WEST VIRGINIA CODE CHAPTER 44D

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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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§44D-2-201. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

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§44D-2-202. Jurisdiction over trustee and beneficiary.

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

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§44D-2-203. Subject-matter jurisdiction.

The court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

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§44D-2-204. Venue.

(a) Except as otherwise provided in subsection (b) of this section, venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located unless the proceeding is to recover land, determine title to the land or subject it to a debt, determine the county where the land or any part may be, or, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, or if the trust is created by will, in the county in which the decedent's estate was or is being administered.

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§44D-3-301. Representation; basic effect.

(a) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

(c) Except as otherwise provided in section four hundred eleven, article four of this chapter, and section six hundred two, article six of this chapter, a person who under this article may represent a grantor who lacks capacity may receive notice and give a binding consent on the grantor's behalf.

(d) A grantor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under subsection (a), section four hundred eleven, article four of this chapter.

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§44D-3-302. Representation by holder of general testamentary power of appointment.

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

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§44D-3-303. Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator or guardian of the protected person may represent and bind the estate that the fiduciary controls;

(2) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(3) A trustee may represent and bind the beneficiaries of the trust;

(4) A personal representative of a decedent's estate may represent and bind persons interested in the estate;

(5) A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed; and

(6) If a minor or unborn person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor or unborn person.

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§44D-3-304. Representation by person having substantially identical interest.

Unless otherwise represented, a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and the person represented.

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§44D-3-305. Appointment of representative.

(a) If the court determines in a judicial proceeding that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

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§44D-4-401. Methods of creating trust.

(a) A trust may be created by:

(1) Transfer of property to another person as trustee during the grantor's lifetime by the grantor or by will or by other disposition taking effect upon the grantor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

(3) Exercise of a power of appointment in favor of a trustee; or

(4) An order of the court.

(b) During the grantor's lifetime, a trust may also be created by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf or which expressly authorizes the agent to fund an existing trust of the grantor on the grantor's behalf.

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§44D-4-402. Requirement for creation.

(a) Except as created by an order of the court, a trust is created only if:

(1) The grantor has capacity to create a trust;

(2) The grantor indicates an intention, in a trust instrument, to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in §44D-4-408 of this code; or

(C) A trust for a noncharitable purpose, as provided in §44D-4-409 of this code;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Notwithstanding the foregoing:

(1) In accordance with §41-3-8 of this code, a trust is valid regardless of the existence, value, or character of the corpus of the trust.

(2) The grantor need not have capacity to create a trust if the trust is created in a record during the grantor's lifetime by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf.

(e) A trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

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§44D-4-403. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The grantor was domiciled, had a place of abode, or was a national;

(2) A trustee was domiciled or had a place of business; or

(3) Any trust property was located.

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§44D-4-404. Trust purposes.

A trust may be created only to the extent its purposes are lawful, not contrary to public policy and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

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§44D-4-405. Charitable purposes; enforcement.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, upon petition by the trustee or a person having a special interest in the trust, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the grantor's intention to the extent it can be ascertained.

(c) The grantor of a charitable trust, trustee or a person having a special interest in the trust, may maintain a proceeding to enforce the trust.

(d) This section is not intended to override the provisions of section four, article one, chapter thirty-five of this code or section two, article two of said chapter, concerning conveyances, devises, dedications, gifts or bequests to religious organizations, and to the extent there is a conflict with those sections, this section controls.

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§44D-4-406. Creation of trust induced by fraud, duress or undue influence.

A trust is void to the extent its creation was induced by fraud, duress or undue influence. As used in this section, "fraud", "duress" and "undue influence" have the same meanings for trust validity purposes as they have for purposes of determining the validity of a will.

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§44D-4-407. Oral trusts unenforceable.

Oral trusts are unenforceable in this state.

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§44D-4-408. Trust for care of animal.

(a) A trust may be created to provide for the care of an animal alive during the grantor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the grantor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use must be distributed to the grantor, if then living, otherwise to the grantor's successors in interest.

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§44D-4-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in section four hundred eight of this article, or by the provisions of article five-a, chapter thirty-five of this code, or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than the period set forth in section one, article one-a, chapter thirty-six of this code.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use must be distributed to the grantor, if then living, otherwise to the grantor's successors in interest.

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§44D-4-410. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by sections four hundred eleven through four hundred fourteen, article four of this chapter, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections four hundred eleven through four hundred sixteen of this article, or trust combination or division under section four hundred seventeen of this article, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section four hundred eleven of this article may be commenced by the grantor. The grantor of a charitable trust may maintain a proceeding to modify the trust under section four hundred thirteen of this article.

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§44D-4-411. Modification or termination of noncharitable irrevocable trust by consent.

