WEST VIRGINIA CODE CHAPTER 44D ARTICLE 8

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§44D-8-801. Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust and invest the trust assets in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter. In administering, managing and investing trust assets, the trustee shall comply with the provisions of the Uniform Prudent Investor Act in article six-c, chapter forty-four of this code, and the Uniform Principal and Income Act in chapter forty-four-b of this code.

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§44D-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section one thousand twelve, article ten of this chapter, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) The transaction was authorized by the terms of the trust instrument;

(2) The transaction was approved by the court having jurisdiction over the trust;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section one thousand five, article ten of this chapter;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with section one thousand nine, article ten of this chapter; or

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) The trustee's spouse;

(2) The trustee's descendants, siblings, parents or their spouses;

(3) An agent or attorney of the trustee; or

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage from such transaction is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the

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transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust, mutual fund or other investment or financial product to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Uniform Prudent Investor Act in article six-c, chapter forty-four of this code. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company, investment trust, mutual fund or other investment or financial product, or by the affiliated entity sponsoring, selling or providing the service, and the compensation may be in addition to the compensation the trustee is receiving as a trustee if the trustee notifies the persons entitled to receive a copy of the trustee's annual report as provided hereunder of the rate and method by which that compensation was determined and of any subsequent changes to the rate or method of compensation.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) Payment of reasonable compensation to the trustee;

(3) A transaction between a trust and another trust, decedent's estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial service institution operated by the trustee; or

(5) An advance by the trustee of money for the protection of the trust.

(i) The court having jurisdiction over the trust may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

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§44D-8-803. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests.

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§44D-8-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

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§44D-8-805. Costs of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

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§44D-8-806. Trustee's skills.

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, shall use those special skills or expertise.

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§44D-8-807. Delegation by trustee.

(a) A trustee may delegate duties and powers 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 instrument; 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 subsection (a) of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties 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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§44D-8-808. Powers to direct.

The terms of a trust instrument which confer upon a person other than the grantor of a revocable trust power to direct certain actions of the trustee are governed by the provisions of the West Virginia Uniform Directed Trust Act contained in §44D-8A-801 *et seq.* of this code.

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§44D-8-809. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property.

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§44D-8-810. Recordkeeping and identification of trust property.

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

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§44D-8-811. Enforcement and defense of claims.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

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§44D-8-812. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

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§44D-8-813. Duty to inform and report.

(a) A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall within a reasonable time respond to a beneficiary's request for information related to the administration of the trust.

(b) A trustee:

(1) Upon request of a beneficiary, shall within a reasonable time furnish to the beneficiary a copy of the trust instrument;

(2) Within a reasonable time after accepting a trusteeship, shall notify the current beneficiaries of the acceptance and of the trustee's name, address and telephone number;

(3) Within a reasonable time after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the grantor or otherwise, shall notify the current beneficiaries of the trust's existence, of the identity of the grantor or grantors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

(4) Shall notify the current beneficiaries within a reasonable time in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the current beneficiaries of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the current beneficiaries, and to other nonqualified or qualified beneficiaries who request it or who have previously requested it, by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated individual who was a trustee, and the personal representative, conservator or guardian shall deliver to the successor trustee or trustees any books, records, documentation, instruments of title, or assets of or concerning the trust which are in the possession or under the control of the personal representative, conservator or guardian.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) The trustee may provide reports or other information to beneficiaries to whom reports

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and other information are not otherwise required to be furnished under this section.

(f) Subdivisions (2) and (3), subsection (b) of this section do not apply to a trustee who accepts a trusteeship before the effective date of this chapter, to an irrevocable trust created before the effective date of this chapter, or to a revocable trust that becomes irrevocable before the effective date of this chapter.

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§44D-8-814. Discretionary powers; tax savings.

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust instrument, including the use of such terms as "absolute," "sole" or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the general and specific terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust instrument expressly indicate that a rule in this subsection does not apply:

(1) A person other than a grantor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court having jurisdiction may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) A power held by the grantor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or Section 2523(e) of the Internal Revenue Code;

(2) Any trust during any period that the trust may be revoked or amended by its grantor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

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§44D-8-815. General powers of trustee.

(a) A trustee, without authorization by the court having jurisdiction, may exercise:

(1) Powers conferred by the terms of the trust instrument; or

(2) Except as limited by the terms of the trust instrument:

(A) All powers over the trust property which an unmarried competent owner has over individually owned property;

(B) Any other powers appropriate to achieve the proper investment, management and distribution of the trust property; and

(C) Any other powers conferred by this code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

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§44D-8-816. Specific powers of trustee.

Without limiting the authority conferred by section eight hundred fifteen of this article, a trustee has the powers enumerated in the provisions of section three, article five-a, chapter forty-four of this code.

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§44D-8-817. Distribution upon termination.

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within sixty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall have and exercise all powers appropriate to wind up the administration of the trust and shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) It was induced by improper conduct of the trustee; or

(2) The beneficiary, at the time of the release, did not know of the beneficiary’s rights or of the material facts relating to the breach.

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