not required by statute 	<ul style="list-style-type: none"> - Court approval required if (i) new trust eliminates a provision granting another person the right to remove or replace the authorized, or (ii) new trust increases the commission of trustee in the appointed trust - Otherwise, court approval is not required, but a trustee may seek court approval on notice to all persons interested in the invaded trust
North Carolina (UDTA) [N.C. Gen. Stat. §36C-8-816.1]	<ul style="list-style-type: none"> - Applies to power over principal or income - If original trust subject to an ascertainable standard, new trust must include the same ascertainable standard 	Not addressed	In an instrument signed and acknowledged by the trustee and filed with records of the original trust	<ul style="list-style-type: none"> - Must give 60 days' notice to all "qualified beneficiaries" of the original trust - Consent not required by statute 	<ul style="list-style-type: none"> - Statute expressly provides court approval not required - Trustee or a beneficiary can bring a proceeding to approve or disapprove of proposed decanting
Ohio [Ohio Rev. Code Ann. §5808.18]	<ul style="list-style-type: none"> - Applies to power over principal or income - Statute distinguishes between trustees with an absolute or limited power - Cannot be used to decrease standard of care beyond or exonerate trustee for failure to exercise reasonable care, diligence, and prudence 	Inter vivos and testamentary trusts governed by Ohio law or having their principal place of administration in Ohio	In an instrument signed, dated and acknowledged by the trustee and filed with records of the first trust	<ul style="list-style-type: none"> - Must give 30 days' notice to all current beneficiaries of the first trust - Consent or court approval required to increase or change trustee compensation 	<ul style="list-style-type: none"> - Required if the first trust is a testamentary trust created under the will of an Ohio domiciliary - Court approval or consent required to increase or change method to determine trustee compensation
Rhode Island [R.I. Gen. Laws §18-4-31]	<ul style="list-style-type: none"> - Applies to power over principal - Absolute power to distribute principal no longer required 	Not addressed	In an instrument signed and acknowledged by the trustee and filed with records of the first trust	<ul style="list-style-type: none"> - Must give 60 days' notice to all "qualified beneficiaries" of the first trust - Consent not required by statute 	Statute does not require court approval
South Carolina [S.C. Code Ann. §62-7-816A]	<ul style="list-style-type: none"> - Applies to power over principal or income - If original trust subject to an ascertainable standard, new trust must include the same ascertainable standard 	Not addressed	In an instrument signed and acknowledged by the trustee and filed with records of the original trust	<ul style="list-style-type: none"> - Must give 90 days' notice to all "qualified beneficiaries" of the first trust - Consent not required by statute 	<ul style="list-style-type: none"> - Statute expressly provides court approval not required unless trust instrument of first trust prohibits decanting or required court approval - A trustee or beneficiary of the original trust may petition the court to approve or disapprove the decanting

Overview of State Decanting Statutes [LAST UPDATED 3/11/19]

State	Extent of Power to Decant	Jurisdictional Nexus	How Exercised	Notice and Consent	Court Approval
South Dakota [S.D. Codified Laws §§ 55-2-15 to -21]	<ul style="list-style-type: none"> - Applies to power over principal or income - Trustee has affirmative duty to determine that decanting is necessary or desirable 	Testamentary and inter vivos trusts administered under South Dakota law	In an instrument signed and acknowledged by the trustee and filed with records of the first trust	<ul style="list-style-type: none"> - May give 20 days' notice to "qualified beneficiaries" of the first trust - Consent not required by statute 	Statute does not require court approval
Tennessee [Tenn. Code Ann. §35-15-816(b)(27)]	Applies to power over principal or income	Testamentary and inter vivos trusts administered in Tennessee	In an instrument signed and acknowledged by the trustee and filed with records of the trust	Notice and consent not required by statute	Statute does not require court approval
Texas [Tex. Prop. Code Ann. §112.071]	<ul style="list-style-type: none"> - Applies to power over principal - Full or unlimited discretion not required, but statute distinguishes if authorized trustee has full or limited discretion - Cannot be used to decrease standard of care beyond or exonerate trustee for failure to exercise reasonable care, diligence, and prudence or eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power - Authorized trustee must exercise power in good faith 	Not addressed	In an instrument signed and acknowledged by the trustee and filed with records of the first trust and second trust	30 days' notice to all current and presumptive remainder beneficiaries of the first trust (including the AG if there is a charitable beneficiary) is required to proceed without consent of the settlor or the beneficiaries	<ul style="list-style-type: none"> - Court approval is required if (i) a beneficiary to whom notice is required objects, or (ii) the decanting is being done solely to change trustee compensation - Trustee may otherwise seek court approval
Virginia (UDTA) [Va. Code Ann. §§64.2-779.1 to 64.2-779.25]	<ul style="list-style-type: none"> - Applies to power over principal and income - If the first trust has a standard, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust. 	Trusts administered in Virginia or governed by Virginia law	In a record signed by an authorized fiduciary, identifying the first trust and the second trust(s), and stating the property being distributed and the property that will remain with the first trust.	<ul style="list-style-type: none"> - An authorized fiduciary must provide 60 days' notice to the settlor, each "qualified beneficiary", each holder of a presently exercisable power of appointment, each person that currently has power to replace the authorized fiduciary, each other fiduciary of the first trust, each fiduciary of the second trust, and the Attorney General for charitable beneficiaries, unless all parties entitled to notice waive the notice period in a signed record. - Consent not required by statute except when decanting would result in an increase in compensation of, or a modification of the power to remove or replace, an authorized fiduciary. 	<ul style="list-style-type: none"> - Court approval not required by statute except when consent is required but not obtained. - An authorized fiduciary, a person entitled to notice, a beneficiary or the Attorney General may seek court approval.
Washington (UDTA) [Wash. Rev. Code Ann. §§11.107.010 to 11.107.080]	<ul style="list-style-type: none"> - Applies to power over principal - If the first trust has a standard, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust. 	Trusts administered in Washington or governed by Washington law	In a record signed by the trustee	<ul style="list-style-type: none"> - A trustee must provide 60 days' notice to the settlor, each "qualified beneficiary", each holder of a presently exercisable power of appointment and each person that currently has power to replace the trustee, unless all parties entitled to notice waive the notice period in a signed record. The Attorney General must receive notice when the first trust contains a charitable interest. - Consent not required by statute except when decanting would result in an increase in compensation of, or a modification of the power to remove or replace, a trustee. 	<ul style="list-style-type: none"> - Court approval not required by statute except when consent is required but not obtained. - The trustee of the first trust, a qualified beneficiary, a holder of a presently exercisable power of appointment over any part of the first trust, or a person that currently has the right to remove or replace the trustee may seek court approval.