(a) If, upon petition, the court finds that the grantor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A grantor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust instrument; by the grantor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the grantor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust instrument is presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If all of the beneficiaries do not consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination including any distributions of the trust property, may be approved by the court if the court is satisfied that:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a beneficiary who does not consent will be adequately protected.

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§44D-4-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the grantor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the grantor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

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§44D-4-413. Cy pres.

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) The charitable trust does not fail, in whole or in part;

(2) The charitable trust property does not revert to the grantor or the grantor's successors in interest; and

(3) Upon petition by a trustee or a person having a special interest in the trust, the court shall apply cy pres to fulfill as nearly as possible the grantor's charitable intention, whether it be general or specific.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) The charitable trust property is to revert to the grantor and the grantor is still living; or

(2) Fewer than twenty-one years have elapsed since the date of the trust's creation.

WV Legislature

§44D-4-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of a noncharitable trust property having a total value less than $200,000 may terminate the trust, without the necessity of court approval, if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

WV Legislature

§44D-4-415. Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the grantor's intention if it is proved by preponderance of the evidence that both the grantor's intent and the terms of the trust instrument were affected by a mistake of fact or law, whether in expression or inducement.

WV Legislature

§44D-4-416. Modification to achieve grantor's tax objectives.

To achieve the grantor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the grantor's probable intention. The court may provide that the modification has retroactive effect.

WV Legislature

§44D-4-417. Combination and division of trusts.

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

WV Legislature

§44D-5-501. Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest in a trust by execution or other process against the present or future distributions to or for the benefit of the beneficiary. The court may limit the award to relief as appropriate under the circumstances.

WV Legislature

§44D-5-502. Spendthrift provision.

(a) A spendthrift provision contained in a trust instrument is valid if it contains language substantially to the effect that it restrains both voluntary and involuntary transfers of a beneficiary's interest.

(b) A term of a trust instrument providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

WV Legislature

§44D-5-503. Exceptions to spendthrift provision.

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) A beneficiary's child, who has a judgment or court order against the beneficiary for child support;

(2) A judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) A claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against whom a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

WV Legislature

§44D-5-503a..Self-settled spendthrift trusts.

(a) A grantor may transfer assets to a qualified self-settled spendthrift trust and retain in that trust a qualified interest, and, except as otherwise provided in this article, the provisions of section five hundred five of this article do not apply to such qualified interest.

(b)The provisions of section five hundred five of this article shall continue to apply with respect to any interest held by a grantor in a qualified self-settled spendthrift trust, other than a qualified interest.

(c) A grantor's transfer to a qualified self-settled spendthrift trust shall not, to the extent of the grantor's qualified interest, be deemed to have been made with intent to delay, hinder or defraud creditors, for purposes of article one-a, chapter forty of this code, merely because it is made to a trust with respect to which the grantor retains a qualified interest and merely because it is made without consideration. A grantor's transfer to a qualified self-settled spendthrift trust may, however, be set aside under article one-a, chapter forty of this code or if the qualified affidavit contains a material misstatement of fact: Provided, That any transfer made to a qualified self-settled spendthrift trust which may be set aside under article one-a, chapter forty of this code shall be chargeable first with the entire costs and expenses, including attorney's fees, properly incurred by the trustee in the defense of the action or proceeding to set aside the transfer.

(d) A grantor's creditor may bring an action under article one-a, chapter forty of this code to avoid a transfer to a qualified self-settled spendthrift trust or otherwise to enforce a claim that existed on the date of the grantor's transfer to such trust within four years after the date of the grantor's transfer to such trust to which such claim relates.

(e) A creditor shall have only such rights with respect to a grantor's transfer to a qualified self-settled spendthrift trust as are provided in this section. No creditor and no other person has any claim or cause of action against any trustee, trust adviser, trust director or any person involved in the counseling, drafting, preparation or execution of, or transfers to, a qualified self-settled spendthrift trust.

(f) If a grantor makes more than one transfer to the same qualified self-settled spendthrift trust, the following rules apply:

(1) The grantor's making of a subsequent transfer shall be disregarded in determining a

creditor's claim with respect to whether a prior transfer is valid under this section;

(2) With respect to each subsequent transfer by the grantor, the four-year limitations period provided in subsection (d) of this section, with respect to actions brought under article one-a of chapter forty of this code with respect to the subsequent transfer, commences on the date of such subsequent transfer; and

(3) Any distribution to a beneficiary is deemed to have been made from the latest such

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transfer.

(g) The movement to this state of the administration of an existing trust, which, after such movement to the state, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by the grantor on the date of such movement of all of the assets previously transferred to the trust by the grantor.

WV Legislature

§44D-5-503b. Definitions.

