

# Decanting Irrevocable Trusts in Texas

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## What is Decanting?

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### ***Decanting is . . .***

1. *A method for modifying an **irrevocable** trust.*
1. *Initiated by a **Trustee** with authority over trust **principal**.*
1. *Accomplished by the Trustee distributing all or some of the assets of one trust to a second trust.*

## Source of Authority to Decant

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### ***Power to Decant May Exist Under . . .***

1. Governing Trust Instrument
1. Common Law Power of Trustee
1. State Statute

•3

## Source of Authority to Decant

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### ***Under Common Law . . .***

- ✓ Courts have recognized the authority of Trustee with broad discretion ***over principal*** to distribute “in further trust”
- ✓ Early decision: *Phipps v. Palm Beach Trust Co.* (1940)
- ✓ Broad Trustee discretion over principal is equivalent to a “special power of appointment,” which includes power to distribute in further trust

•4

## Source of Authority to Decant

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### ***Under Common Law . . .***

#### ***Power of Trustee to Decant NOT Unlimited:***

##### Trustee Duties . . .

- To Act Reasonably and in Good Faith
- To Act in the Interest of the Beneficiaries
- To Adhere to Intent & Purposes of the Trust
- To Follow Other Fiduciary Duties  
(Duty of Loyalty, Impartiality, No Self-Dealing, etc.)

## Source of Authority to Decant

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### **Decanting Under State Statutes**

- ✓ New York passed first decanting statute 1992
- ✓ 26 States currently have decanting statutes
- ✓ Texas passed decanting statute in 2013
- ✓ Texas modified decanting statute in 2017

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Title search: Decanting Irrevocable Trusts Under Texas Law

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First appeared as part of the conference materials for the  
14<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"Decanting: A Solution for Defective or Problematic Trusts"