

Appendix C

Divided Trusteeship Meeting -
Spring 2015

MEMORANDUM

TO: Ben Orzeske

FROM: Dana O'Leary

DATE: 1/6/14

RE: Memorandum Summarizing UTC Enacting States' Variations to UTC Section 8.

This memorandum will summarize the variations in each enacting state's equivalent of Section 8 of the Uniform Trust Code. There are currently 30 states that have enacted the Uniform Trust Code in some form.¹ Every enacting state has included an equivalent to UTC § 808. UTC § 808 is entitled "Powers to Direct," and governs the settlor's power to direct the actions of the trustee with regards to the trust.

Commonalities among Enacting States

- 12 states enacted UTC § 808 in its entirety with no substantive changes²
- North Carolina is the only state that did not enact UTC § 808(a) in its entirety with no substantive changes– the subsection states the basic premise of the entire section.
- 4 states removed "serious" from the "serious breach of fiduciary duty" exception, which permits a trustee to refuse to follow the direction of a power holder³
- 5 states specifically mention "investment direction" or "investment decisions" in regards to the direction power that may be conferred upon a power holder⁴
- 4 states removed the exception provision of UTC § 808(b) – the provision appears at the end of the subsection, and permits trustees to refuse to follow a power holder's direction under certain circumstances.⁵

UTC Section 8 Enacting State Variations

¹ Some states enacted UTC in its entirety, while other states chose to enact amended or substantially similar versions of the code. *Guide to Uniform and Model acts 2014-15*, 35 THE UNIFORM LAW COMMISSION (2014).

² Arkansas, DC, Florida, Kansas, Maine, Montana, Nebraska, New Mexico, North Dakota, Pennsylvania, South Carolina, and Vermont.

³ Arizona, Kentucky, Maryland, and North Carolina.

⁴ Arizona, Maryland, Missouri, Utah, and Wisconsin.

⁵ Mississippi, Tennessee, New Hampshire, and Wyoming.

ALABAMA

Alabama enacted UTC § 808 in its entirety with no changes (Ala. Code § 19-3B-808).

ARIZONA

Arizona enacted the majority of the UTC § 808 in its entirety (A.R.S. § 14-10808). The variations between Arizona's version of §808 and the UTC §808 are differences in the wording of the two sections because Arizona provided more detail in subsection B than did the UTC.

Arizona's section expressly states that trustee oversight is not required when a trustee is directed to take an action regarding the trust. Under the UTC, minimal oversight by the trustee is implied.⁶

In Arizona, a trustee can only be held liable for acting pursuant to a direction if the trustee acted with "bad faith" or "reckless indifference." UTC § 808 does not contain an express provision on trustee liability. The UTC permits trustees to refuse to act under certain circumstances, but does not address situations in which a trustee may be held liable for his or her action or non-action.

Arizona's subsection B expressly states that a trustee has no duty to review a power-holder's direction, nor does the trustee have a duty to notify beneficiaries of "any investment action taken pursuant to the direction." These provisions in Arizona's code imply that a trustee has no duty to monitor or perform checks and balances on the power-holder's direction. The comments to UTC § 808 state that subsection (b) "imposes only minimal oversight responsibility on the "trustee," but the code itself does not say that a trustee's oversight may be minimal. The code lacks any language pertaining to the trustee's duty, or lack thereof, to oversee and monitor a power-holder's direction.

ARKANSAS

Arkansas enacted UTC § 808 in its entirety with no changes (A.C.A. § 28-73-808).

DISTRICT OF COLUMBIA

D.C. enacted UTC § 808 in its entirety with no changes. (D.C. Code § 19-1308.08).

FLORIDA

Florida enacted UTC § 808 in its entirety with no substantive changes (F.S.A. § 736.0808).

KANSAS

Kansas enacted UTC § 808 in its entirety with no changes (K.S.A. § 58a-808).

KENTUCKY

Kentucky enacted UTC § 808 in its entirety with no major substantive changes (KRS

⁶ The comments to UTC §808 state that subsection (b) "imposes only minimal oversight responsibility on the "trustee," but the code does not expressly state that a trustee's oversight may be minimal. UTC § 808 (comment on p. 143.).

§ 386B.8-080.) Under Kentucky’s statute, a trustee may refuse to act pursuant to a power holder’s direction if the trustee knows that the act would constitute a “breach of fiduciary duty” that the power holder owes to the beneficiaries of the trust; the UTC imposes the higher standard of “serious breach of fiduciary duty.”

MAINE

Maine enacted UTC § 808 in its entirety with no changes (18-B M.R.S.A. § 808).

MARYLAND

Maryland enacted the majority of UTC § 808; the state made changes to the wording and included additional detail to its version of the section (2014 Md. Laws Ch. 585 (H.B. 83)). The amendments Maryland made to its version of the act are as follows:

Maryland specifies that a trustee may follow a “*written* direction” of the settlor that is contrary to the terms of the trust; the UTC states that a trustee may follow a direction of the settlor, but imposes no requirement that the direction be in writing (emphasis added).

Maryland’s § 808 is triggered by a revocable trust that confers upon a person “a power to direct, consent to, or disapprove the actual or proposed investment decisions, distribution decisions, or other decisions of the trustee”; UTC § 808 is triggered by a revocable trust that confers on a person the “power to direct certain actions of the trustee.” Even though Maryland’s section is more detailed than the UTC, Maryland encompasses the UTC trigger by including the phrase “other decisions of the trustee.”

Maryland requires power holders to act reasonably with regard to the trust’s purposes and the interests of the beneficiaries; under the UTC, the standard is “good faith.”