As used in this article, unless the context requires a different meaning:

(a) "Qualified trustee" means any person who is a natural person residing within the state or a legal entity authorized to engage in trust business within the state and who maintains or arranges for custody within the state of some or all of the property that has been transferred to the trust by the grantor, maintains records within the state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation within the state of fiduciary income tax returns for the trust, or otherwise materially participates within the state in the administration of the trust. A trustee is not a qualified trustee if such trustee's authority to make distributions of income or principal or both are subject to the direction of someone who, were that person a trustee of the trust, would not meet the requirements to be a qualified trustee.

(b) "Independent qualified trustee" means a qualified trustee who is not, and whose actions are not, subject to direction by:

(1) The grantor;

(2) Any natural person who is not a resident of the state;

(3) Any entity that is not authorized to engage in trust business within the state;

(4) The grantor's spouse;

(5) A parent of the grantor;

(6) Any descendant of the grantor; or

(7) A sibling of the grantor.

(c) "Qualified interest" means a grantor's interest in a qualified self-settled spendthrift trust, to the extent that such interest entitles the grantor to receive distributions of income, principal, or both, in the sole discretion of an independent qualified trustee. A grantor may have a qualified interest in a qualified self-settled spendthrift trust and also have an interest in the same trust that is not a qualified interest, and the rules of section five hundred five of this article shall apply to each interest of the grantor in the same trust other than the grantor's qualified interest.

(d) "Qualified self-settled spendthrift trust" means a trust if:

(1) The trust is irrevocable;

(2) The trust is created during the grantor's lifetime;

WV Legislature

(3) There is, at all times when distributions could be made to the grantor pursuant to the grantor's qualified interest, at least one beneficiary other than the grantor:

(i) To whom income may be distributed, if the grantor's qualified interest relates to trust income;

(ii) to whom principal may be distributed, if the grantor's qualified interest relates to trust principal; or

(iii) to whom both income and principal may be distributed, if the grantor's qualified interest relates to both trust income and principal;

(4) The trust has at all times at least one qualified trustee, who may be, but need not be, an independent qualified trustee;

(5) The trust instrument expressly incorporates the laws of this state to govern the validity, construction and administration of the trust;

(6) The trust instrument includes a spendthrift provision, as defined in section five hundred two of this article, that restrains both voluntary and involuntary transfer of the grantor's qualified interest;

(7) The grantor does not have the right to disapprove distributions from the trust; and

(8) The grantor duly executes a qualified affidavit before or substantially contemporaneously with the making of the transfer of the asset or assets into the trust.

(e) "Qualified affidavit" means a duly executed affidavit of the grantor which contains under oath all of the following statements, or statements substantially to the effect:

(1) The property being transferred to the trust was not derived from unlawful activities;

(2) The grantor has full right, title, and authority to transfer the property to the trust;

(3) The grantor will not be rendered insolvent immediately after the transfer of the property to the trust;

(4) The grantor does not intend to defraud any creditor by transferring the property to the trust;

(5) There are no pending or threatened court actions against the grantor, except for any court action expressly identified in the affidavit or an attachment to the affidavit;

(6) The grantor is not involved in any administrative proceeding, except for any proceeding expressly identified in the affidavit or an attachment to the affidavit;

(7) The grantor is not indebted on account of an agreement or order of court for the payment

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of support or alimony in favor of such transferor's spouse, former spouse or children, or for a division or distribution of property incident to a judicial proceeding with respect to a divorce or annulment in favor of such transferor's spouse or former spouse, except for any such indebtedness expressly identified in the affidavit or an attachment to the affidavit; and

(8) The grantor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code of the United States.

An affidavit is defective and is not a qualified affidavit if it materially fails to meet the requirements set forth in this subsection. An affidavit is not considered defective and is a qualified affidavit if it contains any nonsubstantive variances from the language set forth in this subsection, it contains statements or representations in addition to those required in this subsection which do not materially contradict the required statements or representations or there are any technical errors in the form, substance or method of preparation or execution of the affidavit if those errors were not the fault of the affiant and the affiant reasonably relied upon another person to prepare or notarize the affidavit.

WV Legislature

§44D-5-503c. Vacancies; revocability of trust; right to withdraw.

(a) A vacancy in the position of qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be a qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee;

(2) By a person eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be a qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq*. of this code.

(b) A vacancy in the position of independent qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be an independent qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee; or

(2) By a person eligible to be an independent qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be an independent qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq*. of this code.

