WEST VIRGINIA CODE: §44D-10-1008

§44D-10-1008. Exculpation of trustee.

(a) A term of a trust instrument relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries, subject to §44D-1-105 and §44D-8A-809 of this code; or

(2) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the grantor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless:

(1) The trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the grantor; or

(2) The grantor was represented by an attorney not employed by the trustee with respect to the trust and the attorney provided independent legal advice.

WV Legislature