

DRAFT
FOR DISCUSSION ONLY

DIRECTED TRUST ACT

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~~**DIRECTED TRUST ACT**~~

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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~~June 6~~October 7, 2016

DIRECTED TRUST ACT

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1 **DIRECTED TRUST ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Directed Trust Act.

3 **SECTION 2. DEFINITIONS.** In this [act]:

4 (1) “Breach of trust” includes a violation by a trust director or trustee of a duty imposed
5 by this [act] or the terms of a trust.

6 (2) “Directed trustee” means a trustee that is subject to a trust director’s power of ~~a trust~~
7 ~~director~~direction under Section 6.

8 (3) “Person” means an individual, business or nonprofit entity, public corporation,
9 government or governmental subdivision, agency, or instrumentality, or other legal entity.

10 ~~(4)~~(4) “Power of appointment” means a power given by the terms of a trust to a person
11 that enables the person in a nonfiduciary capacity to designate a recipient of an ownership
12 interest in or a power of appointment over the trust property.

13 (5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
14 United States Virgin Islands, or any other territory or insular possession subject to the
15 jurisdiction of the United States.

16 (56) “Terms of a trust” means the manifestation of a settlor’s intent regarding a trust’s
17 provisions:

18 (A) as expressed in the trust instrument;

19 (B) as established by other evidence that would be admissible in a judicial
20 proceeding;

21 (C) as amended by a trustee or trust director in accord with the terms of the trust;

22 [or]

23 (D) as determined or amended by court order[; or]

1 | ~~[(E)~~ as determined or amended by nonjudicial settlement agreement under
2 | [Uniform Trust Code Section 111]].

3 | ~~(67)~~ “Trust director” means a person, other than a trustee, that is given a power of
4 | direction under Section 6 by the terms of a trust; whether or not the terms of the trust designate
5 | the person as a trust director, trust protector, or trust adviser-, and whether or not the person is a
6 | beneficiary.

7 | **SECTION 3. APPLICATION; PRINCIPAL PLACE OF ADMINISTRATION.**

8 | (a) This [act] applies to a trust, whenever created ~~before, on, or after [the effective date of~~
9 | ~~this [act]] which, that~~ has its principal place of administration in this state, including a subject to
10 | the following rules:

11 | ~~(1) If the~~ trust ~~whose principal place of administration has been changed to this~~
12 | ~~state. As to a trust~~ was created before or on [the effective date of this [act]], this [act] applies only
13 | to conduct after that date.

14 | ~~(2) As to a trust whose principal place of administration is changed to this state on~~
15 | ~~or after [the effective date of this [act]], this [act] applies only to conduct after the change.~~

16 | (b) Without precluding other means to establish a sufficient connection with the
17 | designated jurisdiction, terms of a trust designating the principal place of administration of the
18 | trust are valid and controlling if:

19 | (1) a trustee’s principal place of business is located in or a trustee is a resident of
20 | the designated jurisdiction;

21 | (2) a trust director’s principal place of business is located in or a trust director is a
22 | resident of the designated jurisdiction; or

23 | (3) all or part of the administration occurs in the designated jurisdiction.

24 | **SECTION 4. LAW AND PRINCIPLES OF EQUITY.** Unless displaced by a

1 provision of this [act], the law and principles of equity of this state supplement this [act].

2 **SECTION 5. EXCLUSIONS.** This [act] does not apply to:

3 (1) a ~~nonfiduciary~~ power of appointment;

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

5 ~~(3) a power~~ of a settlor with respect to a revocable trust;

6 ~~(34)~~ a power of a beneficiary with respect to a trust to the extent the exercise or
7 nonexercise of the power affects only the interest of the beneficiary or another beneficiary
8 represented by the beneficiary under [Uniform Trust Code Sections 301- ~~through~~ 305]; or

9 **(4) Alternative A for Paragraph (5)**

10 (5) a power of a trust director to the extent the power must be held in a nonfiduciary
11 capacity to achieve the settlor's federal tax objectives.