(c) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

(1) A power of appointment, exercisable by the grantor by will or other record effective only upon the grantor's death, other than a power to appoint to the grantor's estate or the creditors of the grantor's estate;

(2) The grantor's qualified interest in the trust;

(3) The grantor's right to receive income or principal pursuant to an ascertainable standard;

(4) The grantor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of Section 664(d) of the Internal Revenue Code) and the grantor's right, at any time, and from time to time, to release, in a record delivered to the qualified trustee, all or any part of the grantor's retained interest in such trust;

(5) The grantor's receipt each year of a percentage, not to exceed five percent, specified in the trust instrument of the initial value of the trust assets or their value determined from

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time to time pursuant to the trust instrument;

(6) The grantor's right to remove a qualified trustee or independent qualified trustee and to appoint a new trustee who meets the same criteria;

(7) The grantor's potential or actual use of real property held under a personal residence trust (within the meaning of Section 2702(c) of the Internal Revenue Code);

(8) The grantor's potential or actual receipt or use of a qualified annuity interest (within the meaning of Section 2702 of the Internal Revenue Code);

(9) The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the grantor's death, all or any part of the grantor's debts outstanding at the time of the grantor's death, the expenses of administering the grantor's estate, or any federal or state estate, inheritance, or death tax imposed on or with respect to the grantor's estate; and

(10) A grantor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the grantor for such tax payments.

(d) A beneficiary who has the right to withdraw his or her entire beneficial interest in a trust shall be treated as its grantor to the extent of such withdrawal right, when such right to withdraw has lapsed, been released, or otherwise expired, without regard to the limitations otherwise imposed by §44D-505(b) of this code.

WV Legislature

§44D-5-504. Discretionary trusts; effect of standard.

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust instrument contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) The discretion is expressed in the form of a standard of distribution; or

(2) The trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for child support of the beneficiary's child; and

(2) The court shall direct the trustee to pay to the child, spouse or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(e) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.

WV Legislature

§44D-5-505. Creditor's claim against grantor.

(a) Whether or not the terms of a trust instrument contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the grantor, the property of a revocable trust is subject to claims of the grantor's creditors.

(2) During the lifetime of the grantor, with respect to an irrevocable trust, except to the extent otherwise provided in sections five hundred three-a, five hundred three-b and five hundred three-c of this article, a creditor or assignee of the grantor may reach the maximum amount that can be distributed to or for the grantor's benefit. If a trust has more than one grantor, the amount the creditor or assignee of a particular grantor may reach may not exceed the grantor's interest in the portion of the trust attributable to that grantor's contribution.

(3) After the death of a grantor, and subject to the grantor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the grantor's death is subject to claims of the creditors of the deceased grantor, to the extent the grantor's probate estate is inadequate to satisfy them, and with such claims payable in order of priority of the following classes:

(A) The costs and expenses of administration of the grantor's estate;

(B) Reasonable funeral expenses;

(C) Debts and taxes with preference under federal law;

(D) Unpaid child support which is due and owing at the time of the decedent's death;

(E) Debts and taxes with preference under other laws of the State of West Virginia;

(F) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(G) All other claims.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the grantor of a revocable trust to the extent of the property subject to the power; and

(2) Upon the lapse, release or waiver of the power, the holder is treated as the grantor of the trust only to the extent the value of the property affected by the lapse, release or waiver

WV Legislature

exceeds the greater of the amount specified in Section 2041(b)(2), Section 2503(b) or Section 2514(e) of the Internal Revenue Code.

WV Legislature

§44D-5-506. Overdue distribution.

(a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust instrument, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(1) The discretion is expressed in the form of a standard of distribution; or

(2) The terms of the trust instrument authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

WV Legislature

§44D-5-507. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

WV Legislature

§44D-6-601. Capacity of grantor of revocable trust.

The capacity required to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

WV Legislature

§44D-6-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the grantor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this chapter.

(b) Unless the terms of a trust provide otherwise, if a revocable trust is created or funded by more than one grantor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) To the extent the trust consists of property other than community property, each grantor may revoke or amend the trust with regard the portion of the trust property attributable to that grantor's contribution; and

(3) Upon the revocation or amendment of the trust by fewer than all of the grantors, the trustee shall promptly notify the other grantors of the revocation or amendment.

(c) The grantor may revoke or amend a revocable trust:

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

(2) If the terms of the trust instrument do not provide a method, by any other method manifesting clear and convincing evidence of the grantor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the grantor directs.

(e) A grantor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust instrument or the power.

(f) A conservator of the grantor or, if no conservator has been appointed, a guardian of the grantor may exercise a grantor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the grantor or grantor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(h) No trust which is otherwise irrevocable because the trust instrument expressly provides or states that the trust is irrevocable is or becomes revocable by the grantor because the grantor is the sole beneficiary of the trust.

WV Legislature

§44D-6-603. Grantor's powers; powers of withdrawal.

(a) While a trust is revocable and the grantor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the grantor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a grantor of a revocable trust under this section to the extent of the property subject to the power.

(c) When a trust is revocable, the trustee may follow a direction of the grantor that is contrary to the terms of the trust instrument.