Maryland expressly governs situations in which a beneficiary holds a power to direct, stating that a beneficiary with the power to direct “may not be treated as a fiduciary.” The UTC section governs situations in which a person other than a beneficiary holds a power to direct, providing that such a person is “presumptively a fiduciary.” The two sections are the inverse of one another; they both provide the same governance, but Maryland chose to focus its governance on beneficiaries, while the UTC focused is governance on all other parties besides beneficiaries.

Maryland’s section includes two additional subsections that provide governance on topics that are not addressed in UTC §808: subsections (C) and (D). Subsection (C) governs situations in which the terms of a trust require a trustee to follow the directions of an advisor, the trustee’s liability, and specific acts that the trustee has no duty to perform. Subsection (D) governs the power of advisers who are given authority with respect to investment decisions.

MASSACHUSETTS

Massachusetts enacted subsections (a) and (b) of UTC § 808 in their respective entireties (M.G.L.A. 203E § 808). In UTC § 808(d) (subsection (c) in the Massachusetts section), Massachusetts removed the clause that excludes beneficiaries from the governance of the subsection: the Massachusetts section begins: “A person who holds a power to direct is presumptively a fiduciary”, while the UTC section begins: “A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary.”

The state deleted UTC § 808(c), which is the subsection that permits the terms of the trust to grant “a trustee or other person” the power to direct the modification or termination of the trust.

MICHIGAN

Michigan enacted only subsection (a) of UTC § 808 (M.C.L.A. § 700.7808); the state enacted the subsection in its entirety.

MISSISSIPPI

Mississippi enacted the majority of UTC § 808 (Miss. Code Ann. § 91-8-808); the state made some changes to its version of the section.

Mississippi expressly permits trustees to follow the direction of a settlor even if the directions are contrary to the terms of the trust or “contrary to the normal practice of the trustee in regard to the action requested”; UTC only expressly permits a trustee to follow direction that is contrary to the terms of the trust. The additional allowance in the Mississippi section simply eliminates an excuse that a trustee may use in refusing to follow the direction of the settlor.

Mississippi deleted the portion of § 808(b) that provides an exception to the default rule that the trustee must act in accordance with the power-holder’s exercise of power. Mississippi’s section is stricter than the UTC because the state’s section does not expressly provide an exception that would allow a trustee to refuse to follow the power-holder’s direction.

Mississippi’s subsection governing the power to direct is markedly different from the UTC’s: In Mississippi, a person holding a power to direct is a “trust advisor, trust protector, or both”; under the UTC, such a person is “presumptively a fiduciary.” Mississippi does not provide substantive governance in this subsection; instead, the subsection references a different article in the trust act; UTC provides substantive governance, clearly stating the duties and requirements of a power-holder.

MISSOURI

Missouri enacted UTC § 808 with several modifications (Mo. Ann. Stat. § 456.8-808). Missouri’s section governs the appointment of “trust protectors”, which is the state’s term for a power-holder who is not a settlor, trustee, or beneficiary of the trust. The state enacted § 808(a) in its entirety, but amended the rest of the UTC section to reflect Missouri’s laws on trust protectors.

The Missouri section provides an enumerated list of the express powers that may be granted to a trust protector. Missouri definitively limits a trust protector’s power to modify a trust by including in its statute a list of the aspects of the trust that the trust protector does and does not have the power to modify; UTC simply provides that a trust may confer upon a person the power to direct the modification or termination of the trust. Missouri allows trust protectors to terminate the trust in favor of the trust’s beneficiaries.

The Missouri section includes several subsections governing topics that are not covered by UTC § 808. Missouri’s additional governance includes, inter alia, provisions on the non-liability of the trust protector for acts and omissions, the evidentiary standard for proving the

liability of the trust protector, requests for information by the trust protector, and resignation of a trust protector.

MONTANA

Montana enacted UTC § 808 in its entirety (M.C.A. § 72-38-808).

NEBRASKA

Nebraska enacted UTC § 808 in its entirety (Neb. Rev. Stat. § 30-3873). Nebraska's statute references the corresponding UTC section in the title and at the beginning of each section of the state's uniform trust code.

NEW HAMPSHIRE

New Hampshire enacted a significant majority of UTC § 808 (N.H. Rev. Stat. § 564-B:8-808). The state included a small number of substantive changes to its version of the section:

New Hampshire's section specifies that either the terms of a trust, an agreement of the qualified beneficiaries, or a court order could all confer the power to direct upon a person. UTC only recognizes a power to direct that has been conferred by the terms of a trust.

New Hampshire deleted the portion of § 808(b) that provides an exception to the default rule that the trustee must act in accordance with the power-holder's exercise of power. New Hampshire's section is stricter than UTC § 808 because the state's section lacks an exception that permits a trustee to refuse to follow the power-holder's direction under certain circumstances.

New Hampshire amended § 808(d): in New Hampshire, a person who holds a power to direct is a "trust advisor"; under UTC, such a person is "presumptively a fiduciary." The New Hampshire subsection simply states that a trust advisor has the power to "direct the trustee to make distributions", while the UTC subsection provides governance on power-holders' liability and power-holder duties.

NEW MEXICO

New Mexico enacted UTC § 808 in its entirety (N. M. S. A. § 46A-8-808).

NORTH CAROLINA

North Carolina made significant changes to its version of UTC § 808 (N.C.G.S.A. § 36C-8-808). North Carolina expressly states that the settlor of a revocable trust has the power to direct or consent to the actions of the trustee at all times while the trust is revocable; this express grant of power to the settlor is implied in the UTC.

