

58-820. Marital deduction gifts; effect and construction. (a) As used in this section:

(1) "Marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the federal internal revenue code or the federal gift tax deduction allowed for transfers under section 2523 of the federal internal revenue code; and

(2) "marital deduction gift" means a transfer of property that is intended to qualify for the marital deduction.

(b) If an instrument contains a marital deduction gift:

(1) The provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the marital deduction provisions of the federal internal revenue code;

(2) the fiduciary shall not take any action or have any power that impairs the deduction as applied to the marital deduction gift;

(3) the marital deduction gift may be satisfied only with property that qualifies for the marital deduction; and

(4) with respect to marital deduction gifts which are under the terms of the instrument, whether determined by a formula or a fixed dollar amount, in a pecuniary amount that is to be satisfied by distribution of assets at their values, as finally determined for federal estate tax purposes and the instrument does not otherwise require that such bequest at time of funding either be of an aggregate fair market value at least equal to such pecuniary amount or that the assets distributed in satisfaction of such bequest be fairly representative of appreciation or depreciation, as the case may be, of all assets available to satisfy such bequest, then such fiduciary shall be required to distribute assets in satisfaction of such marital deduction gift which are fairly representative of the depreciation or appreciation, as the case may be, of all assets available to satisfy such bequest.

(c) The provisions of this section shall have no effect on the administration or interpretation of marital deduction gifts made prior to their effective date.

History: L. 1994, ch. 269, § 6; July 1.