WV Legislature

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) (1) An interested person may commence a judicial proceeding to contest the validity of a trust that was revocable at the grantor's death within the earlier of:

(A) Two years after the grantor's death; or

(B) Six months after the trustee has sent the interested person a copy of the trust instrument and a notice informing the interested person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(2) Notwithstanding subdivision (1) of this subsection:

(A) If the interested person is under the age of eighteen years or is a convict or mentally incapacitated person, the interested person has one year after he or she becomes of age or the disability ceases, to commence a judicial proceeding; and

(B) If the interested person resided out of the state at the time the interested person received the trust instrument and notice, the interested person has one year after receipt thereof to commence the judicial proceeding.

(b) Upon the death of the grantor of a trust that was revocable at the grantor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust instrument. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(c) A beneficiary of a trust that was revocable at the grantor's death that is determined to have been invalid is liable to return any distribution received.

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

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

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

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§44D-8A-801. Short title.

This article may be cited as the West Virginia Uniform Directed Trust Act.

WV Legislature

§44D-8A-802. Definitions.

In addition to the definitions contained in §44D-1-103 of this code, as used in this article:

(1) “Breach of trust” means a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this article, or law of this state, other than this article pertaining to trusts.

(2) “Directed trust” means a trust for which the terms of the trust grant a power of direction.

(3) “Directed trustee” means a trustee that is subject to a trust director’s power of direction.

(4) “Power of direction” means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in §44D-8A-501(b) of this code.

(5) “Trust director” means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or grantor of the trust.

(6) “Knowingly” means known by the trustee based on the contents of the direction and any information provided by the trust director to the trustee.

(7) “Willful misconduct” means intentional malicious conduct or conduct intentionally designed to defraud or seek an unconscionable advantage and which is not mere negligence, gross negligence, or recklessness.

WV Legislature

§44D-8A-803. Application; principal place of administration.

The provisions of the West Virginia Uniform Directed Trust Act apply to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(a) If the trust was created before the effective date of this article, this article applies only to a decision or action occurring on or after the effective date of this article.

(b) If the principal place of administration of the trust is changed to this state on or after the effective date of this article, this article applies only to a decision or action occurring on or after the date of the change.

WV Legislature

§44D-8A-804. Common law and principles of equity.

The common law and principles of equity supplement this article, except to the extent modified by this article or law of this state other than this article.

WV Legislature

§44D-8A-805. Exclusions.

(a) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) This article does not apply to a:

(1) Power of appointment;

(2) Power to appoint or remove a trustee or trust director;

(3) Power of a grantor over a trust to the extent the grantor has a power to revoke the trust;

(4) Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(A) The beneficiary; or

(B) Another beneficiary represented by the beneficiary under §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, and §44D-3-305 of this code with respect to the exercise or nonexercise of the power; or

(5) Power over a trust if:

(A) The terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) The power must be held in a nonfiduciary capacity to achieve the grantor's tax objectives under the United States Internal Revenue Code of 1986 and regulations issued thereunder.

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

WV Legislature

§44D-8A-806. Powers of trust director.

(a) Subject to §44D-8A-807 of this code, the terms of a trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise:

(1) A trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection (a) of this section; and

(2) Trust directors with joint powers must act by majority decision.

WV Legislature

§44D-8A-807. Limitations on trust director.

A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code regarding:

(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C. Section 1396p(d)(4)(A) and regulations issued thereunder; and

(2) A charitable interest in the trust, including notice regarding the interest to the Attorney General of the State of West Virginia.

WV Legislature

§44D-8A-808. Duty and liability of trust director.

(a) Subject to subsection (b) of this section, with respect to a power of direction or further power under §44D-8A-806(b)(1) of this code:

(1) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) The terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than in §44D-8A-801 *et seq.* of this code to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this article.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

WV Legislature

§44D-8A-809. Duty and liability of directed trustee.

(a) Subject to subsection (b) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code to the extent that the directed trustee is thereby directed knowingly to violate the laws or regulations of any jurisdiction applicable to the trust. The directed trustee may reasonably rely upon the advice of legal counsel to determine what actions would be consistent with, or contrary to, applicable law. Reasonable expenses incurred by the directed trustee in good faith for legal advice concerning an instruction from a trust director or a petition to the court for instructions shall be proper expenses of the trust.

(c) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(1) The breach involved the trustee's or other director's breach of fiduciary duty as set forth in subsection (b) of this section;

(2) The release was induced by improper conduct of the trustee or other director in procuring the release; or

(3) At the time of the release, the director did not know the material facts relating to the breach.

(d) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(e) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

WV Legislature

§44D-8A-810. Duty to provide information to trust director or trustee.

(a) Subject to §44D-8A-811 of this code, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(1) The powers or duties of the trustee; and

(2) The powers or duties of the director.