Overview of State Decanting Statutes [LAST UPDATED 3/11/19]

State	Extent of Power to Decant	Jurisdictional Nexus	How Exercised	Notice and Consent	Court Approval
Wisconsin [Wis. Stat. Ann. §701.0418]	<ul style="list-style-type: none"> - Applies to power over principal - If the first trust contains a specific or ascertainable standard, the standard in the second trust cannot be broader - Trustee must exercise power in good faith 	Not addressed	In a written instrument signed and acknowledged by the trustee and filed with records of the first trust and second trust	<ul style="list-style-type: none"> - Must give 30 days' notice to the "qualified beneficiaries", trust protector, any "directing parties" and the settlor (if living) - Consent not required by statute 	<ul style="list-style-type: none"> - Court approval is required if the trustee receives an objection to the decanting during the notice period - Trustee may otherwise seek court approval
Wyoming [Wyo. Stat. Ann. §4-10-816(a)(xxviii)]	<ul style="list-style-type: none"> - Applies to power over principal or income - Applies whether or not power is subject to an ascertainable standard 	Not addressed	Not addressed	Notice and consent not required by statute	Statute does not require court approval

Overview of State Statutes Permitting the Merger, Combination, or Consolidation of Trusts

Many states have enacted statutes that expressly permit the merger, combination, or consolidation of trusts. This chart: (1) identifies relevant statutes, (2) describes the standard for merging trusts under the statute, (3) indicates whether and when court approval is required, and (4) identifies statutory notice requirements.

Overview of State Statutes Permitting the Merger, Combination, or Consolidation of Trusts [LAST UPDATED 3/11/19]

State	Standard for Merging Trusts	Court Approval Required	Notice Required
Alabama (UTC) [Ala. Code §19-3B-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Arizona (UTC) [Ariz. Rev. Stat. Ann. §14-10417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries, unless the terms of the trust instrument provide otherwise
Arkansas (UTC) [Ark. Code. Ann. §28-73-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No, the statute expressly provides court approval is not required	To qualified beneficiaries
California [Cal. Prob. Code §15411]	Terms of trusts must be substantially similar and the court must find good cause and that the combination does not defeat or substantially impair trust purposes or interests of beneficiaries	Yes, upon petition of a trustee or beneficiary	Statute is silent
Colorado [Colo. Rev. Stat. §15-5-417]	Combination must not impair the rights of any beneficiaries or adversely affect achievement of the purposes of the trust.	No, but a trustee or beneficiary may commence a proceeding to approve or disapprove a combination pursuant to §15-16-410	To qualified beneficiaries
Connecticut [Conn. Gen. Stat. §45a-234(20)]	Must be trusts created under the same instrument; can only hold trusts as a single trust until division is necessary	No	Statute is silent
Delaware [12 Del. C. §3325(29)]	Merger cannot result in a material change in the beneficial interests of the trust beneficiaries; trustee expressly empowered to declare a new trust solely for purposes of doing the merger	No	Statute is silent
District of Columbia (UTC) [D.C. Code Ann. §19-1304.17]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Florida (UTC) [Fla. Stat. §736.0417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Georgia [Ga. Code Ann. §53-12-61]	Without court approval, if permitted by trust instrument. With court approval if consolidation would be helpful to the administration of the trusts	No, if permitted by trust instrument.	Statute is silent
Idaho [Idaho Code §15-7-402(2)]	Consolidation must not be inconsistent with the intent of the settlor, must facilitate the administration of the trust, and must be in the best interests of the beneficiaries and would not impair their interests	No, but any interested person may petition a court for an order approving a consolidation	Yes, and the trustee may proceed only after receiving consent from all interested persons and other trustees
Illinois [760 Ill. Comp. Stat. §5/4.25]	Terms of trust must be substantially similar	No	Statute is silent
Indiana [Ind. Code §30-4-3-3(27)(A)]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries

Overview of State Statutes Permitting the Merger, Combination, or Consolidation of Trusts [LAST UPDATED 3/11/19]