12 **Alternative B for Paragraph (5)**

13 (5) a power to substitute ~~in place of~~for trust property other property of equivalent value to
14 the extent the power must be held in a nonfiduciary capacity to achieve the settlor's federal tax
15 objectives;

16 ~~(5) a power with respect to a trust other than a power under Section 6.~~

17 ~~SECTION 6. POWERS OF TRUST DIRECTOR.~~

18 (a) A trust director has only those powers granted to the director by the terms of athe trust
19 under this section.

20 ~~(b) The terms of a trust may grant a trust director:~~

21 ~~(1) a power of direction to invest, manage, or distributeunder which the director~~
22 may administer the trust ~~property or to~~ direct a trustee or another trust director in the ~~trustee's or~~
23 director's administration of the trust, including in the investment, management, or distribution of

1 the trust property;

2 ~~_____ (2) a power of consent under which:~~

3 ~~_____ (A) a trustee or another trust director must obtain the permission of the~~
4 ~~director before exercising a power of the trustee or other director; or~~

5 ~~_____ (B) the director may release a trustee or another trust director from~~
6 ~~liability for an action proposed or previously taken by the trustee or other director;~~

7 ~~_____ (3) a power of protection to:~~

8 ~~_____ (A) amend or modify the terms of the trust or terminate the trust;~~

9 ~~_____ (B) change the principal place of administration, situs, or governing law of~~
10 ~~the trust; or~~

11 ~~_____ (C) determine the capacity of the settlor or a trustee, trust director,~~
12 ~~beneficiary, or other party.~~

13 ~~_____ (D) appoint or remove a trustee or another trust director, or a successor to~~
14 ~~either; or~~

15 ~~_____ (E) prosecute, defend, or join an action, claim, or judicial proceeding~~
16 ~~relating to the trust.~~

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

18 (1) a trust director may exercise any further power appropriate to the exercise of
19 the director's express powers under subsection (b);

20 ~~_____ (2)(2) a power to designate a recipient of an ownership interest in or~~
21 ~~a power of appointment over trust property is a power of appointment and not a power of~~
22 ~~direction under subsection (b);~~

23 ~~_____ (3) the powers of a trust director are not affected by the incapacity or death of the~~

1 settlor; and

2 ~~(34)~~ trust directors with joint powers must act by majority decision.

3 **SECTION 7. DUTY AND LIABILITY OF TRUST DIRECTOR.**

4 (a) Subject to subsection ~~(eb)~~, with respect to a power of direction under Section 6(b)~~(1)~~,
5 ~~a power of consent under Section 6(b)(2)~~, or a further power under Section 6(c)(1) appropriate
6 to the power of direction ~~or consent~~:

7 (1) the trust director is subject to the same fiduciary duty and liability as a trustee;
8 and

9 (2) the director's duty or liability may be varied by the terms of the trust to the
10 same extent that the terms of the trust could vary the duty or liability of a trustee.

11 ~~———— (b) Subject to subsection (c), with respect to a power of protection under Section 6(b)(3)~~
12 ~~or a further power under Section 6(c)(1) appropriate to the power of protection, the trust director:~~
13 ~~———— (1) must act in accord with the terms and purposes of the trust; and~~
14 ~~———— (2) is not liable for breach of trust unless the director's exercise or nonexercise of~~
15 ~~the power was done in bad faith or with reckless indifference to the purposes of the trust or the~~
16 ~~interests of the beneficiaries.~~

17 ~~(e(b))~~ Unless the terms of a trust provide otherwise, if a trust director is ~~a licensed medical~~
18 ~~professional and, certified, or otherwise authorized or permitted by law to provide health care in~~
19 ~~the ordinary course of the director's business or practice of a profession, and the director~~ acts in
20 ~~the director's such a~~ capacity ~~as such~~, the director is not subject to ~~a~~ duty or liability under this
21 [act].

22 ~~(dc)~~ The terms of a trust may impose a duty or liability on a trust director in addition to
23 the duties and liabilities under this [act].