(b) Subject to §44A-8A-811 of this code, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(1) The powers or duties of the director; and

(2) The powers or duties of the trustee or other director.

(c) A trustee that acts in reliance upon information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance upon information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

WV Legislature

§44D-8A-811. No duty to monitor, inform, or advise.

(a) Unless the terms of a trust provide otherwise:

(1) A trustee does not have a duty to:

(A) Monitor a trust director; or

(B) Inform or give advice to a grantor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) By taking an action described in §44D-8A-811(a)(1) of this code, a trustee does not assume the duty excluded by §44D-8A-811(a)(1) of this code.

(b) Unless the terms of a trust provide otherwise:

(1) A trust director does not have a duty to:

(A) Monitor a trustee or another trust director; or

(B) Inform or give advice to a grantor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(2) By taking an action described in §44D-8A-811(b)(1) of this code, a trust director does not assume the duty excluded by §44D-8A-811(b)(1) of this code.

WV Legislature

§44D-8A-812. Application to cotrustee.

The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under §44D-8A-809, §44D-8A-810, and §44D-8A-811 of this code.

WV Legislature

§44D-8A-813. Limitation of action against trust director.

(a) An action against a trust director for breach of trust must be commenced within the same limitation period as provided in §44D-10-1005 of this code for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under §44D-10-1005 of this code in an action for breach of trust against a trustee in a like position and under similar circumstances.

WV Legislature

§44D-8A-814. Defenses in action against trust director.

In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

WV Legislature

§44D-8A-815. Jurisdiction over trust director.

(a) By accepting appointment as a trust director of a trust subject to this article, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(b) §44D-8A-815 of this code does not preclude other methods of obtaining jurisdiction over a trust director.

WV Legislature

§44D-8A-816. Office of trust director.

Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) Acceptance under §44D-7-701 of this code;

(2) Giving of bond to secure performance under §44D-7-702 of this code;

(3) Reasonable compensation under §44D-7-708 of this code;

(4) Resignation under §44D-7-705 of this code;

(5) Removal under §44D-7-706 of this code; and

(6) Vacancy and appointment of successor under §44D-7-704 of this code.

WV Legislature

§44D-8A-817. Effective date.

This article takes effect on July 1, 2020.

WV Legislature

§44D-8B-1. Short title.

This article may be cited as the West Virginia Uniform Trust Decanting Act.

WV Legislature

§44D-8B-2. Definitions.

In addition to the definitions contained in §44D-1-103 of this code which apply to this article:

(1) "Appointive property" means the property or property interest subject to a power of appointment.

(2) "Authorized fiduciary" means:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) A special fiduciary appointed under §44D-8B-9 of this code; or

(C) A special-needs fiduciary under §44D-8B-13 of this code.

(3) "Charitable interest" means an interest in a trust which:

(A) Is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(4) "Charitable organization" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(5) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(6) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under this article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(7) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

WV Legislature

(8) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

(9) "First-trust instrument" means the trust instrument for a first trust.

(10) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(11) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(12) "Powerholder" means a person in which a donor creates a power of appointment.

(13) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) Includes a power of appointment exercisable only after:

(i) The occurrence of the specified event;

(ii) The satisfaction of the ascertainable standard; or

(iii) The passage of the specified time; and

(B) Does not include a power exercisable only at the powerholder’s death.

(14) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. §674(b)(5)(A) and any applicable regulations.

(15) "Second trust" means:

(A) A first trust after modification under this article; or

(B) A trust to which a distribution of property from a first trust is or may be made under this article.

(16) "Second-trust instrument" means the trust instrument for a second trust.

WV Legislature

§44D-8B-3. Scope.

(a) Except as otherwise provided in subsections (b) and (c) of this section, this article applies to an express trust that is irrevocable or revocable by the grantor only with the consent of the trustee or a person holding an adverse interest.

(b) This article does not apply to a trust held solely for charitable purposes.

(c) Subject to §44D-8B-15 of this code, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) This article does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this article, common law, a court order, or a nonjudicial settlement agreement.

(e) This article does not affect the ability of a grantor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

WV Legislature

§44D-8B-4. Fiduciary duty.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) This article does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this article.

(c) Except as otherwise provided in a first-trust instrument, for purposes of this article and §44D-8-1 and §44D-8-2(a) of this code, the terms of the first trust are considered to include the decanting power.

WV Legislature

§44D-8B-5. Application; governing law.

This article applies to a trust created before, on, or after the effective date of this article which:

(1) Has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) Construction of terms of the trust; or

(C) Determining the meaning or effect of terms of the trust.

WV Legislature

§44D-8B-6. Reasonable reliance.

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this article, law of this state other than this article, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

WV Legislature

§44D-8B-7. Notice; exercise of decanting power.

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends 59 days after the day notice is given.

