WEST VIRGINIA CODE CHAPTER 44 ARTICLE 5A

WV Legislature

§44-5A-1. Definition.

As used in this article, the term “fiduciary” means the one or more executors of the estate of a decedent, or the one or more trustees of a testamentary or inter vivos trust estate, whichever in a particular case is appropriate.

WV Legislature

§44-5A-2. Incorporation by reference of enumerated powers by testator; restriction on exercise of powers.

(a) After June 30, 2011, by an intention of the testator expressed in a will, any or all of the powers or any portion of the powers enumerated in section three of this article, as they exist at the time of the signing of the will by the testator may be, by appropriate reference made thereto, incorporated in the will, with the same effect as though the language were set forth verbatim in the instrument. Incorporation of one or more of the powers contained in section three of this article by reference to that section is in addition to and not in limitation of the common law or statutory powers of the fiduciary.

(b) No power of authority conferred upon a fiduciary as provided in this article may be exercised by the fiduciary in a manner as, in the aggregate, to deprive the trust or the estate involved of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, or operate to impose a tax upon a donor or testator or other person as owner of any portion of the trust or estate involved. "Tax" includes, but is not limited to, any federal, state, or local income, gift, estate or inheritance tax.

(c) Nothing in this section prevents the incorporation of the powers enumerated in section three of this article in any other kind of instrument or agreement.

WV Legislature

§44-5A-3. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference by a testator in the will as provided in section two of this article and the following powers apply without the need for incorporation by reference to trustees who are governed by the provisions of the West Virginia Uniform Trust Code in chapter forty-four-d of this code:

(a) Retain original property. -- To retain for the time the fiduciary considers advisable any property, real or personal, which the fiduciary may receive, even though the retention of the property by reason of its character, amount, proportion to the total estate or otherwise would not be appropriate for the fiduciary apart from this provision.

(b) Sell and exchange property. -- To sell, exchange, give options upon, partition or otherwise dispose of any property or interest therein which the fiduciary may hold from time to time, with or without order of court, at public or private sale or otherwise, upon the terms and conditions, including credit, and for the consideration the fiduciary considers advisable, and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust; and the party dealing with the fiduciary is not under a duty to follow the proceeds or other consideration received by the fiduciary from the sale or exchange.

(c) Invest and reinvest. -- To invest and reinvest, as the fiduciary considers advisable, in stocks (common or preferred), bonds, debentures, notes, mortgages or other securities, in or outside the United States; in insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest, or in annuity contracts for any beneficiary, in any real or personal property, in investment trusts; in participations in common trust funds, and generally in property the fiduciary considers advisable, even though the investment is not of the character approved by applicable law but for this provision.

(d) Invest without diversification. -- To make investments which cause a greater proportion of the total property held by the fiduciary to be invested in investments of one type or of one company than would be considered appropriate for the fiduciary apart from this provision.

(e) Continue business. -- To the extent and upon terms and conditions and for the periods as the fiduciary considers necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form of organization, including, but not limited to, the power:

(1) To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(2) To dispose of any interest therein or acquire the interest of others therein;

(3) To contribute thereto or invest therein additional capital or to lend money thereto, in any

WV Legislature

case upon terms and conditions the fiduciary approves from time to time;

(4) To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole; and

(5) In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it is not necessary to itemize receipts and disbursements and distributions of property but it is sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary is permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

(f) Form corporation or other entity. -- To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of the corporation or entity, and to continue to hold the stock and securities and obligations.

(g) Operate farm. -- To continue any farming operation received by the fiduciary pursuant to the will or other instrument and to do any and all things considered advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including, but not limited to, the following powers:

(1) To operate the farm with hired labor, tenants or sharecroppers;

(2) To lease or rent the farm for cash or for a share of the crops;

(3) To purchase or otherwise acquire farm machinery and equipment and livestock;

(4) To construct, repair and improve farm buildings of all kinds needed in the fiduciary's judgment, for the operation of the farm;

(5) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting or marketing, or for the construction, repair or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock;

(6) To employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil;

(7) To protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate;

(8) To ditch, dam and drain damp or wet fields and areas of the farm when and where needed;

WV Legislature

(9) To engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant pastures and crops necessary to carry on the operations;

(10) To market the products of the farm; and

(11) In general, to employ good husbandry in the farming operation.