North Carolina permits a trustee to follow a direction of the settlor even if the act exceeds the authority granted to the trustee in the trust, or if the act would violate a duty the trustee owes under the trust. Unlike UTC, the state's section does not provide exceptions that would serve as reasons for a trustee to refuse to follow a direction of the settlor. Instead, the state imposes a stricter law than the UTC by eliminating an excuse that a trustee may try to use in his or her refusal to follow a power holder's direction.

North Carolina provides an entire subsection on trustee non-liability for losses resulting from compliance with direction, but is silent on power holder liability. The UTC focuses on the

liability of the power holder, stating that a power-holder is liable for any losses resulting from a breach of fiduciary duty.

North Carolina deleted UTC subsection (c), which is the subsection that permits the terms of a trust to grant a person power to direct the modification or termination of the trust.

NORTH DAKOTA

North Dakota enacted UTC § 808 in its entirety (N.D.C.C. § 59-16-08). The North Dakota statute references the corresponding UTC section in the title of each section of the state's trust statute.

OHIO

Ohio enacted the majority of UTC § 808, but made changes to the wording of the section (Ohio Rev. Code Ann. § 5805.08).

Under Ohio's section, trustees are not liable for losses resulting from certain acts when other persons are granted certain powers with regards to the trust's administration. UTC lacks an express provision on trustee liability.

OREGON

Oregon enacted UTC § 808 in its entirety, with two minor changes (O.R.S. § 130.685): First, Oregon removed the word "attempted" in the first exception to the default rule that trustees must follow the power holder's direction. The section states that a trustee shall act in accordance with an exercise of power "unless the exercise is manifestly contrary" to the trust terms; the UTC section states that a trustee shall act in accordance with an exercise of power "unless the *attempted* exercise is manifestly contrary" to the trust terms (emphasis added). By removing the word "attempted", Oregon is implying that the power-holder must have already exercised the power in order for the trustee to be made aware that the exercise is contrary to the trust terms – this also implies that the trustee has complied with the power holder's direction. Under the UTC, a power-holder can attempt to exercise his or her power, but the trustee has the right to refuse if the act would be contrary to the trust terms.

Second, Oregon expressly states that a person holding a power to direct is "rebuttably presumed to be a fiduciary"; the UTC provides that such a person is "presumptively a fiduciary." Oregon changed the UTC's wording, but the two sections have the same meaning.

PENNSYLVANIA

Pennsylvania enacted UTC § 808 in its entirety with no substantive changes (20 Pa. C.S.A. § 7778).

SOUTH CAROLINA

South Carolina enacted UTC § 808 in its entirety (S.C. Code 1976 § 62-7-808).

TENNESSEE

Tennessee enacted the majority of UTC § 808, with the inclusion of added detail and two new subsections (T.C.A. § 35-15-808). The amendments Tennessee made to subsections (a) and (b) are identical to subsections (a) and (b) of Mississippi's statute.

Tennessee expressly permits trustees to follow the direction of a settlor even if the directions are contrary to the terms of the trust or "contrary to the normal practice of the trustee in regard to the action requested"; the UTC only expressly permits a trustee to follow direction that is contrary to the terms of the trust. The additional allowance in the Tennessee section simply eliminates an excuse that a trustee may use in refusing to follow the direction of the settlor.

Tennessee deleted the portion of § 808(b) that provides an exception to the default rule that the trustee must act in accordance with the power-holder's exercise of power. Tennessee's section is stricter than the UTC because the state's section does not expressly provide an exception that would allow a trustee to refuse to follow the power-holder's direction.

Tennessee included two additional subsections: subsection (e) references a separate part of Tennessee's code and provides information on trust advisors; subsection (f) enumerates a list of transitional provisions that are applicable to the section.

UTAH

Utah enacted the majority of UTC § 808 (U.C.A. § 75-7-906), but there is a major substantive difference between the two sections: Utah's section governs only investment direction, while the UTC governs any kind of direction given by the power-holder to the trustee. Utah's section includes a definition of "investment direction", which helps to clearly differentiate between investment direction and other types of direction.

In Utah, a trustee is permitted to follow the investment direction of the settlor even if the direction is manifestly contrary to the trust terms or seriously breaches a fiduciary duty. The UTC expressly permits a trustee to refuse to follow the direction of a settlor, or any other power holder, for those same two reasons: the direction is manifestly contrary or would constitute a serious breach of fiduciary duty.

Utah's section includes additional subsections that govern: persons whose consent or approval is required before the trustee can make an investment decision, liability of the trustee for loss that results from following an investment direction, and the standard by which to judge the trustee's liability.

VERMONT

Vermont enacted UTC § 808 in its entirety (14A V.S.A. § 808).

VIRGINIA

Virginia enacted UTC § 808 in its entirety, with the inclusion of a lengthy additional subsection (Va. Code Ann. § 64.2-770).

Subsection E of Virginia's statute provides that the section can be incorporated into a trust instrument by specific reference. The additional subsection also: defines "trust director", enumerates the duties that a trustee is not required to perform, and provides that a trustee's

actions within the scope of his or her authority will presumptively be considered administrative actions.

WEST VIRGINIA

West Virginia enacted UTC § 808 in its entirety with no substantive changes (W. Va. Code, § 44D-8-808). West Virginia changed “settlor” to “grantor” because grantor is the state’s equivalent term to “settlor.”

WISCONSIN

Wisconsin enacted the majority of UTC § 808, but the state used different language and added significant detail to its equivalent of the section (W.S.A. § 701.0808).