(b) Except as otherwise provided in this article, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

(1) Each grantor of the first trust, if living or then in existence;

(2) Each qualified beneficiary of the first trust;

(3) Each holder of a presently exercisable power of appointment over any part, or all of, the first trust;

(4) Each person that currently has the right to remove or replace the authorized fiduciary;

(5) Each other fiduciary of the first trust;

(6) Each fiduciary of the second trust; and

(7) The West Virginia Attorney General, if §44D-8B-14(b) of this code applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary.

(e) A notice under subsection (c) of this section must:

(1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) Specify the proposed effective date for exercise of the power;

(3) Include a copy of the first-trust instrument; and

(4) Include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under §44D-8B-9 of this code asserting

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that:

(1) An attempted exercise of the decanting power is ineffective because it did not comply with this article or was an abuse of discretion or breach of fiduciary duty; or

(2) Section 44D-8B-22 of this code applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with that subsection.

WV Legislature

§44D-8B-8. Representation.

(a) Notice to a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter may file an application under §44D-8B-9 of this code on behalf of the person represented.

(d) A grantor may not represent or bind a beneficiary under this article.

WV Legislature

§44D-8B-9. Court involvement.

(a) On application of an authorized fiduciary, a person entitled to notice under §44D-8B-7(c) of this code, a beneficiary, or with respect to a charitable interest any other person that has standing to enforce the charitable interest, the court may:

(1) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this article and consistent with the fiduciary duties of the authorized fiduciary;

(2) Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this article and to exercise the decanting power;

(3) Approve an exercise of the decanting power;

(4) Determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) After applying §44D-8B-22 of this code, the proposed or attempted exercise does not, or did not, comply with this article; or

(B) The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) Determine the extent to which §44D-8B-22 of this code applies to a prior exercise of the decanting power;

(6) Provide instructions to the trustee regarding the application of §44D-8B-22 of this code to a prior exercise of the decanting power; or

(7) Order other relief to carry out the purposes of this article.

(b) On application of an authorized fiduciary, the court may approve:

(1) An increase in the fiduciary's compensation under §44D-8B-16 of this code; or

(2) A modification under §44D-8B-18 of this code of a provision granting a person the right to remove or replace the fiduciary.

WV Legislature

§44D-8B-10. Formalities.

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by §44D-8B-7 of this code, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

WV Legislature

§44D-8B-11. Decanting power under expanded distributive discretion.

(a) In this section:

(1) "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(3) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) "Vested interest" means:

(A) A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) A presently exercisable general power of appointment; or

(E) A right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and §44D-8B-14 of this code, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to §44D-8B-13 of this code, in an exercise of the decanting power under this section, a second trust may not:

(1) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) Include as a presumptive remainder beneficiary or successor beneficiary a person that is

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not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) Reduce or eliminate a vested interest.

(d) Subject to subdivision (3), subsection (c) of this section and §44D-8B-14 of this code, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) Retain a power of appointment granted in the first trust;

(2) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4), inclusive, subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part, but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

WV Legislature

§44D-8B-12. Decanting power under limited distributive discretion.

(a) In this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to §44D-8B-14 of this code, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) The distribution is applied for the benefit of the beneficiary;

(2) The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

(3) The distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part, but not all of, the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

WV Legislature

§44D-8B-13. Trust for beneficiary with disability.

(a) In this section:

(1) "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated a protected person.

(2) "Governmental benefits" means financial aid or services from a state, federal, or other public agency.

(3) "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute part or all of the principal of a first trust to one, or more current beneficiaries;

(B) If no trustee or fiduciary has discretion under paragraph (A) of this subdivision, a trustee or other fiduciary, other than a grantor, that has discretion to distribute part, or all of, the income of the first trust to one or more current beneficiaries; or

(C) If no trustee or fiduciary has discretion under paragraphs (A) and (B) of this subdivision, a trustee or other fiduciary, other than a grantor, that is required to distribute part, or all of, the income or principal of the first trust to one or more current beneficiaries.

(4) "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under §44D-8B-11 of this code over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) A second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding §44D-8B-11(c)(2) of this code, the interest in the second trust of a beneficiary with a disability may:

(A) Be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. §1396p(d)(4)(C); or

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(B) Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. §1396p(d)(4)(A).

(2) Section 44D-8B-11(c)(3) of this code does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

WV Legislature

§44D-8B-14. Protection of charitable interest.

(a) In this section:

(1) “Determinable charitable interest” means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) “Unconditional” means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986 on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

(1) Diminish the charitable interest;

(2) Diminish the interest of an identified charitable organization that holds the charitable interest;

(3) Alter any charitable purpose stated in the first-trust instrument; or

(4) Alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.

