WEST VIRGINIA CODE CHAPTER 44 ARTICLE 6C

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§44-6C-1. Prudent investor rule.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust instrument. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust instrument.

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§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g) (1) Unless otherwise directed by the terms of the trust instrument, the duties of a trustee of an irrevocable life insurance trust with respect to acquiring or retaining a contract of

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insurance upon the life of the grantor, or the lives of the grantor and the grantor's spouse, do not include a duty:

(A) To determine whether the contract is or remains a proper investment;

(B) To exercise policy options available under the contract in the event the policy lapses or is terminated due to failure to pay premiums; or

(C) To diversify the contract.

(2) A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

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§44-6C-3. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

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§44-6C-4. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of this article.

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§44-6C-5. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

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§44-6C-6. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

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§44-6C-7. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

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§44-6C-8. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

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§44-6C-9. Delegation of investment and management functions.

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state

(e) The delegating trustee is not responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and the trustee's compliance with the scope and specific terms of the delegation.

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§44-6C-10. Language invoking standard of article.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article: “investments permissible by law for investment of trust funds”, “legal investments”, “authorized investments”, “using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital”, “prudent man rule”, “prudent trustee rule”, “prudent person rule” and “prudent investor rule”.

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§44-6C-11. Application to existing trusts.

This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

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§44-6C-12. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.

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§44-6C-13. Short title.

This article may be cited as the “West Virginia Uniform Prudent Investor Act”.

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§44-6C-14. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

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§44-6C-15. Effective date.

This article takes effect on July 1, 1996.

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