The Wisconsin statute specifies the different ways that a directing party may be appointed besides being appointed by a settlor in a trust instrument; the UTC states that the terms of a trust can confer power upon a directing party, but does not list the specific ways in which a directing party can be granted the power to direct.

Wisconsin’s statute is more specific than the UTC because it expressly states that a directing party can be appointed to direct the trustee on “investment or distribution decisions”; the UTC simply states that a person can be appointed to direct “certain actions of the trustee,” which impliedly includes investment and distribution decisions. Wisconsin’s statute is also more specific because it directly addresses trustee liability, unlike the UTC.

Wisconsin’s section provides a list of actions that the trustee does not have a duty to undertake, and includes a subsection detailing the difference between the trustee’s administrative actions and monitoring or participating in the directing party’s actions. UTC § 808 impliedly imposes only minimal oversight responsibility on the trustee

Wisconsin included a subsection governing a directing party’s request for information about the trust and a trustee’s duty to provide information to the directing party, and a subsection governing attorney fees and costs to defend claims against the directing party.

WYOMING

Wyoming enacted the majority of UTC § 808 (Wyo. Stat. Ann. § 4-10-808). Wyoming deleted the portion of § 808(b) that provides an exception to the default rule that the trustee must act in accordance with the power-holder’s exercise of power. The Wyoming section is stricter than the UTC section because the state’s section does not expressly provide an exception that would allow a trustee to refuse to follow the power-holder’s direction.

Uniform Trust Code	Alabama Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 19-3B-808. Powers to direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, then the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	Arizona Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p>	<p>§ 14-10808. Powers to direct.</p> <p>A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>B. If the trust provides that the assets in the trust are subject to the direction of the settlor or a cotrustee, beneficiary or third party, the trustee has no duty to review the directions it is directed to make or to notify the beneficiaries regarding any investment action taken pursuant to the direction. The trustee is not responsible for the purchase, monitoring, retention or sale of assets that are subject to the direction of the settlor or a cotrustee, beneficiary or third party. The trustee is not</p>

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

subject to liability if the trustee acts pursuant to the direction, even if the actions constitute a breach of fiduciary duty, unless the trustee acts in bad faith or with reckless indifference.

C. The terms of a trust may confer on a trustee or other person a power to direct the modification or termination of the trust.

D. Unless the trust instrument provides otherwise, a person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Uniform Trust Code

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Arkansas Trust Code

§ 28-73-808. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Uniform Trust Code	D.C. Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 19-1308.08. Powers to direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	Florida Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p>	<p>§ 736.0808. Powers to direct.</p> <p>(1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a direction of the settlor that is contrary to the terms of the trust while a trust is revocable.</p> <p>(2) If the terms of a trust confer on a person other than the settlor of a revocable trust the power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p>

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

(3) The terms of a trust may confer on a trustee or other person a power to direct the modification or termination of the trust.

(4) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Uniform Trust Code

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Kansas Uniform Trust Code

§ 58a-808. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Uniform Trust Code	Kentucky Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>386B.8-080 Powers to direct.</p> <p>(1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(2) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(3) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(4) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	Maine Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p>	<p>§ 808. Powers to direct.</p> <p>1. Revocable trust; direction of settlor. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>2. Directions of person conferred power to direct trustee. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty</p>

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

that the person holding the power owes to the beneficiaries of the trust.

3. Modification or termination. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

4. Power to direct; fiduciary duty. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Uniform Trust Code

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Maryland Trust Act

§ 14.5–808.

(A) While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.

(B) (1)(I) Except as provided in paragraph (2) of this subsection, if the terms of a trust confer on one or more persons, other than the settlor of a revocable trust, a power to direct, consent to, or disapprove the actual or proposed investment decisions, distribution decisions, or other decisions of the trustee, the persons shall be considered advisers and fiduciaries that, as such, are required to act reasonably under the circumstances with regard to the purposes of the trust and the interests of the beneficiaries.

(II) The trustee may not act in accordance with an exercise of the power if:

1. The attempted exercise is manifestly contrary to the terms of the trust, unless expressly waived in writing by the settlor; or

2. The trustee knows the attempted exercise would constitute a breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(2) A beneficiary that holds a power to direct, consent to, or disapprove of a trustee action may not be treated as a fiduciary with

respect to the exercise of the power to the extent that the only persons whose interests in the trust are affected by the decision of the beneficiary are the beneficiary and those persons whose interests in the trust are subject to control by the beneficiary through the exercise of a power of appointment.

(3) An adviser under this subsection is liable for a loss that results from breach of a fiduciary duty.

(C) (1) If the terms of a trust require that a trustee shall follow the direction of an adviser with respect to proposed investment decisions, distribution decisions, or other decisions of the trustee:

(i) The trustee shall act in accordance with the direction of the adviser and may not be liable for a loss resulting directly or indirectly from the act except in the case of willful misconduct on the part of the trustee; and

(ii) The trustee shall have no duty to:

1. Monitor the conduct of the adviser;

2. Provide advice to the adviser; or

3. Communicate with, warn, or apprise a beneficiary or third party concerning instances in which the trustee would or might have exercised the discretion of the trustee in a manner different from the manner directed by the adviser.

(2) Absent a preponderance of the evidence to the contrary, the actions of the trustee pertaining to matters within the scope of the authority of the adviser, such as confirming that the directions of the adviser have been carried out and recording and reporting actions taken at the direction of the adviser, shall be presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee by the terms of the trust, and these administrative actions may not be deemed to constitute an undertaking by the trustee to monitor the adviser or otherwise participate in actions within the scope of the authority of the adviser.