State	Standard for Merging Trusts	Court Approval Required	Notice Required
Iowa [Iowa Code §633A.2207]	Without court approval, the terms of the trusts must have substantially similar beneficial interests. With court approval, the combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No, unless the terms of the trusts are not substantially similar and in such case court approval is required upon petition of a trustee or beneficiary	Statute is silent
Kansas (UTC) [Kan. Stat. Ann. §58a-417]	Terms of the trusts must be substantially similar and the combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Kentucky (UTC) [Ky. Rev. Stat. § 386B.4-170]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Louisiana [La. Rev. Stat. Ann. §9:2030]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To beneficiaries with a current interest in the trusts
Maine (UTC) [Me. Rev. Stat. Ann. tit 18-B, §417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Maryland (UTC) [Md. Code Ann. Est. & Trusts §14.5-415]	Consolidation cannot defeat or materially impair accomplishment of trust purposes or interests of the beneficiaries	Yes, upon petition of a trustee, beneficiary, personal representative or other party in interest	Statute is silent
Massachusetts (UTC) [Mass. Gen. Laws. ch. 203E, §417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Michigan (UTC) [Mich. Comp. Laws §700.7417]	Trusts must have substantially identical provisions and consolidation cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries and holders of powers of appointment
Minnesota (UTC) [Minn. Stat. §501C.0417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Mississippi (UTC) [Miss. Code Ann. §91-8-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes, and the interests of each beneficiary must be substantially the same	No	To qualified beneficiaries
Missouri (UTC) [Mo. Rev. Stat. §456.4-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes, and the interests of each beneficiary must be substantially the same	No	To qualified beneficiaries
Montana (UTC) [Mont. Code Ann. §72-38-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Nebraska (UTC) [Neb. Rev. Stat. §30-3843]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
New Hampshire (UTC) [N.H. Rev. Stat. Ann. §564-B:4-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
New Jersey [N.J. Rev. Stat. Ann. §3B:31-34]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	Statute is silent
New Mexico (UTC) [N.M. Stat. Ann. §46A-4-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
New York [N.Y. EPTL §11-1.1(b)(18)]	Must be trusts created under the same instrument	No	Statute is silent
North Carolina (UTC) [N.C. Gen. Stat. §36C-4-417]	Terms of the trusts must be substantially similar and beneficiaries of the trusts must be identical	No	Statute commentary suggests no notice required

Overview of State Statutes Permitting the Merger, Combination, or Consolidation of Trusts [LAST UPDATED 3/11/19]

State	Standard for Merging Trusts	Court Approval Required	Notice Required
North Dakota (UTC) [N.D. Cent. Code §59-12-17]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Ohio (UTC) [Ohio Rev. Code Ann. §5804.17]	Combination cannot impair rights of a beneficiary or materially adversely affect on achievement of trust purposes	No	To qualified beneficiaries
Oregon (UTC) [Or. Rev. Stat. §130.230]	Trustee must consider individual rights of beneficiaries, exercise due care and prudent judgment and consider the terms of the trust instrument and applicable law. The combination must not materially impair the rights of a beneficiary or adversely affect achievement of the trustor's intent	No	To qualified beneficiaries
Pennsylvania (UTC) [20 Pa. Cons. Stat. §7740.8]	Without court approval, trusts must have identical provisions, tax attributes and trustees. With court approval, combined trusts must have substantially similar provisions.	Yes, unless combined trusts have identical provisions, tax attributes, and trustees	As the court directs in the case of a court approved combination
Rhode Island [R.I. Gen Laws §18-4-25]	Trusts must have a common creator or common beneficiaries and consolidation must not be contrary to the creator's intent, must be in the best interests of the beneficiaries, and must not materially impair the interests of the beneficiaries	Yes, upon petition by a trustee, beneficiary, or party in interest	All interested parties must be notified of a court hearing
South Carolina (UTC) [S.C. Code Ann. §62-7-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
South Dakota [S.D. Codified Laws § 55-3-29]	Combination cannot impair rights of a beneficiary or substantially affect accomplishment of trust purposes	No, but upon petition by a trustee or beneficiary, a court may affirm or prevent a proposed combination	Statute is silent
Tennessee (UTC) [Tenn. Code Ann. §35-15-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes. If the trusts have different trustees, the trustees may negotiate the terms of the surviving trust.	No	To qualified beneficiaries
Texas [Tex. Prop. Code Ann. §112.057(c)]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To all beneficiaries entitled to receive distributions from either trust
Utah (UTC) [Utah Code Ann. §75-7-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Vermont (UTC) [Vt. Stat. Ann. tit. 14A, §417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Virginia (UTC) [Va. Code Ann. §64.2-735]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Washington [Wash. Rev. Code Ann. §11.98.080]	Dispositive provisions of the trusts must be substantially similar, and the consolidation must not be inconsistent with the intent of the trustor and facilitate administration of the trust, and must not materially impair beneficial interests	No, but a trustee or beneficiary may petition a court for an order approving a consolidation	Yes, trustee may proceed only after receiving consent from beneficiaries and other trustees
West Virginia (UTC) [W. Va. Code §44D-4-417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries
Wisconsin (UTC) [Wisc. Stat. §701.0417]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To the trust protector, any directing party, and qualified beneficiaries
Wyoming (UTC) [Wyo. Stat. Ann. §4-10-418]	Combination cannot impair rights of a beneficiary or adversely affect achievement of trust purposes	No	To qualified beneficiaries

Summary of State Statutes That Generally Permit Modification by Consent of Parties to Noncharitable Irrevocable Trusts

Many states have enacted statutes that generally permit parties to a trust to modify the terms of an irrevocable trust, sometimes only with court approval. This chart: (1) identifies relevant statutes, (2) indicates whether a court order is required, (3) describes any consents required by statute, (4) indicates whether there is a “material purpose” limitation, and (4) identifies other statutory restrictions. Although the meaning of “material purpose” will vary by state, a material purpose limitation is generally understood to prohibit a modification that would defeat the purposes of the trust from the perspective of the intent of the settlor at the time the trust was created.

