WEST VIRGINIA CODE CHAPTER 44D ARTICLE 7

WV Legislature

§44D-7-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust instrument; or

(2) If the terms of the trust instrument do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship including by signing a record so stating.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the grantor or, if the grantor is dead or lacks capacity, to a qualified beneficiary; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other proper purpose.

WV Legislature

§44D-7-702. Trustee's bond.

(a) A trustee shall give bond to secure performance of the trustee's duties only if a bond is required by the terms of the trust instrument or if the court having jurisdiction of the trust finds that a bond is needed to protect the interests of the beneficiaries and the court has not dispensed with the requirement of a bond.

(b) The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time upon petition by the grantor, if living, a qualified beneficiary, or cotrustee.

(c) In accordance with the provisions of section eighteen, article four, chapter thirty-one-a of this code, a regulated financial-service institution authorized to exercise trust powers in this state need not give bond, even if required by the terms of the trust instrument.

WV Legislature

§44D-7-703. Cotrustees.

(a) Unless otherwise provided in the terms of the trust instrument, cotrustees who are unable to reach a unanimous decision may act by majority decision. Unless otherwise provided by the trust instrument, when a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them, the court in its discretion upon a petition filed by any of the trustees, the grantor, if living, a qualified beneficiary, or any interested person, may direct the exercise or nonexercise of the power as it considers necessary for the best interest of the trust.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust, unless otherwise provided in the terms of the trust instrument.

(c) Subject to the provisions of §44D-8A-801 *et seq.* of this code, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation of a function previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Subject to the provisions of §44D-8A-801 *et seq.* of this code, each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

WV Legislature

§44D-7-704. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled unless otherwise provided in the terms of the trust instrument. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

(c) Unless otherwise provided in the terms of the trust instrument, a vacancy in a trusteeship of a noncharitable trust that is required to be filled shall be filled in the following order of priority:

(1) By a person designated in the terms of the trust instrument to act as successor trustee;

(2) By a person appointed by a unanimous record of the qualified beneficiaries; or

(3) By a person appointed by the court having jurisdiction of the trust.

(d) Unless otherwise provided, a vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust instrument if the Attorney General of West Virginia either concurs in a record to the selection or fails to make a written objection to the selection within 90 days after receiving by certified or registered mail a notice of the selection by the charitable organizations; or

(3) By a person appointed by the court having jurisdiction over the trust.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may upon petition of the grantor, a qualified beneficiary, or a cotrustee, appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

WV Legislature

§44D-7-705. Resignation of trustee.

(a) Unless otherwise provided in the terms of the trust instrument, a trustee may resign without court approval by giving at least 30 days' notice in a record to the grantor, if living, all of the qualified beneficiaries and all cotrustees, if any.

(b) A trustee may resign with the approval of the court having jurisdiction of the trust upon the filing of a petition for such purpose which joins as respondents the grantor, if living, all of the qualified beneficiaries, and all cotrustees, if any. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Unless otherwise provided by order of the court, any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

WV Legislature

§44D-7-706. Removal of trustee.

(a) The grantor, a cotrustee or a beneficiary may upon petition request the court to remove a trustee, or a trustee may be removed by the court on its own initiative. In the case of a charitable trust, the Attorney General of West Virginia shall also have standing to petition the court to remove a trustee.

(b) The court may remove a trustee if the court finds by a preponderance of the evidence that:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness or persistent failure of the trustee to administer the trust effectively, removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, removal of the trustee best serves the interests of all of the beneficiaries, removal is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under subsection (b), section one thousand one, article ten of this chapter as may be necessary to protect the trust property or the interests of the beneficiaries.

WV Legislature

§44D-7-707. Delivery of property by former trustee.

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee or other person entitled to it.

(c) Title to all trust property shall be owned and vested in any successor trustee, upon acceptance of the trusteeship, without any conveyance, transfer or assignment by the prior trustee.

WV Legislature

§44D-7-708. Compensation of trustee.

(a) If the terms of the trust instrument do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of the trust instrument specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may upon petition of the grantor, qualified beneficiary, the trustee or cotrustee, if any, may allow more or less compensation if:

(1) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust instrument would be unreasonably low or high.

WV Legislature

§44D-7-709. Reimbursement of expenses.

(a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

WV Legislature