	<p>(D) Unless the terms of a trust otherwise provide, an adviser that is given authority with respect to investment decisions has the power to perform the following:</p> <p>(1) Direct the trustee with respect to the retention, purchase, sale, or encumbrance of the trust property and the</p> <p>Ch. 585 2014 laws of maryland Investment and reinvestment of principal and income from the trust;</p> <p>(2) Vote proxies for securities held in trust; and</p> <p>(3) Select one or more investment advisers, managers, or counselors, including the trustee, and delegate to the advisers, managers, or counselors a power of the adviser.</p> <p>(E) The terms of a trust may confer on a trustee or other person a power to direct the modification or termination of the trust.</p>
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Uniform Trust Code	Massachusetts Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the</p>	<p>§ 808. Powers to direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person, other than the settlor of a revocable trust, power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power, unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) A person who holds a power to direct is presumptively a fiduciary who is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct shall be liable for any loss that results from a breach of a fiduciary duty.</p>

trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Uniform Trust Code	Michigan Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 700.7808. Observance of directions of settlor.</p> <p>While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p>

Uniform Trust Code	Mississippi Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the</p>	<p>§ 91-8-808. Powers to direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust or contrary to the normal practice of the trustee in regard to the action requested.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the</p>

attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

trustee, the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) If a person holds a power to direct pursuant to Article 12 of this chapter, that person is a trust advisor, trust protector, or both. The power holder is subject to all the provisions of Article 12, including any duties prescribed by Article 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under Article 12 is relieved of any duty or any liability, or is otherwise protected under Article 12, shall be so relieved and otherwise protected.

Uniform Trust Code	Missouri Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 456.8-808. Appointment of Trust Protector—Powers, Limitations, Entitlement to Information, Resignation, Personal Jurisdiction.</p> <p>1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>2. A trust instrument may provide for the appointment of a trust protector. For purposes of this section, a “trust protector”, whether referred to in the trust instrument by that name or by some other name, is a person, other than the settlor, a trustee, or a beneficiary, who is expressly granted in the trust instrument one or more powers over the trust.</p> <p>3. A trust protector appointed in the trust instrument shall have only the powers granted to the trust protector by the express terms of the trust instrument, and a trust protector is only authorized to act within the scope of the authority expressly granted in the trust instrument. Without limiting the authority of the settlor to grant powers to a trust protector, the express powers that may be granted include, but are not limited to, the following:</p>

- (1) Remove and appoint a trustee or name a successor trustee or trust protector;
- (2) Modify or amend the trust instrument to:
 - (a) Achieve favorable tax status or respond to changes in the Internal Revenue Code or state law, or the rulings and regulations under such code or law;
 - (b) Reflect legal changes that affect trust administration;
 - (c) Correct errors or ambiguities that might otherwise require court construction; or
 - (d) Correct a drafting error that defeats a grantor's intent;
- (3) Increase, decrease, modify, or restrict the interests of the beneficiary or beneficiaries of the trust;
- (4) Terminate the trust in favor of the beneficiary or beneficiaries of the trust;
- (5) Change the applicable law governing the trust and the trust situs; or
- (6) Such other powers as are expressly granted to the trust protector in the trust instrument.

4. Notwithstanding any provision in the trust instrument to the contrary, a trust protector shall have no power to modify a trust to:

- (1) Remove a requirement from a trust created to meet the requirements of 42 U.S.C. Section 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible beneficiary of the trust at the death of that beneficiary; or
- (2) Reduce or eliminate an income interest of the income beneficiary of any of the following types of trusts:
 - (a) A trust for which a marital deduction has been taken for federal tax purposes under Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any comparable provision of applicable state law, during the life of the settlor's spouse;
 - (b) A charitable remainder trust under Section 664 of the Internal Revenue

Code, during the life of the noncharitable beneficiary;

(c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code, during any period in which the settlor is a beneficiary; or

(d) A trust for which an election as a qualified Sub-Chapter S Trust under Section 1361(d) of the Internal Revenue Code is currently in place.

5. Except to the extent otherwise provided in a trust instrument specifically referring to this subsection, the trust protector shall not exercise a power in a way that would result in a taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the trust protector's gross estate for federal estate tax purposes.

6. Except to the extent otherwise provided in the trust instrument and in subsection 7 of this section, and notwithstanding any provision of sections 456.1-101 to 456.11-1106 to the contrary:

(1) A trust protector shall act in a fiduciary capacity in carrying out the powers granted to the trust protector in the trust instrument, and shall have such duties to the beneficiaries, the settlor, or the trust as set forth in the trust instrument. A trust protector is not a trustee, and is not liable or accountable as a trustee when performing or declining to perform the express powers given to the trust protector in the trust instrument. A trust protector is not liable for the acts or omissions of any fiduciary or beneficiary under the trust instrument;

(2) A trust protector is exonerated from any and all liability for the trust protector's acts or omissions, or arising from any exercise or nonexercise of the powers expressly conferred on the trust protector in the trust instrument, unless it is established by a preponderance of the evidence that the acts or omissions of the trust protector were done or omitted in breach of the trust protector's duty, in bad faith or with reckless

indifference;

(3) A trust protector is authorized to exercise the express powers granted in the trust instrument at any time and from time to time after the trust protector acquires knowledge of their appointment as trust protector and of the powers granted;

(4) A trust protector is entitled to receive, from the assets of the trust for which the trust protector is acting, reasonable compensation, and reimbursement of the reasonable costs and expenses incurred, in determining whether to carry out, and in carrying out, the express powers given to the trust protector in the trust instrument;

(5) A trust protector is entitled to receive, from the assets of the trust for which the trust protector is acting, reimbursement of the reasonable costs and expenses, including attorney's fees, of defending any claim made against the trust protector arising from the acts or omissions of the trust protector acting in that capacity unless it is established by clear and convincing evidence that the trust protector was acting in bad faith or with reckless indifference; and

(6) The express powers granted in the trust instrument shall not be exercised by the trust protector for the trust protector's own personal benefit.