Summary of State Statutes That Generally Permit Modification By Consent of Parties to Noncharitable Irrevocable Trusts [LAST UPDATED 3/11/19]

State	Court Order Required	Required Consents	Material Purpose Limitation	Other Statutory Restrictions
Alabama (UTC) [Ala. Code §19-3B-411]	Yes	All beneficiaries	Yes	
		Settlor and all beneficiaries	No	
Arizona (UTC) [Ariz. Rev. Stat. Ann. §14-10411]	Yes	All beneficiaries	Yes	
Arkansas (UTC) [Ark. Code. Ann. §28-73-411]	No	Settlor and all beneficiaries	No	
	Yes	All beneficiaries	Yes	
California [Cal. Prob. Code §15404]	No, but parties may seek an order	Settlor and all beneficiaries	Statute is silent	
Colorado [Colo. Rev. Stat. §15-5-411]	Yes	Settlor and all beneficiaries, unless court is satisfied that the trust could have been modified if all the beneficiaries consented and the interests of a non-consenting beneficiary will be adequately protected.	Yes	
Delaware [12 Del. C. §3342]	No, but any interested person may seek an order	Trustor, all then serving fiduciaries, and all beneficiaries	No	
District of Columbia (UTC) [D.C. Code Ann. §19-1304.11]	No	Settlor and all beneficiaries	No	
	Yes	All beneficiaries	Yes	
Florida (UTC) [Fla. Stat. §§ 736.0412; 736.04113]	No	All qualified beneficiaries	Statute is silent	Applies to trusts created (or that became irrevocable) on or after 1/1/2011; applies only after death of the settlor
	Yes	Upon application of a trustee or a qualified beneficiary	Yes	Court modification based on one of three statutorily prescribed justifications [see Fla. Stat. §736.04113(1)(a)]
Georgia [Ga. Code Ann. §53-12-61]	No, if permitted by trust instrument			
	Yes	During settlor's lifetime, settlor and all beneficiaries.	No	
	Yes	After settlor's death, all beneficiaries.	Yes	

Summary of State Statutes That Generally Permit Modification By Consent of Parties to Noncharitable Irrevocable Trusts [LAST UPDATED 3/11/19]

State	Court Order Required	Required Consents	Material Purpose Limitation	Other Statutory Restrictions
Iowa [Iowa Code §633A.2202]	No	Settlor and all beneficiaries	Statute is silent	
Kansas (UTC) [Kan. Stat. Ann. §58a-411]	No	Settlor and all qualified beneficiaries	No	Applies only to trusts created (or that became irrevocable) on or after 1/1/2003
	Yes	All qualified beneficiaries	Yes	
Kentucky (UTC) [Ky. Rev. Stat. §386B.4-110]	No	Settlor and all beneficiaries	No	
	Yes	All beneficiaries	Yes	
Maine (UTC) [Me. Rev. Stat. Ann. Tit 18-B, §411]	Yes	Settlor and all beneficiaries	No	
		All beneficiaries	Yes	
Maryland (UTC) [Md. Code Ann. Est. & Trusts §14.5-410]	Yes	Trustee and all beneficiaries	Yes	
Massachusetts (UTC) [Mass. Gen. Laws. Ch. 203E, §411]	Yes	Settlor and all beneficiaries	No	
		All beneficiaries	Yes	
Michigan (UTC) [Mich. Comp. Laws §700.7411]	No	Qualified trust beneficiaries and a trust protector with a power to modify or grant, veto, or withhold approval of a modification	No	Applies only to trusts created (or becoming irrevocable) on or after 4/1/2010
	Yes	Trustee and all qualified trust beneficiaries	Yes	
Minnesota (UTC) [Minn Stat. §501C.0411]	No	Settlor and all beneficiaries	No	
	Yes	All beneficiaries	Yes	
Mississippi (UTC) [Miss. Code. Ann. §91-8-411]	No	Consent of qualified beneficiaries (settlor also must not object)	No	Requires 60 days' notice to the settlor
	Yes	All beneficiaries	Yes	
Missouri (UTC) [Mo. Rev. Stat. §456.4A-411]	No	Settlor and all beneficiaries	No	
Montana (UTC) [Mont. Code Ann. §72-38-411]	No	Settlor and all beneficiaries and the consent of the AG if a charitable trust	No	Applies to trusts created (or that became irrevocable) on or after 10/1/1989
	Yes	All beneficiaries	Yes	
Nebraska (UTC) [Neb. Rev. Stat. §30-3837]	Yes	Settlor and all beneficiaries	No	
		All beneficiaries	Yes	

Summary of State Statutes That Generally Permit Modification By Consent of Parties to Noncharitable Irrevocable Trusts [LAST UPDATED 3/11/19]

