WEST VIRGINIA CODE CHAPTER 44D ARTICLE 1

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§44D-1-101. Short title.

This chapter may be cited as the West Virginia Uniform Trust Code.

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§44D-1-102. Scope.

This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

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§44D-1-103. Definitions.

In this chapter:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(3) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent;

(B) In a capacity other than that of trustee, holds a power of appointment over trust property; or

(C) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.

(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in §44D-4-405 of this code.

(5) "Conservator" means a person appointed by the court to administer the estate and financial affairs of a protected person.

(6) "Court" means a court of this state having proper jurisdiction under §44D-2-203 of this code, and venue under §44D-2-204 of this code.

(7) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

(8) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(9) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(10) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health, and welfare of a minor. The term does not include a guardian ad litem.

(11) "Interested person" means heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust or the property in a trust.

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It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved, in any proceeding.

(12) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(13) "Internal Revenue Code" or "Internal Revenue Code of 1986" has the same meaning as when used in a comparable context in the laws of the United States then in effect relating to income, estate, generation-skipping transfer, and other taxes, including all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature in §11-21-9 of this code.

(14) "Jurisdiction" with respect to a geographic area, includes a state or country.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, unincorporated nonprofit association, charitable organization, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(16) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(A) Exercisable by a trustee and limited by an ascertainable standard; or

(B) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(17) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(18) "Qualified beneficiary" means a 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 (B) of this subdivision 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 on that date.

(19) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. “Record” does not

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include a will of the grantor, unless the will is duly admitted to probate.

(20) "Revocable", as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

(21) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(22) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(24) "Terms of a trust" means:

(A) Except as otherwise provided in paragraph (B); and the manifestation of the grantor’s intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) Established by other evidence that would be admissible in a judicial proceeding; or

(B) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) A court order; or

(iii) A nonjudicial settlement agreement under §44D-1-111 of this code.

(25) "Trust instrument" means a will of the grantor which is duly admitted to probate, or a record, signed by the grantor, that contains terms of the trust, including any amendments thereto.

(26) "Trustee" includes an original, additional, successor trustee and a cotrustee.

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§44D-1-104. Knowledge.

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

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§44D-1-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust instrument, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust but subject to the provisions of §44D-8A-809, §44D-8A-811, and §44D-8A-812 of this code;

(3) The requirement that a trust and its terms have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under §44D-4-410 through §44D-4-416, inclusive, of this code;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in §44D-5-501 *et seq.* of this code;

(6) The power of the court under §44D-7-702 of this code to require, dispense with, or modify or terminate a bond;

(7) The power of the court under §44D-7-708(b) of this code to adjust a trustee's compensation specified in the terms of the trust instrument which is unreasonably low or high;

(8) The effect of an exculpatory term under §44D-10-1008 of this code;

(9) The rights under §44D-10-1010 through §44D-10-1013, inclusive, of this code of a person other than a trustee or beneficiary;

(10) Periods of limitation for commencing a judicial proceeding;

(11) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice; and

(12) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in §44D-2-203 and §44D-2-204 of this code.

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§44D-1-106. Common law of trusts; principles of equity.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

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§44D-1-107. Governing law.

The meaning and effect of the terms of a trust are determined by:

(1) The law of the jurisdiction designated in the terms of the trust instrument, including terms which may provide for change of jurisdiction from time to time, unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) In the absence of a controlling designation in the terms of the trust instrument, the law of the jurisdiction in which the grantor is domiciled when the trust becomes irrevocable.

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§44D-1-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in, or a trustee is a resident of the designated jurisdiction;

(2) A trust director's principal place of business is located in, or a trust director is a resident of the designated jurisdiction; or

(3) All or part of the administration occurs in the designated jurisdiction.

(b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

(c) When the proposed transfer of a trust's principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the current beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. A corporate trustee that maintains a place of business in West Virginia where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries has not transferred its principal place of administration merely because all or a significant portion of the administration of the trust is performed outside West Virginia. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) The date, not less than 60 days after the giving of the notice, by which the current beneficiary must notify the trustee of an objection to the proposed transfer.

(d) The authority of a trustee under this section to transfer a trust's principal place of administration to another state or to a jurisdiction outside the United States terminates if a current beneficiary notifies the trustee of an objection to the proposed transfer on or before

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the date specified in the notice.

(e) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust instrument or appointed pursuant to §44D-7-704 of this code.

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§44D-1-109. Methods and waiver of notice.

(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding shall be given as provided in the applicable rules of civil procedure.

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§44D-1-110. Others treated as qualified beneficiaries.

(a) Whenever notice to qualified or current beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter.

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section four hundred eight or four hundred nine, article four of this chapter has the rights of a qualified beneficiary under this chapter.

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§44D-1-111. Nonjudicial settlement agreements.

(a) For purposes of this section "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, including, but not limited to:

(1) The interpretation or construction of the terms of the trust;

(2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting;

(3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) Transfer of a trust's principal place of administration;

(6) Liability or release from liability of a trustee for an action relating to the trust;

(7) Questions relating to the property or an interest in property held as part of a trust;

(8) An investment decision, policy, plan or program of the trustee;

(9) The grant to a trustee of any necessary or desirable power;

(10) The exercise or nonexercise of any power by a trustee;

(11) An action or proposed action by or against a trust or trustee;

(12) The modification or termination of a trust; and

(13) Any other matter concerning the administration of a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(d) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in article three of this chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

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§44D-1-112. Rules of construction.

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

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§44D-1-113. Insurable interest of trustee.

(a) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(1) The insured is:

(A) A grantor of the trust; or

(B) An individual in whom a grantor of the trust has, or would have had if living at the time the policy was issued, an insurable interest as provided by the provisions of section two, article six, chapter thirty-three of this code; and

(2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have an insurable interest in the life of the insured as provided by the provisions of section two, article six, chapter thirty-three of this code.

(b) For purposes of this section, the term “grantor” means a person that executes a trust instrument. The term includes a person for which a fiduciary or agent is acting.

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