(e) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:

(1) The Attorney General, after receiving notice under §44D-8B-7 of this code, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) The Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

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(3) The court approves the exercise of the decanting power.

WV Legislature

§44D-8B-15. Trust limitation on decanting.

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) The decanting power; or

(2) A power granted by state law to the fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) The decanting power; or

(2) A power granted by state law to a fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under this article even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part, or all of, the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

WV Legislature

§44D-8B-16. Change in compensation.

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) The increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by this chapter unless:

(1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) The increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

WV Legislature

§44D-8B-17. Relief from liability and indemnification.

(a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this article.

WV Legislature

§44D-8B-18. Removal or replacement of authorized fiduciary.

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) The person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) The person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) The court approves the modification and the modification grants a substantially similar power to another person.

WV Legislature

§44D-8B-19. Tax-related limitations.

(a) In this section:

(1) “Grantor trust” means a trust as to which a grantor of a first trust is considered the owner under 26 U.S.C. §§671-677 or 26 U.S.C. §679.

(2) “Internal Revenue Code” means the United States Internal Revenue Code of 1986.

(3) “Nongrantor trust” means a trust that is not a grantor trust.

(4) “Qualified benefits property” means property subject to the minimum distribution requirements of 26 U.S.C. §401(a)(9), and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. §401(a)(9) or the regulations.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b), the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. §2503(b). If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b) by application of 26 U.S.C. §2503(c), the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26

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U.S.C. §2503(c).

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. §1361 and the first trust is, or but for provisions of this article other than this section would be, a permitted shareholder under any provision of 26 U.S.C. §1361, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. §1361(c)(2). If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this article other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. §1361(d), the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. §2642(c) the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. §2642(c).

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. §401(a)(9) and any applicable regulations, or any similar requirements that refer to 26 U.S.C. §401(a)(9) or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is determined to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and §2201 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. §672(f)(2)(A), the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. §672(f)(2)(A).

(8) In this subdivision, "tax benefit" means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) The first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

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(B) The transfer of property held by the first trust or the first trust qualified, or but for provisions of this article other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) Except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) Except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a grantor objects in a signed record delivered to the fiduciary within the notice period and:

(A) The first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the grantor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the grantor or other person; or

(B) The first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the grantor, unless:

(i) The grantor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) The first-trust instrument contains a provision granting the grantor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

WV Legislature

§44D-8B-20. Duration of second trust.

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

WV Legislature

§44D-8B-21. Need to distribute not required.

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

WV Legislature

§44D-8B-22. Saving provision.

(a) If exercise of the decanting power would be effective under this article except that the second-trust instrument in part does not comply with this article, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under this article is void to the extent necessary to comply with this article; and

(2) A provision required by this article to be in the second-trust instrument which is not contained in the instrument is considered to be included in the instrument to the extent necessary to comply with this article.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

WV Legislature

§44D-8B-23. Trust for care of animal.

(a) In this section:

(1) “Animal trust” means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) “Protector” means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this article if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under this article of a qualified beneficiary.

(d) Notwithstanding any other provision of this article, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

WV Legislature

§44D-8B-24. Terms of second trust.

Any reference in this chapter to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

WV Legislature

§44D-8B-25. Grantor.

(a) For purposes of law of this state other than this article and subject to subsection (b) of this section, a grantor of a first trust is considered to be the grantor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining grantor intent with respect to a second trust, the intent of a grantor of the first trust, a grantor of the second trust, and the authorized fiduciary may be considered.

WV Legislature

§44D-8B-26. Later-discovered property.

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

WV Legislature

§44D-8B-27. Obligations.

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

WV Legislature

§44D-8B-28. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

§44D-8B-29. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 *et seq.*, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in §103(b) of that act, 15 U.S.C. §7003(b).

WV Legislature

§44D-8B-30. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

WV Legislature

§44D-8B-31. Effective date.

This article takes effect on July 1, 2020.

WV Legislature

§44D-9-901. Uniform Prudent Investor Act.

The Uniform Prudent Investor Act is contained in article six-c, chapter forty-four of this code.

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§44D-11-1101. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

§44D-11-1102. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of the records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

WV Legislature

§44D-11-1103. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

WV Legislature

§44D-11-1104. Effective date.

This chapter takes effect on July 1, 2011.

WV Legislature

§44D-11-1105. Application to existing relationships.

(a) Except as otherwise provided in this chapter:

(1) This chapter applies to all trusts created before, on, or after July 1, 2011;

(2) This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2011;

(3) This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2011, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2011, unless there is a clear indication of a contrary intent in the terms of the trust instrument; and

(5) An act done before July 1, 2011 is not affected by this chapter.

(b) If a right is acquired or vested before July 1, 2011, or if a right is extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2011, that right or statute continues to apply even if the statute has been repealed or superseded.

WV Legislature