7. If a trust protector is granted a power in the trust instrument to direct, consent to, or disapprove a trustee's actual or proposed investment decision, distribution decision, or other decision of the trustee required to be performed under applicable trust law in carrying out the duties of the trustee in administering the trust, then only with respect to such power, excluding the powers identified in subsection 3 of this section, the trust protector shall have the same duties and liabilities as if serving as a trustee under the trust instrument.

8. A trustee shall carry out the written directions given to the trustee by a trust protector acting within the scope of the

powers expressly granted to the trust protector in the trust instrument. Except in cases of bad faith or reckless indifference on the part of the trustee, or as otherwise provided in the trust instrument, the trustee shall not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of the written direction of the trust protector or the failure of the trust protector to provide consent. Except as otherwise provided in the trust instrument, the trustee shall have no duty to monitor the conduct of the trust protector, provide advice to or consult with the trust protector, or communicate with or warn or apprise any beneficiary concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the trust protector.

9. Except to the extent otherwise expressly provided in the trust instrument, the trust protector shall be entitled to receive information regarding the administration of the trust as follows:

(1) Upon the request of the trust protector, unless unreasonable under the circumstances, the trustee shall promptly provide to the trust protector any and all information related to the trust that may relate to the exercise or nonexercise of a power expressly granted to the trust protector in the trust instrument. The trustee has no obligation to provide any information to the trust protector except to the extent a trust protector requests information under this section;

(2) The request of the trust protector for information under this section shall be with respect to a single trust that is sufficiently identified to enable the trustee to locate the records of the trust; and

(3) If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, a trust protector who requests information under this section about such asset shall agree to be bound by the confidentiality restrictions that bind the

	<p>trustee before receiving such information from the trustee.</p> <p>10. A trust protector may resign by giving thirty days' written notice to the trustee and any successor trust protector. A successor trust protector, if any, shall have all the powers expressly granted in the trust instrument to the resigning trust protector unless such powers are expressly modified for the successor trust protector.</p> <p>11. A trust protector of a trust having its principal place of administration in this state submits personally to the jurisdiction of the courts of this state during any period that the principal place of administration of the trust is located in this state and the trust protector is serving in such capacity.</p>
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Uniform Trust Code	Montana Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 72-38-808. Powers to Direct.</p> <p>(1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(2) If the terms of a trust confer upon a person other than the settlor of a revocable trust the power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(3) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(4) A person other than a beneficiary who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	Nebraska Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 30-3873. (UTC 808) Powers to Direct.</p> <p>(UTC 808) (a) While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	New Hampshire Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person</p>	<p>§ 564-B:8-808 Powers to Direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust, an agreement of the qualified beneficiaries, or a court order, confer upon a person (other than the settlor of a revocable trust) the power to direct certain actions of the trustee, then the trustee shall act in accordance with an exercise of the power.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p>

holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

(d) A person who holds a power to direct is a trust advisor, except to the extent that the person is a beneficiary of the trust and, under such power, the person may direct the trustee to make distributions.

Uniform Trust Code

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

New Mexico Uniform Trust Code

§ 46A-8-808. Powers to Direct.

A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

B. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

C. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

D. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Uniform Trust Code	North Carolina Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 36C-8-808. Powers of a Settlor to Take Certain Actions with Respect to the Trust.</p> <p>While a trust is revocable, the settlor of a revocable trust has, at all times, the power to direct or consent to the actions of the trustee whether or not the power is conferred upon the settlor by the terms of the trust. The duty and liability of the trustee subject to the direction and consent of the settlor is as follows:</p> <p>(1) The trustee may follow a direction of the settlor that is not authorized by or is contrary to the terms of the trust, even if by doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust.</p> <p>(2) The trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction. If the settlor requires the settlor's consent to certain actions of the trustee, and the settlor does not provide consent within a reasonable time after the trustee has made a timely request for the settlor's consent, the trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the trustee's failure to take any action that required the settlor's consent.</p>

Uniform Trust Code	North Dakota Trust Statute
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious</p>	<p>§ 59-16-08. (808) Powers to Direct.</p> <p>1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>2. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious</p>

breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

3. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

4. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of fiduciary duty.