1 **SECTION 8. DUTY AND LIABILITY OF DIRECTED TRUSTEE.**

2 (a) ~~With respect~~Subject to a matter for which subsection (b), a directed trustee ~~is subject~~
3 ~~to a power of direction under Section 6(b)(1) or a power of protection under Section 6(b)(3), the~~
4 ~~following rules apply:~~

5 ~~——(1) Except as otherwise provided in paragraph (3), if the director exercises the~~
6 ~~power, or a further power under Section 6(c)(1) appropriate to the exercise of the power, the~~
7 ~~trustee must comply with the exercise, including by taking~~must take reasonable action to
8 ~~implement the exercise~~comply with the terms of a power of direction.

9 ~~——(2) Except as otherwise provided in paragraph (3), if the director does not exercise~~
10 ~~the power and a term of the trust provides that the trustee may not act in the absence of an~~
11 ~~exercise of the power, the~~(b) A directed trustee must not comply with ~~that term.~~

12 ~~——(3) The trustee must not comply with an exercise~~the terms of a power of direction
13 ~~or protection, or a term of the trust providing that the trustee may not act in absence of an~~
14 ~~exercise of such a power,~~ to the extent that by complying ~~with the exercise or the term~~ the trustee
15 would engage in willful misconduct.

16 ~~——(b) With respect to a matter for which a directed trustee is subject to a power of consent~~
17 ~~under Section 6(b)(2), the following rules apply:~~

18 ~~——(1)(c) If under the terms of the trust the trustee may not act without the permission~~
19 ~~of the director, and the trustee acts reasonably in proposing an action but the director does not~~
20 ~~grant permission, the trustee is liable only for the trustee's own willful misconduct.~~

21 ~~——(2) If under the terms of the trust the director~~a trust director may release ~~the~~
22 trustee or another trust director from liability for breach of trust and the director grants such a
23 release, the trustee or other director is not liable to the extent of the release unless:

1 | ~~_____ (A)(1) the breach involved the trustee’s own willful misconduct;~~
2 | ~~_____ (B) or the other director’s own willful misconduct;~~
3 | _____ (2) the release was induced by improper conduct of the trustee or other director;

4 | or

5 | ~~_____ (C)(3)~~ at the time of the release, the director did not know of the material
6 | facts relating to the breach.

7 | ~~(ed)~~ A directed trustee that has reasonable doubt about its duty under this section may
8 | satisfy that duty by timely petitioning the court for instructions or presenting the issue in a
9 | pending proceeding.

10 | ~~(de)~~ The terms of a trust may impose a duty or liability on a directed trustee in addition to
11 | the duties and liabilities ~~underprescribed by~~ this [act].

12 | **SECTION 9. DUTY TO PROVIDE INFORMATION TO TRUSTEE OR TRUST**
13 | **DIRECTOR.**

14 | (a) A directed trustee shall provide information to a trust director to the extent the
15 | information is reasonably related to the powers or duties of the trustee and the powers or duties
16 | of the director.

17 | (b) A trust director shall provide information to a trustee or another trust director to the
18 | extent the information is reasonably related to the powers or duties of the director and the powers
19 | or duties of the trustee or other director.

20 | _____ SECTION 10. NO ~~LIABILITY FOR FAILURE DUTY~~ TO MONITOR, INFORM,
21 | **OR ADVISE.** Unless the terms of a trust provide otherwise, a directed trustee:

1 | (1) ~~is~~does not ~~liable for~~have a ~~failure~~duty to monitor a trust director or inform or give
2 | advice to a settlor, beneficiary, trustee, or trust director about the director's exercise or
3 | nonexercise of the director's powers; and

4 | (2) does not ~~become liable for a failure~~assume the duty described in paragraph (1)
5 | because the directed trustee on another occasion monitors a trust director or informs or gives
6 | advice to a settlor, beneficiary, trustee, or trust director about a trust director's exercise or
7 | nonexercise of the director's powers.

8 | **SECTION 11. APPLICATION TO COTRUSTEE.** ~~The terms of a trust may provide~~
9 | ~~that a cotrustee is subject only to the duty and liability of a directed trustee under Sections 8, 9,~~
10 | ~~and 10 with respect to:~~ through 10 with respect to another trustee's power to administer the trust
11 | or direct the cotrustee in the administration of the trust, including in the investment,
12 | management, or distribution of the trust property.