State	Court Order Required	Required Consents	Material Purpose Limitation	Other Statutory Restrictions
New Hampshire (UTC) [N.H. Rev. Stat. Ann. §564-B:4-411]	Yes	All beneficiaries	Yes	
New Jersey [N.J. Rev. Stat. Ann. §3B:31-27]	No	Trustee and all beneficiaries	Yes	
	Yes	Court order required if not all beneficiaries consent	Yes	
New Mexico (UTC) [N.M. Stat. Ann. §46A-4-411]	No	Settlor and all beneficiaries	No	If a party brings a petition and the settlor and all beneficiaries consented, the court shall enter approving order
	Yes	All beneficiaries	Yes	
New York [N.Y. EPTL §7-1.9]	No	Creator of the trust amends upon the consent of "all persons beneficially interested"	Statute is silent	
North Carolina (UTC) [N.C. Gen. Stat. §36C-4-411]	No	Settlor and all beneficiaries	No	
	Yes	All beneficiaries	Yes	
North Dakota (UTC) [N.D. Cent. Code §59-12-11]	Yes	All beneficiaries	Yes	
Ohio (UTC) [Ohio Rev. Code Ann. §5804.11]	Yes	Settlor and all beneficiaries	No	If a party brings a petition and the settlor and all beneficiaries consented, the court shall enter approving order
		All beneficiaries	Yes	Cannot be used to remove or replace a trustee
Oregon (UTC) [Or. Rev. Stat. §130.200]	Yes	Settlor and all beneficiaries that are not remote interest beneficiaries (AG must consent if a charitable trust)	No	
		All beneficiaries who are not remote interest beneficiaries (AG must consent if a charitable trust)	Yes	
Pennsylvania (UTC) [20 Pa. Cons. Stat. §7740.1]	No	Settlor and all beneficiaries	No	
	Yes	All beneficiaries	Yes	Spendthrift provision is presumed to be a material purpose
South Carolina (UTC) [S.C. Code Ann. §62-7-411]	Yes	Settlor and all beneficiaries	No	
		All beneficiaries	Yes	
South Dakota [S.D. Codified Laws § 55-3-24]	No	All beneficiaries	Yes	
	No	Trustor and all beneficiaries	No	
Tennessee (UTC) [Tenn. Code Ann. §35-15-411]	No	Trustee modifies upon the consent of all qualified beneficiaries during settlor's lifetime	No	Trustee must give 60 days' notice to settlor (during his or her lifetime) in which the settlor can object to the modification
	Yes	All qualified beneficiaries	Yes	
Utah (UTC) [Utah Code Ann. §75-7-411]	No	Settlor and all beneficiaries	No	
	Yes	All beneficiaries	Yes	

Summary of State Statutes That Generally Permit Modification By Consent of Parties to Noncharitable Irrevocable Trusts [LAST UPDATED 3/11/19]

State	Court Order Required	Required Consents	Material Purpose Limitation	Other Statutory Restrictions
Vermont (UTC) [Vt. Stat. Ann. tit. 14A, §411]	No	Settlor and all beneficiaries	No	If a party brings a petition and the settlor and all beneficiaries consented, the court shall enter approving order
	Yes	All beneficiaries	Yes	
Virginia (UTC) [Va. Code Ann. §64.2-729]	Yes	Settlor and all beneficiaries	No	
		All beneficiaries	Yes	
West Virginia (UTC) [W. Va. Code §44D-4-411]	Yes	Settlor and all beneficiaries	No	If settlor and all beneficiaries consent, the court shall enter an approving order
		All beneficiaries	Yes	Spendthrift provision is presumed to be a material purpose
Wisconsin (UTC) [Wis. Stat. §701.0411]	No	Settlor and all beneficiaries	No	Parties may seek court approval
	Yes	All beneficiaries	Yes	
Wyoming (UTC) [Wyo. Stat. Ann. §4-10-412]	No	Trust protector may modify if the terms of the trust authorize	Silent	
	Yes	Settlor and all beneficiaries	No	If a party brings a petition and the settlor and all beneficiaries consented, the court shall enter an approving order
		All beneficiaries	Yes	

Overview of State Nonjudicial Settlement Agreement (NJSA) Statutes

Many states have enacted statutes that permit parties to a trust to enter into an NJSA to resolve various issues related to a trust. This chart: (1) identifies relevant statutes, (2) indicates whether the statute allows an NJSA Wrapper, (3) indicates whether the statute includes an express power to modify the terms of the trust with an NJSA, (4) identifies required parties, (5) describes any statutory limits on trustee exculpation, (6) identifies statutes validating trustee releases, and (7) describes departures from the Uniform Trust Code. The term “NJSA Wrapper” refers to a tool that is permitted under some NJSA statutes whereby interested parties may use an NJSA to appoint a trustee, grant a trustee a power, direct another trustee not to exercise that power, and/or address the liability and compensation of the trustee. Also, a notation that a state uses the “UTC definition” of interested person means that the state has a statute modeled after the UTC that defines interested persons to be those persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

Overview of State Nonjudicial Settlement Agreement (NJSA) Statutes [LAST UPDATED 3/11/19]

State	Allows NJSA Wrapper	Express Power to Modify w/ NJSA	Required Parties	Statutory Limit on Trustee Exculpation	Statute Validating Trustee Releases	Departures from UTC
Alabama (UTC) [Ala. Code §19-3B-111]	Yes	No	Interested persons (UTC definition) [§19-3B-111(a)]	Bad faith and reckless indifference [§19-3B-1008]	Yes (silent on consideration) [§19-3B-1009]	§19-3B-111(d)(7) Partial or final settlements
Arizona (UTC) [Ariz. Rev. Stat. Ann. §14-10111]	Yes	No	Interested persons (provides a list) [§§ 14-1201(28); 14-10111(a)]	Bad faith and reckless indifference (applies only to irrevocable trusts created on or after 1/1/09) [§14-11008]	Yes (silent on consideration) [§14-11009]	§14-10111(E) Unless the interested person, pursuant to subsection D of this section, asks the court to rule without regard to this subsection, the court may either approve the agreement or decline to approve the agreement, but may not disapprove or deny the effectiveness of the agreement. If the court does not approve the agreement pursuant to this subsection, the failure to approve is not any prejudice against the effectiveness of the agreement and is not a final judgment or judicial precedent with respect to the agreement or subsequent agreements pursuant to the section.
Arkansas (UTC) [Ark. Code. Ann. §28-73-111]	Yes	No	Interested persons (UTC definition) [§28-73-111(a)]	Bad faith and reckless indifference [§28-73-1008]	Yes (silent on consideration) [§28-73-1009]	
Colorado [Colo. Rev. Stat. §15-5-111]	Yes	No	Interested persons [§15-5-103(10)]	Bad faith and reckless indifference [§15-5-1008]	Yes (silent on consideration) [§15-5-1009]	