Uniform Trust Code	Ohio Trust Statute
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 5808.08 Powers to Direct.</p> <p>(A) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(B) As provided in section 5815.25 of the Revised Code, a trustee is not liable for losses resulting from certain actions or failures to act when other persons are granted certain powers with respect to the administration of the trust.</p> <p>(C) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(D) Except to the extent otherwise provided by the terms of a trust, a person other than a beneficiary who holds a power to direct, including, but not limited to, a power to direct the modification or termination of a trust, is presumptively a fiduciary who, as a fiduciary, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	Oregon Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 130.685. UTC 808. Powers to Direct.</p> <p>(1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(2) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(3) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(4) A person other than a beneficiary who holds a power to direct is rebuttably presumed to be a fiduciary and is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	Pennsylvania Trust Statute
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p>	<p>§ 7778. Powers to Direct – UTC 808.</p> <p>(a) Direction of settlor.--While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the trust instrument.</p> <p>(b) Compliance with power.--If a trust instrument confers upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with a written exercise of the power unless the attempted exercise is manifestly contrary to the trust instrument or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the</p>

<p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>power owes to the beneficiaries of the trust.</p> <p>(c) Modification or termination of trust.--A trust instrument may confer upon a trustee or other person a power to modify or terminate the trust.</p> <p>(d) Fiduciary relationship.--A person other than a beneficiary who holds a power to direct certain actions of a trustee is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of the holder's fiduciary duty.</p>
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Uniform Trust Code	South Carolina Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 62-7-808. Powers to Direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

§ 35-15-808. Powers to Direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust or contrary to the normal practice of the trustee in regard to the action requested.

(b) If the terms of a trust, an agreement of the qualified beneficiaries, or a court order, confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) Unless the terms of a trust provide otherwise, if a person holds a power to perform any act in reliance on §§ 35-3-122 and 35-3-123, and that power holder is other than a beneficiary, that person is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to perform any act under this subsection (d) is liable for any loss that results from breach of a fiduciary duty. In so following the directions of such person the trustee is protected from liability as provided in §§ 35-3-122 and 35-3-123.

(e) If a person holds a power to direct pursuant to part 12 of this chapter, that person is a trust advisor, trust protector or both. Such power holder is subject to all the provisions of part 12, including any duties prescribed by part 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under part 12 is relieved of any duty or any liability, or is otherwise protected under part 12, shall be so relieved and otherwise protected.

(f) Transitional provisions applicable to this section shall be as follows:

(1) Powers to direct or perform any act held in reliance on or that are subject to §§ 35-3-122 and 35-3-123 that are in existence

prior to July 1, 2013, remain effective thereafter and remain subject to the provisions of those sections and their protections;

(2) Notwithstanding subdivision (f)(1), should any power that is described in part 12 of this chapter be held under a trust instrument that was in existence or became irrevocable before July 1, 2013, and that power is not held in reliance on nor is it subject to §§ 35-3-122 and 35-3-123, then from July 1, 2013, all law relative to such power shall be controlled by and subject to part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12; and

(3) For all trust instruments entered into, that become irrevocable or that are amended relative to any power that is described in part 12 of this chapter on or after July 1, 2013, part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12, shall be the exclusive method to create a directed trust or a provision regarding such and shall control such. Relative to trusts described in this subdivision and subdivision (f)(2), §§ 35-3-122 and 35-3-123 shall be of no further force and effect.

Uniform Trust Code

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person

Utah Uniform Trust Code

§ 75-7-906. Investment Direction.

(1) For purposes of this section, “investment direction” means a direction that is binding on the trustee, except for an investment direction given by a settlor as described in Subsection (2) to do any of the following with respect to an investment:

- (a) retention;
- (b) purchase;
- (c) sale;
- (d) exchange;
- (e) tender; or
- (f) any other transaction affecting

holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

ownership in the investment.

(2)(a) During the time period that a trust is revocable, the trustee may follow any investment direction of the settlor, including an investment direction that:

(i) is manifestly contrary to the terms of the trust; or

(ii) seriously breaches a fiduciary duty to the beneficiaries.

(b) The trustee is not liable for any loss resulting from following an investment direction described in Subsection (2)(a).

(3) If the terms of a trust authorize a person to give investment direction to the trustee, the person authorized to give investment direction:

(a) is presumptively a fiduciary only with respect to an investment direction that the person gives to the trustee;

(b) is required to act in good faith with regard to:

(i) the purposes of the trust; and

(ii) the interests of the beneficiaries;

and

(c) is liable for any loss that results from breach of the fiduciary duty only with respect to an investment direction that the person gives to the trustee.

(4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for any loss that results from following an investment direction if:

(a) the terms of a trust authorizes a person to give the investment direction to the trustee; and

(b) the trustee acts in accordance with the investment direction given by a person described in Subsection (4)(a).

(5) If the terms of a trust require another person's approval or consent to an investment decision of the trustee:

(a) the person from whom approval or consent is required:

(i) is presumptively a fiduciary;

(ii) is required to act in good faith with regard to:

	<p>(A) the purposes of the trust; and (B) the interests of the beneficiaries; and</p> <p>(iii) is liable for any loss that results from breach of the fiduciary duty; and</p> <p>(b) except in cases of willful misconduct or gross negligence, the trustee is not liable for any loss resulting from any act not taken as a result of the person's failure to respond to a request for approval or consent.</p>
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Uniform Trust Code	Vermont Trust Statute
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 808. Powers to Direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>

Uniform Trust Code	Virginia Uniform Trust Code
SECTION 808. POWERS TO DIRECT.	§ 64.2-770. Powers to Direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

B. If (i) the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee and (ii) subsection E does not apply, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

C. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

D. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

E. The provisions of this subsection shall apply if the settlor incorporates this subsection into the trust instrument by specific reference. The provisions of this subsection shall also apply if this subsection is incorporated into the trust instrument by a nonjudicial settlement agreement under § 64.2-709 by specific reference.

1. For the purpose of this subsection, a “trust director” means any person who is not a trustee and who has, pursuant to the governing instrument, a power to direct the trustee on any matter. No person shall be a “trust director” for purposes of this subsection merely by holding a general or limited power of appointment over the trust assets.

