
WEST VIRGINIA CODE CHAPTER 44d
ARTICLE 8A

WV Legislature

§44D-8A-801. Short title.

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

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§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.

§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.

§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.

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§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

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§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.

§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.

§44D-8A-817. Effective date.

This article takes effect on July 1, 2020.

WV Legislature