

## PROBATE CORNER

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### ARTICLE: Who is a “Qualified Beneficiary” Of A Trust?

Sec. 736.0103(14), Fla. Stat. defines a qualified beneficiary as a living beneficiary who, on the date the beneficiary's qualification is determined:

- (a) Is a distributee or permissible distributee of trust income or principal;
- (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (a) terminated on that date without causing the trust to terminate; or
- (c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated in accordance with its terms on that date.

This Scrivener's Summary, dated 5/21/06 explains the new Trust Code, with special emphasis on the changes made to existing law, together with the Ad Hoc Trust Code Revision Committee's rationale supporting those changes. The Scrivener's Summary is helpful in defining who is a qualified beneficiary of a trust. The relevant portion of the Scrivener's Summary reads:

**Beneficiary:** The term “beneficiary” refers to the universe of persons who have a beneficial interest in a trust as well as to any person who has a power of appointment over trust property in a capacity other than as trustee. It is immaterial for this purpose whether the beneficial interest is present or future, vested or contingent, or whether the person having the interest is ascertainable or even living. **46**

**Example 1 — Meaning of Beneficiary.** At his death, ninety-year-old D leaves \$1,000,000 to T as trustee “to pay the income to D’s spouse S for life, then to distribute trust property to such of D’s descendants as S by will appoints, and in default of appointment in continuing trust to spray income among D’s children from time to time living, and at the death of the last to distribute all trust property per stirpes to D’s then living descendants and if there be none, to D’s alma mater, QB University.” D is survived by S, by two children, C1 and C2, by a grandson Bob (C1’s child) and by a great-granddaughter Fay (Bob’s child). On these facts, the beneficiaries of D’s trust include S, C1, C2, Bob, Fay, QB University, and an indeterminate and unascertainable class of as yet unborn descendants of D. Note that T’s power to spray trust income among D’s children does not make T a beneficiary because T holds that power as a trustee. **47**

**Qualified Beneficiary:** The term “beneficiary” is to be contrasted with “qualified beneficiary.”**48** The latter encompasses only a limited subset of all trust beneficiaries. In effect the class is limited to living persons who are current beneficiaries, intermediate beneficiaries, and first line remainder beneficiaries, whether vested or contingent.**49** An example may be helpful.

Example 2 — Meaning of Qualified Beneficiary. Same facts as Example 1. The qualified beneficiaries of D's trust, as of his death, include S, C1, C2 and Bob. S is included because she is a permissible distributee. C1 and C2 are included because they would become permissible distributees were S's interest to terminate at D's death (i.e., were she to die at that time). Bob is also a qualified beneficiary because he would take the trust property were the trust to terminate at D's death (because of the death of S, C1 and C2). As of D's death, neither Fay nor QB University are qualified beneficiaries. Note however, that if Bob were to die after D's death, Fay would then become a qualified beneficiary because she would be entitled to trust property as a consequence of a hypothetical trust termination at that time. That is, the determination of who is a qualified beneficiary is made as of a specific point in time and can change over time.

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FOOTNOTES:

**46** Nor is it relevant how the person acquired the beneficial interest. The term 'beneficiary' includes persons who received their interests by assignment, exercise of a power of appointment, resulting trust, or by operation of an antilapse statute. See generally the discussion of "beneficiary" in the comments to UTC § 103.

**47** Suppose S's power in this example extended to D's descendants and their spouses. Would a current or future spouse of the descendants be beneficiaries by virtue of the fact that they are permissible objects of S's power? The better answer is no because, under traditional property law, the objects of a power of appointment have no beneficial interest in the property subject to the power; they have a mere expectancy.

**48** It is this latter term that the Code employs in the various provisions dealing with notice and consent.

**49** More precisely, the term includes only living beneficiaries who are either present distributees (or present permissible distributees) of trust income or principal or who would become present or permissible distributees if the interests of present distributees or the trust itself terminated on the date the class of qualified beneficiaries is being determined.