Overview of State Nonjudicial Settlement Agreement (NJSa) Statutes [LAST UPDATED 3/11/19]

State	Allows NJSa Wrapper	Express Power to Modify w/ NJSa	Required Parties	Statutory Limit on Trustee Exculpation	Statute Validating Trustee Releases	Departures from UTC
Delaware [12 Del. C. §3338]	Yes	No	Interested persons (amended in 2015 to provide an express list) [§3338(a)]	Willful misconduct [§§ 3301(g); 3303(b)]	Yes (valid without consideration) [§3588]	12 Del. C. §3338(a)(1-4) specific list of interested parties: (1) Trustees and other fiduciaries; (2) Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust would vest, without regard to the exercise or nonexercise of any power of appointment, if the present interests in the trust terminated on the date of the nonjudicial settlement agreement; (3) The trustor of the trust, if living; and (4) All other persons having an interest in the trust according to the express terms of the governing instrument (such as, but not limited to, holders of powers and persons having other rights, held in a nonfiduciary capacity, relating to trust property).
District of Columbia (UTC) [D.C. Code Ann. §19-1301.11]	Yes	No	Interested persons (UTC definition) [§19-1301.11(a)]	Bad faith and reckless indifference [§19-1310.08]	Yes (silent on consideration) [§19-1310.09]	
Florida (UTC) [Fla. Stat. §736.0111]	Yes	Yes (but cannot be used to modify in any "impermissible manner") [§736.0111(3)]	Interested persons (persons whose interest would be affected by the NJSa) [§736.0111(a)]	Bad faith and reckless indifference (applies to trusts created on or after 7/1/07) [§736.1011]	Yes (silent on consideration) [§736.1012]	§736.0111(3) A nonjudicial settlement agreement among the trustee and trust beneficiaries is valid only to the extent the terms and conditions could be properly approved by the court. A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this code, including, but not limited to, terminating or modifying a trust in an impermissible manner.
Georgia [Ga. Code Ann. §53-12-9]	Maybe	Not when settlor's consent would be required in order to achieve a binding settlement if such settlement were to be approved by court	Interested persons (UTC definition) [§53-12-9(a)]	Bad faith and reckless indifference [§53-12-303]		May permit modifications when a settlor consents or when a settlor's consent would not be required in order to achieve a binding settlement if such settlement were to be approved by the court [§53-12-9(c)(2)]
Idaho [Idaho Code §§15-8-302; 103(1)] (called a "binding agreement")	Maybe	No	"Parties" (lists necessary parties) [§15-8-103(3)]	No apparent limitation [§15-7-301; 302]	No	<i>No statute following general NJSa framework</i>
Illinois [760 Ill. Comp. Stat. §5/16.1(d)]	Yes	Yes for terms pertaining to the administration of a trust [§5/16.1(d)(4)(K)]	Interested persons (lists necessary parties) [§5/16.1(d)(1)]	No	No	§5/16.1(d) Much broader list of statutory provisions (no part (3), extensive list of "matters"); §5/16.1(d)(4)(K) modification for terms pertaining to the administration of a trust

Overview of State Nonjudicial Settlement Agreement (NJSA) Statutes [LAST UPDATED 3/11/19]

