WEST VIRGINIA CODE CHAPTER 44D ARTICLE 10

WV Legislature

§44D-10-1001. Remedies for breach of trust.

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

(1) Compel the trustee to perform the trustee's duties;

(2) Enjoin the trustee from committing a breach of trust;

(3) Compel the trustee to redress a breach of trust by paying money, restoring property or other means;

(4) Order a trustee to account;

(5) Appoint a special fiduciary to take possession of the trust property and administer the trust in accordance with the limitations and directions as ordered by the court;

(6) Suspend the trustee;

(7) Remove the trustee as provided in section seven hundred six, article seven of this chapter;

(8) Reduce or deny compensation to the trustee;

(9) Subject to section one thousand twelve of this article, void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) Order any other appropriate relief.

WV Legislature

§44D-10-1002. Damages for breach of trust.

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) The profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

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§44D-10-1003. Damages in absence of breach.

Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

WV Legislature

§44D-10-1004. Attorney's fees and costs.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

WV Legislature

§44D-10-1005. Limitation of action against trustee.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative of the beneficiary knows of the potential claim or should know of the existence of the potential claim.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after the first to occur of:

(1) The removal, resignation or death of the trustee;

(2) The termination of the beneficiary's interest in the trust;

(3) The termination of the trust; or

(4) The time when the beneficiary knew or should have known of the breach of trust.

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§44D-10-1006. Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust instrument as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

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§44D-10-1007. Event affecting administration or distribution.

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attaining a specific age or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

WV Legislature

§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

§44D-10-1009. Beneficiary's consent, release or ratification.

(a) A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

(b) A beneficiary is also bound to the extent an approval is given by a person authorized to represent the beneficiary as provided in article three of this chapter.

WV Legislature

§44D-10-1010. Limitation on personal liability of trustee.

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

WV Legislature

§44D-10-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract is satisfied if the trustee signs the contract, or signs another record which is contemporaneously delivered to the other parties to the contract, in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the grantor is personally liable for contracts and other obligations of the partnership as if the grantor were a general partner.

WV Legislature

§44D-10-1012. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

WV Legislature

§44D-10-1013. Certification of trust.

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(1) That the trust exists and the date the trust instrument was executed;

(2) The identity of the grantor;

(3) The identity and address of the currently acting trustee;

(4) The powers of the trustee;

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

(7) The trust's taxpayer identification number; and

(8) The manner of taking title to trust property.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust instrument may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

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(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court having jurisdiction over the trust determines that the person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(j) Nothing in this section expands, limits or otherwise affects the provisions contained in section four-a, article one, chapter thirty-six of this code pertaining to memoranda of trust.

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