(h) Manage real property. -- (1) To improve, manage, protect and subdivide any real property;

(2) To dedicate or withdraw from dedication parks, streets, highways or alleys;

(3) To terminate any subdivision or part thereof;

(4) To borrow money for the purposes authorized by this subdivision for periods and upon terms and conditions as to rates, maturities and renewals the fiduciary considers advisable and to mortgage or otherwise encumber any property or part thereof, whether in possession or reversion;

(5) To lease any property or part thereof to commence at the present or in the future, upon terms and conditions, including options to renew or purchase, and for such period or periods the fiduciary considers advisable although the period or periods may extend beyond the duration of the trust or the administration of the estate involved;

(6) To make coal, gravel, sand, oil, gas and other mineral leases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which the property lies;

(7) To manage and improve timber and forests on the property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(8) To modify, renew or extend leases;

(9) To employ agents to rent and collect rents;

(10) To create easements and release, convey or assign any right, title or interest with respect to any easement on the property or part of the property;

(11) To erect, repair or renovate any building or other improvement on the property, and to remove or demolish any building or other improvement, in whole or in part; and

(12) To deal with the property and every part of the property in all other ways and for other purposes or considerations as it would be lawful for any person owning the same to deal with the property either in the same or in different ways from those specified elsewhere in this subdivision.

WV Legislature

(i) Pay taxes and expenses. -- To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust or estate.

(j) Receive additional property. -- To receive additional property from any source and administer the additional property as a portion of the appropriate trust or estate under the management of the fiduciary but the fiduciary is not required to receive the property without his or her consent.

(k) Deal with other trusts. -- In dealing with one or more fiduciaries:

(1) To sell property, real or personal, to, or to exchange property with, the trustee of any trust which the decedent or the settlor or his or her spouse or any child of his or her has created, for estates and upon terms and conditions as to sale price, terms of payment, and security as the fiduciary considers advisable; and the fiduciary is under no duty to follow the proceeds of any such sale; and

(2) To borrow money for periods and upon terms and conditions as to rates, maturities, renewals and securities the fiduciary considers advisable from any trust created by the decedent, his or her spouse, or any child of his or her, for the purpose of paying debts of the decedent, taxes, the costs of the administration of the estate, and like charges against the estate, or any part thereof, or discharging the liability of any fiduciary thereof and to mortgage, pledge or otherwise encumber a portion of the estate or any trust as may be required to secure the loan or loans and to renew the loans.

(l) Borrow money. -- To borrow money for periods and upon terms and conditions as to rates, maturities, renewals, and security the fiduciary considers advisable, including the power of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber a portion of the estate or any trust as may be required to secure the loan or loans; and to renew existing loans either as maker or endorser.

(m) Make advances. -- To advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances with any interest the fiduciary has a lien on the assets of the trust or estate as against a beneficiary.

(n) Vote shares. -- To vote shares of stock owned by the estate or any trust at stockholders meetings in person or by special, limited or general proxy, with or without power of substitution.

(o) Register in name of nominee. -- To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship so that title to the security may pass by

WV Legislature

delivery, but the fiduciary is liable for any act of the nominee in connection with the stock so held.

(p) Exercise options, rights and privileges. -- To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages or other property into other stocks, bonds, debentures, notes, mortgages or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages or other property; and to hold the stocks, bonds, debentures, notes, mortgages or other property so acquired as investments of the estate or trust so long as the fiduciary considers advisable.

(q) Participate in reorganizations. -- To unite with other owners of property similar to any which may be held at any time in the decedent's estate or in any trusts in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease or sale of the property, incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders or bondholders protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to the plan; and to receive as investments of an estate or any trust any securities issued as a result of the execution of the plan.

(r) Reduce interest rates. -- To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.

(s) Renew and extend obligations. -- To continue any obligation, whether secured or unsecured, upon and after maturity with or without renewal or extension upon terms the fiduciary considers advisable, without regard to the value of the security, if any, at the time of the continuance.

(t) Foreclose and bid in. -- To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust or other lien securing the bond, note or other obligation, and to bid in the property at the foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(u) Insure. -- To carry insurance coverage, including public liability, for hazards and in amounts, either in stock companies or in mutual companies, as the fiduciary considers advisable.

(v) Collect. -- To collect, receive and receipt for rents, issues, profits, and income of an estate or trust.

(w) Litigate, compromise or abandon. -- To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the estate or trust as

WV Legislature

the fiduciary considers advisable, and the fiduciary's decision is conclusive between the fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud by those persons; and in the absence of fraud, bad faith or gross negligence of the fiduciary, is conclusive between the fiduciary and the beneficiaries of the estate or trust.

(x) Employ and compensate agents, etc. -- To employ and compensate, out of income or principal or both and in proportion as the fiduciary considers advisable, persons considered by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct or default of the agent or representative as long as he or she was selected and retained with due care on the part of the fiduciary.