State	Allows NJSA Wrapper	Express Power to Modify w/ NJSA	Required Parties	Statutory Limit on Trustee Exculpation	Statute Validating Trustee Releases	Departures from UTC
Iowa [Iowa Code §633A.6308]	Yes	No (expressly precludes modification with an NJSA) [§633A.6308.2]	Interested persons (UTC- style definition) [§633A.6308.1]	Intentional breach, gross negligence, bad faith, reckless indifference, and profit derived from a breach [§633A.4505]	Yes (silent on consideration) [§633A.4505]	§633A.6308.2 expressly precludes modification with an NJSA
Kansas (UTC) [Kan. Stat. Ann. §58a-111]	No	No (includes finite list of matters that an NJSA can be used for) [§58a-111(d)]	Interested persons (UTC definition) [§58a-111(a)]	Bad faith and reckless indifference [§58a-1008]	Yes (silent on consideration) [§58a-1009]	§58a-111(d) Matters that may be resolved by NJSA do <i>not</i> include the interpretation or construction of the terms of the trust; direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power
Kentucky (UTC) [Ky. Rev. Stat. Ann. 386B.1-090]	Yes	No	Interested persons (UTC definition) [§386B.1-090(1)]	Bad faith and reckless indifference [§386B.10-080]	Yes (silent on consideration) [§386B.10-090]	386B.1- 090(6) The District Court shall have exclusive jurisdiction over matters under this section.
Maine (UTC) [Me. Rev. Stat. Ann. tit 18-B, §111]	Yes	No	Interested persons (UTC definition) [§111(1)]	Bad faith and reckless indifference [§1008]	Yes (silent on consideration) [§1009]	
Maryland [Md. Code Ann. Est. & Trust §14.5-111]	Yes	No	Interested persons (UTC definition) [§14.5-111(A)]	Bad faith and reckless indifference [§14.5-906]	Yes (silent on consideration) [§14.5-907]	
Massachusetts (UTC) [Mass. Gen. Laws. ch. 203E, §111]	Yes	No	Interested persons (UTC definition) [§111(a)]	Bad faith and reckless indifference [§1008]	Yes (silent on consideration) [§1009]	
Michigan (UTC) [Mich. Comp. Laws §700.7111]	Yes	No (expressly prohibits modification) [§700.7111(2)]	Interested persons (UTC definition) [§700.7111(5)]	Bad faith and reckless indifference [§700.7908]	Yes (silent on consideration) [§700.7909]	§700.7111(2) A nonjudicial settlement agreement shall not be used to accomplish the termination or modification of the trust.
Minnesota (UTC) [Minn Stat. §501C.0111]	Yes	No	Interested persons (UTC definition) [§501C.0111(a)]	Bad faith and reckless indifference [§501C.1008]	Yes (silent on consideration) [§501C.1009]	
Mississippi (UTC) [Miss. Code. Ann. §91-8-111]	Yes	No	Trustee and qualified beneficiaries [§91-8-111(a)]	Bad faith and reckless indifference [§91-8-1008]	Yes (silent on consideration) [§91-8-1009]	§91-8-111(c)(7-9) Additional permitted matters: the extent or waiver of bond of a trustee; the governing law of the trust; and the criteria for distribution to a beneficiary where the trustee is given discretion.
Missouri (UTC) [Mo. Rev. Stat. §456.1-111]	Yes	Yes but only for the same reasons a court could modify [§456.1-411.6]	Interested persons (UTC definition) [§456.1-111.1]	Bad faith and reckless indifference [§456.10-1008]	Yes (silent on consideration) [§456.10-1009]	§456.1-111(6) A nonjudicial settlement agreement may not be used to terminate or modify a trust for the reasons that a court could terminate or modify a trust
Montana (UTC) [Mont. Code Ann. §72-38-111]	Yes	No	Interested persons (UTC definition) [§72-38-111(1)]	Bad faith and reckless indifference [§72-38-1008]	Yes (silent on consideration) [§72-38-1009]	
Nebraska (UTC) [Neb. Rev. Stat. §30-3811]	Yes	No	Interested persons (UTC definition) [§30-3811(a)]	Bad faith and reckless indifference [§30-3897]	Yes (silent on consideration) [§30-3898]	

Overview of State Nonjudicial Settlement Agreement (NJSA) Statutes [LAST UPDATED 3/11/19]

State	Allows NJSA Wrapper	Express Power to Modify w/ NJSA	Required Parties	Statutory Limit on Trustee Exculpation	Statute Validating Trustee Releases	Departures from UTC
New Hampshire (UTC) [N.H. Rev. Stat. Ann. §564-B:1-111]	Yes	Yes [§564-B:1-111(d)(7)]	Interested persons (UTC definition, but excludes settlor and includes trustees, persons with the power to enforce a trust, and if the trust is charitable the director of charitable trusts) [§564-B:1-111(a)]	Bad faith and reckless indifference [§564-B:10-1008]	Yes (silent on consideration) [§564-B:10-1009]	§564-B:1-111(d)(7) additional provision for the termination or modification of a trust
New Jersey [N.J. Rev. Stat. Ann. §3B:31-11]	Yes	No	Interested persons UTC definition) [§3B:31-11]	Bad faith and reckless indifference [§3B:31-77]	Yes (silent on consideration) [§3B:31-78]	§3B:31-11(f) additional prohibition for the termination or modification of a trust
New Mexico (UTC) [N.M. Stat. Ann. §46A-1-111]	Yes	No	Interested persons (UTC definition) [§46A-1-111(a)]	Bad faith and reckless indifference [§46A-1-1008]	Yes (silent on consideration) [§46A-1-1009]	
North Carolina (UTC) [N.C. Gen. Stat. §36C-1-111]	Yes	No	Interested persons (UTC definition) [§36C-1-111(a)]	Bad faith and reckless indifference [§36C-1-1008]	Yes (silent on consideration) [§36C-1-1009]	§36C-1-111(d) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 of this Chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.
North Dakota (UTC) [N.D. Cent. Code §59-09-11]	Yes	No	Interested persons (UTC definition plus trustee) [§59-09-11.1]	Bad faith and reckless indifference [§59-18-08]	Yes (silent on consideration) [§59-18-09]	§59-09-11(4) Matters that may be resolved by an NJSA include the extent or waiver of bond of a trustee, and the criteria for distribution to a beneficiary where the trustee is given discretion
Ohio (UTC) [Ohio Rev. Code Ann. §5801.10] (called an "agreement")	Yes	Yes (if it does not violate a material purpose) [§5801.10(C)(4)]	Parties (may include the settlor, beneficiaries, trustee, creditors, and Attorney General) [§5801.10(B)]	Bad faith and reckless indifference [§5810.08]	Yes (silent on consideration) [§5810.09]	§5801.10(C)(4) modification if it does not violate a material purpose <i>No statute following general NJSA framework</i>
Oregon (UTC) [Or. Rev. Stat. §130.045]	Yes	Yes [§130.045(5)(i)]	Interested persons (defined to include a living settlor, trustee, qualified beneficiaries, and Attorney General if a charitable trust) [§130.045(1)]	Bad faith and reckless indifference [§130.835]	Yes (silent on consideration) [§130.840]	§130.045(5)(i) Express Power to Modify <i>Substantially more robust definitional framework</i>
Pennsylvania (UTC) [20 Pa. Cons. Stat. §7710.1]	Yes	Yes [§7710.1(d)(11)]	All beneficiaries and trustees [§7710.1(b)]	Bad faith and reckless indifference [§7788]	Yes (silent on consideration) [§7789]	§7710.1(a) No explicit definition of "interested person;" §7710.1(d)(7-13) Additional permitted matters: the grant to a trustee of any necessary or desirable power; the exercise or nonexercise of any power by a trustee; questions relating to the property or an interest in property held as part of a trust; an action or proposed action by or against a trust or trustee; the modification or termination of a trust; an investment decision, policy, plan or program of a trustee; any other matter concerning the administration of a trust.