13 | ~~(1) another trustee's power of direction to invest, manage, or distribute the trust property~~
14 | ~~or to direct the cotrustee in the cotrustee's or trust director's investment, management, or~~
15 | ~~distribution of the property; or~~

16 | ~~(2) another trustee's power of consent under which:~~
17 | ~~—— (A) the cotrustee must obtain the permission of the other trustee before exercising~~
18 | ~~a power of the cotrustee; or~~

19 | ~~—— (B) the other trustee may release the cotrustee from liability for an action~~
20 | ~~proposed or previously taken by the cotrustee.~~

21 | ~~—— (3) another trustee's power of protection to:~~

22 | ~~—— (A) amend or modify the terms of the trust or terminate the trust;~~

23 | ~~—— (B) change the principal place of administration, situs, or governing law of the~~

1 ~~trust;~~

2 ~~_____ (C) determine the capacity of the settlor, a trustee, a trust director, a beneficiary,~~

3 ~~or other party;~~

4 ~~_____ (D) appoint or remove a trustee or another trust director, or a successor to either;~~

5 ~~or~~

6 ~~_____ (E) prosecute, defend, or join an action, claim, or judicial proceeding relating to~~

7 ~~the trust.~~

8 **SECTION 12. LIMITATION OF ACTION AGAINST TRUST DIRECTOR.**

9 (a) An action against a trust director for breach of trust must be commenced within the
10 same limitations period as an action against a trustee for breach of trust- as prescribed by
11 Uniform Trust Code Section 1005].

12 (b) A report or accounting to a person of the conduct of a trust director has the same
13 effect on the limitations period for an action by the person against the director that the report or
14 accounting would have if the director were a trustee- as prescribed by Uniform Trust Code
15 Section 1005].

16 **SECTION 13. DEFENSES IN ACTION AGAINST TRUST DIRECTOR.** In an

17 action against a trust director for breach of trust, the director may assert the same defenses a
18 trustee could assert in an action against the trustee for breach of trust, ~~including:~~

19 ~~(1) laches or estoppel;~~

20 ~~(2) consent, release, or ratification;~~

21 ~~(3) reasonable reliance on the terms of the trust; and~~

22 ~~(4) reasonable care to ascertain the happening of a conditional event.~~

1 **SECTION 14. JURISDICTION OVER TRUST DIRECTOR.**

2 (a) By accepting appointment as trust director of a trust subject to this [act], the director
3 submits personally to the jurisdiction of the courts of this state regarding any matter related to a
4 power or duty of the director.

5 (b) This section does not preclude other methods of obtaining jurisdiction over a trust
6 director.

7 **SECTION 15. ~~OFFICE OF TRUST DIRECTOR.~~ The TRUST DIRECTORSHIP.**

8 ~~Unless the terms of a trust provide otherwise, the~~ rules applicable to a trusteeship regarding the
9 following matters apply to a trust directorship:

10 (1) acceptance; ~~[as prescribed by Uniform Trust Code Section 701];~~

11 (2) appointment; ~~[as prescribed by Uniform Trust Code Section 704];~~

12 (3) giving of bond to secure performance; ~~[as prescribed by Uniform Trust Code Section~~
13 ~~702];~~

14 (4) compensation; ~~[as prescribed by Uniform Trust Code Section 708];~~

15 (5) resignation; ~~[as prescribed by Uniform Trust Code Section 705];~~

16 (6) removal; ~~[as prescribed by Uniform Trust Code Section 706];~~ and

17 (7) vacancy; ~~[as prescribed by Uniform Trust Code Section 704].~~

18 **SECTION 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

21 **SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

22 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic

23 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not

1 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
2 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
3 Section 7003(b).

4 **SECTION 18. REPEALS; CONFORMING AMENDMENTS.**

5 (a)

6 (b)

7 (c)

8 SECTION 19. EFFECTIVE DATE. This [act] takes effect