Notwithstanding anything in the trust instrument to the contrary, the trust director shall be deemed a fiduciary who, as such, is required to act in good faith with regard to the

purposes of the trust and the interests of the beneficiaries. The trust director is liable for any loss that results from a breach of the trust director's fiduciary duty. Unless the governing instrument provides otherwise, the trust director may assert defenses to liability on the same basis as a trustee serving under the governing instrument, other than defenses provided to the trustee under this subsection. Notwithstanding the foregoing, a term of a trust relieving a trust director of liability for breach of trust is unenforceable to the extent that it (i) relieves the trust director 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 or (ii) was inserted as the result of an abuse by the trust director of a fiduciary or confidential relationship to the settlor. An exculpatory term drafted or caused to be drafted by the trust director is invalid as an abuse of a fiduciary or confidential relationship unless the trust director proves that the existence and contents of the exculpatory term were adequately communicated to the settlor.

2. A trustee who acts in accordance with a direction in the governing instrument that the trustee is to follow the trust director's direction or act only with the trust director's consent or direction shall not, other than in cases of willful misconduct or gross negligence on the part of the directed trustee, be liable for any loss resulting directly or indirectly from any act taken or not taken by the trustee (i) pursuant to the trust director's direction or (ii) as a result of the trust director's failure to direct, consent, or act, after receiving a request by the trustee for such direction, consent, or action.

3. A trustee shall not, except as otherwise expressly provided in the trust instrument, have any duty to (i) monitor the trust director's conduct; (ii) provide the trust director with information, other than material facts related to the trust administration expressly requested in writing by the trust

director; (iii) inform or warn any beneficiary or third party that the trustee disagrees with any of the trust director's actions or directions; (iv) notify the trust director that the trustee disagrees with any of the trust director's actions or directions; (v) do anything to prevent the trust director from giving any direction or taking any action; or (vi) compel the trust director to redress its action or direction.

4. The actions of the trustee pertaining to matters within the scope of the authority of the trust director, including confirming that the trust director's directions have been carried out and recording and reporting actions taken pursuant to the trust director's direction, shall, absent clear and convincing evidence to the contrary, presumptively be considered administrative actions by the trustee and not be considered to constitute either monitoring the trust director's actions or participating in the actions of the trust director.

Uniform Trust Code	West Virginia Uniform Trust Code
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a</p>	<p>§ 44D-8-808. Powers to Direct.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the grantor that is contrary to the terms of the trust instrument.</p> <p>(b) If the terms of a trust instrument confer upon a person other than the grantor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust instrument or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust instrument may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who</p>

fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from the holder's breach of a fiduciary duty.

Uniform Trust Code	Wisconsin Trust Statute
<p>SECTION 808. POWERS TO DIRECT.</p> <p>(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.</p> <p>(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.</p> <p>(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.</p>	<p>§ 701.0808. Powers to Direct; Directing Parties.</p> <p>(1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.</p> <p>(2) A settlor in a trust instrument, a court in a trust instrument or court order, or interested persons in a nonjudicial settlement agreement may appoint a directing party to direct the trustee on investment or distribution decisions or to make investment or distribution decisions regarding directed trust property. If a trustee acts in accordance with the direction of a directing party or fails to act due to lack of direction from a directing party, the trustee is not liable for any loss resulting directly or indirectly from any action taken or omitted with respect to the direction or lack of direction except for acts or omissions that are a result of the trustee's willful misconduct.</p> <p>(3) A trustee does not have a duty to do any of the following:</p> <p>(a) Provide advice to, consult with, monitor, or evaluate a directing party's conduct.</p> <p>(b) Inform or warn a beneficiary, a 3rd party, or a directing party that the trustee disagrees with any of the directing party's actions or directions.</p> <p>(c) Prevent a directing party from giving a direction or taking any action.</p> <p>(d) Compel a directing party to redress the directing party's actions or directions.</p> <p>(4) The administrative actions of a trustee related to matters within the scope of a directing party's power, including confirming</p>

that the directing party's directions have been carried out and recording and reporting actions taken pursuant to the directing party's direction, do not constitute either monitoring the directing party's actions or participating in the actions of the directing party.

(5) A directing party is a fiduciary and is required to act in good faith with regard to the terms of the trust and the interests of the beneficiaries. A directing party is liable for any loss that results from a breach of any of the directing party's fiduciary duties.

(6)(a) A directing party may request information about the trust from the trustee and, if the requested information is related to a power granted to the directing party, the trustee shall provide the requested information to the directing party. If a trustee is bound by any confidentiality restrictions with respect to information requested by a directing party, the trustee may require that the directing party agree to be bound by the confidentiality restrictions before delivering such information to the directing party. A trustee is not liable to any beneficiary for any loss or damages resulting from the trustee providing information to the directing party that is related to the power granted to the directing party.

(b) Except as otherwise provided in this chapter, a trustee does not have a duty to provide any information to the directing party that the directing party does not request.

(7) A trustee shall, in accordance with s. 701.1004, pay or reimburse a directing party for attorney fees and costs to defend any claim made against the directing party.

(8) Sections 701.0701, 701.0708, 701.0709, 701.1001 to 701.1003, and 701.1005 to 701.1010 apply to a directing party as if the directing party was a trustee.

(9) A person who accepts an appointment as a directing party of a trust submits to the jurisdiction of the courts of this state, as provided in s. 701.0202(1).

Uniform Trust Code

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Wyoming Uniform Trust Code

§ 4-10-808. Powers to Direct.

(a) While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person, as provided in article 7 of this act, a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty with respect to the holder's power.