(y) Acquire and hold property of two or more trusts undivided. -- To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division becomes necessary in order to make distributions; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses: Provided, That the provisions of this subdivision do not defer the vesting in possession of any share or part of share of the estate or trust.

(z) Establish and maintain reserves. -- To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs, improvements and general maintenance of buildings or other property out of rents, profits or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries: Provided, That the provisions of this subdivision do not affect the ultimate interests of beneficiaries in the reserves.

(aa) Distribute in cash or kind. -- To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to determine the value of capital assets for the purpose of making distribution thereof if and when there is more than one distributee thereof, which determination is binding upon the distributees unless clearly capricious, erroneous and inequitable: Provided, That the fiduciary may not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof.

(bb) Pay to or for minors or incompetents. -- To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

(1) Directly to the minor or incompetent;

WV Legislature

(2) To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital or other institutional care of the minor or incompetent;

(3) To the legal or natural guardian of the minor or incompetent;

(4) To any other person, whether or not appointed guardian of the person by any court, who does, in fact, have the care and custody of the person of the minor or incompetent.

The fiduciary is not under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom the payments were made; and the receipt of the person is full acquittance to the fiduciary.

(cc) Apportion and allocate receipts and expenses. -- Where not otherwise provided by statute to determine:

(1) What is principal and what is income of any estate or trust and to allocate or apportion receipts and expenses as between principal and income in the exercise of the fiduciary's discretion, and, by way of illustration and not limitation of the fiduciary’s discretion, to charge premiums on securities purchased at a premium against principal or income or partly against each;

(2) Whether to apply stock dividends and other noncash dividends to income or principal or apportion them as the fiduciary considers advisable; and

(3) What expenses, costs, taxes (other than estate, inheritance, and succession taxes and other governmental charges) shall be charged against principal or income or apportioned between principal and income and in what proportions.

(dd) Make contracts and execute instruments. -- To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers granted in this section.

(ee) The foregoing powers are limited as follows for any trust which is classified as a "private foundation" as that term is defined by section 509 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (including each nonexempt charitable trust described in section 4947(a)(1) of the code which is treated as a private foundation) or nonexempt split-interest trust described in section 4947(a)(2) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (but only to the extent that section 508(e) of the code is applicable to the nonexempt split-interest trust under section 4947(a)(2)):

(1) The fiduciary shall make distributions of amounts, for each taxable year, at times and in a manner as not to become subject to the tax imposed by section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

WV Legislature

(2) No fiduciary may engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(3) No fiduciary may retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(4) No fiduciary may make any investments in a manner as to subject the trust to tax under section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(5) No fiduciary may make any taxable expenditures as defined in section 4945(e) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

WV Legislature

§44-5A-4. Designation of testamentary trustee as beneficiary of insurance.

A policy of life insurance may contain a designation of a beneficiary, a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurer. The proceeds of the insurance shall be paid to the trustee or trustees to be held and disposed of under the terms of the will as they exist at the death of the testator; but if no trustee or trustees makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within the one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured. The proceeds of the insurance as collected by the trustee or trustees are not subject to debts of the insured or to inheritance tax to any greater extent than if the proceeds were payable to any other named beneficiary other than the estate of the insured, and are not considered as payable to the estate of the insured for any purpose. The insurance proceeds so held in trust may be commingled with any other assets which may properly come into the trust as provided in the will. Enactment of this section does not invalidate previous life insurance policy designations naming trustees of trusts established by will.

WV Legislature

§44-5A-5. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.

(a) Where a will, trust or other governing instrument authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or a separate trust to be funded by a pecuniary amount or formula unless the will, trust or other governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution, and if any pecuniary bequests or separate trusts established under the will or trust by a pecuniary amount or formula is not entirely funded or an amount necessary to fund the bequest or trust completely is not irrevocably set aside within fifteen months after the date of the testator's or grantor's death, the fiduciary shall allocate to the bequest or trust a prorata share of the income earned by the estate of the testator or grantor or other fund from which the bequest or trust is to be funded between the date of death of the testator or grantor and the date or dates of the funding.

(b) Whenever a fiduciary under the provisions of a will, trust or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust and is authorized to satisfy the bequest or transfer by selection and distribution of assets in kind, and the will, trust or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will, trust or other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest or transfer. This section does not apply to prevent a fiduciary from carrying into effect the provisions of the will, trust or other governing instrument that the fiduciary, in order to implement the bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) (1) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust is authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of the bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of the bequest or transfer in trust and any such agreement heretofore entered into after April 1, 1964, is hereby validated. The fiduciary is authorized to enter into any other agreement not in conflict with the express terms of the will, trust or other governing instrument that may be necessary or advisable in order to secure for federal estate tax

WV Legislature

purposes the appropriate marital deduction or other deduction or exemption available under the Internal Revenue laws of the United States of America, and to do and perform all acts incident to that purpose.