Overview of State Nonjudicial Settlement Agreement (NJSA) Statutes [LAST UPDATED 3/11/19]

State	Allows NJSA Wrapper	Express Power to Modify w/ NJSA	Required Parties	Statutory Limit on Trustee Exculpation	Statute Validating Trustee Releases	Departures from UTC
South Carolina (UTC) [S.C. Code Ann. §62-7-111]	Yes	No	Interested persons (UTC definition) §62-7-111(a)]	Bad faith and reckless indifference [§62-7-1008]	Yes (silent on consideration) [§62-7-1009]	§62-7-111 No limitation on NJSA validity; may not resolve interpretation or construction of a trust by an NJSA
South Dakota (UTC)	Yes	Yes [§55-1B-6(1)]	Parties (may include the settlor, trust advisor, or trust protector) [§55-2-13]		Yes (silent on consideration) [§55-3-45]	§2-12: Additional permitted matters: the determination of a fiduciary or representative's compensation; partial or final settlement agreements regarding a trust or its administration
Tennessee (UTC) [Tenn. Code Ann. §35-15-111]	Yes	No	Qualified beneficiaries [§35-15-111; 35-15-103(13)(a); 35-15-110]	Bad faith and reckless indifference [§35-15-1008]	Yes (silent on consideration) [§35-15-1009]	§35-15-111 No explicit definition of "interested person;" Additional matters that may be resolved by NJSA: the extent or waiver of bond of a trustee; the governing law of the trust; and the criteria for distribution to a beneficiary where the trustee is given discretion.
Utah (UTC) [Utah Code Ann. §75-7-110]	Yes	No	Interested persons (UTC definition) [§75-7-110(1)]	Bad faith and reckless indifference [§75-7-1008]	Yes (silent on consideration) [§75-7-1009]	
Vermont (UTC) [Vt. Stat. Ann. tit. 14A, §111]	Yes	No	Interested persons (UTC definition) [§111(a)]	Bad faith and reckless indifference [§1008]	Yes (silent on consideration) [§1009]	
Virginia (UTC) [Va. Code Ann. §64.2-709]	Yes	No	Interested persons (UTC definition) [§64.2-709.A]	Bad faith and reckless indifference [§64.2-799]	Yes (silent on consideration) [§64.2-800]	
Washington [Wash. Rev. Code Ann. §§ 11.96A.220; 11.96A.030(2)] (called a "binding agreement")	Maybe	No	Parties (list of defined parties) [§11.96A.030(5)]	Result of an abuse of a fiduciary relationship between trustor and trustee [§11.98.107]	Yes (silent on consideration) [§11.98.108]	<i>Substantially different definitional framework</i>
West Virginia (UTC) [W. Va. Code §44D-1-111]	Yes	Yes [§44D-1-111(b)(12)]	Interested persons (UTC definition) [§44D-1-111(a)]	Bad faith and reckless indifference [§44D-10-1008]	Yes (silent on consideration) [§44D-10-1009]	§44D-1-111(b)(7-13) Additional matters that may be resolved by NJSA: Questions relating to the property or an interest in property held as part of a trust; an investment decision, policy, plan or program of the trustee; the grant to a trustee of any necessary or desirable power; the exercise or nonexercise of any power by a trustee; an action or proposed action by or against a trust or trustee; the modification or termination of a trust; and any other matter concerning the administration of a trust.

Overview of State Nonjudicial Settlement Agreement (NJSA) Statutes [LAST UPDATED 3/11/19]

State	Allows NJSA Wrapper	Express Power to Modify w/ NJSA	Required Parties	Statutory Limit on Trustee Exculpation	Statute Validating Trustee Releases	Departures from UTC
Wisconsin (UTC) [Wis. Stat. Ann. §701.0111]	Yes	No	Interested persons (UTC definition) [§701.0111(1)]	Bad faith and reckless indifference [§701.1008]	Yes [§701.1009]	§701.0111(5)(g-l) Additional matters that may be resolved by NJSA: the liability or release from liability of a trustee for an action relating to the trust; the criteria for distribution to a beneficiary where the trustee is given discretion; the resolution of disputes arising out of the administration or distribution of the trust; an investment action; the appointment of and powers granted to a directing party or a trust protector; direction to a directing party or to a trust protector to perform or refrain from performing a particular act or the grant of a power to a directing party or trust protector.
Wyoming (UTC)	Yes	No	Interested persons (defined to include settlor if living, trustee, and trust protector) [§44D-10-111(a)]	Bad faith and reckless indifference [§4-10-1008]	Yes (silent on consideration) [§4-10-1009]	§4-10-111(d)(vii) Additional matters that may be resolved by NJSA: an election to treat the trust as a qualified spendthrift trust under article 5 of this act and modification of the trust to comply with W.S. 4-10-510