(2) Unless ordered by a court of competent jurisdiction, the bank or trust company operating a common trust fund, as provided in section six of this article, is not required to render an accounting with regard to the fund, before any fiduciary commissioner but it may, by application to the circuit court of the county in which is located the principal place of business of the bank or trust company, secure the approval of an accounting in the condition the court may fix: Provided, That nothing in this section relieves a fiduciary acquiring, holding or disposing of an interest in any common trust fund from making an accounting as required by law with respect of the interest.

(d) The fiduciary of any trust created by will, trust or other governing instrument may from time to time without need of court approval to divide the trust or trusts for purposes of the generation skipping transfer tax ("GST") of section 2601 of the Internal Revenue Code of 1986, as in effect on January 1, 2010, or any similar or successor law of like import, or for any other tax, administrative or other purposes. In exercising this authority for inclusion ratio, marital deduction election, reverse qualified terminal interest property election or other GST or other tax purposes, the power shall be exercised in a manner that complies with applicable Internal Revenue Code Treasury Regulations or other requirements for accomplishing the intended purposes. If that division is made for purposes of separating assets with respect to which the federal estate tax marital deduction election is to be made from those as to which the election is not to be made, the division shall be done on a fractional or percentage basis and the assets of the trust or other fund to be divided shall be valued for purposes of the division on the date or dates of division.

WV Legislature

§44-5A-6. Restrictions on exercise of power for fiduciary' benefit.

(a) A power conferred upon a person in his or her capacity as fiduciary to make discretionary distributions of principal or income to himself or herself or to make discretionary allocations in his or her favor of receipts or expenses between income and principal cannot be exercised by him or her. If the power is conferred on two or more fiduciaries, it may be exercised by the fiduciaries who are not so disqualified. If there is no fiduciary qualified to exercise the power, it may be exercised by a special fiduciary appointed by the court authorized under article fourteen of this chapter, and in accordance with the procedure described therein, to appoint a successor or substitute trustee. Except as provided in subsection (c) of this section this section applies to all trusts now in existence and to all trusts which are created later.

(b) Unless either: (1) Mandatory; (2) limited by an ascertainable standard relating to the health, education, support or maintenance of the fiduciary; or (3) exercisable by the fiduciary only in conjunction with another person having a substantial interest in the trust which is adverse to the interest of the fiduciary, a power to make distributions of principal or income is a discretionary power for purposes of this section.

(c) This section does not apply to trusts that come into existence or are amended after the effective date of this section which show a clear intent that this section does not apply.

WV Legislature

§44-5A-7. Powers of fiduciaries regarding environmental laws.

(a) For purposes of this section:

(1) "Environmental law" means any federal, state or local law, rule, regulation or ordinance relating to the regulation of hazardous substances or hazardous wastes, air pollution, water pollution and underground storage tanks;

(2) "Hazardous substance" means any substance defined as hazardous in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") [42 U.S.C. 9601, et seq. (1980)] as amended and in effect on January 1, 2010, and regulations promulgated thereunder;

(3) "Hazardous waste" means a waste characterized or listed as hazardous in the Resource, Conservation and Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as amended] as in effect on January 1, 2010, and regulations promulgated thereunder;

(4) "Fiduciary" means a fiduciary as defined by section one-d, article four-d, chapter thirty-one of this code.

(b) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") has the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:

(1) To inspect property held by the fiduciary including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting the property and to take necessary or reasonable action, including reporting to the appropriate regulatory authority as may be otherwise required by law, with respect to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(2) To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

(3) To refuse to accept property in trust or estate if the fiduciary determines any property to be donated or conveyed to the trust or estate is contaminated by any hazardous substance or hazardous waste or is being used or has been used for any activity directly or indirectly involving any violation of an environmental law which is reasonably likely to result in liability to the fiduciary: Provided, That the refusal does not limit the liability of the trust or estate or its income or principal, for any liability the trust or estate may otherwise have in connection

WV Legislature

with any environmental law, but only to limit the liability of the fiduciary. Property not accepted into a trust or estate by the fiduciary may revert to the grantor or its successors or pass by the laws of descent and distribution, as may otherwise be provided by law;

(4) To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

(5) To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it and its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(c) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate.

(d) A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law.

(e) Neither the acceptance by the fiduciary of property nor the failure by the fiduciary to inspect property creates any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.

WV Legislature