

Appendix A

Divided Trusteeship Meeting –
Fall 2015

Non-Trustee Powers in State Statutes

Appointment and Removal

- “Remove, replace, or appoint a trustee, trust protector, or directing party or a successor trustee, trust protector, or directing party”¹
- “Select one or more investment advisors, managers or counselors, including the trustee, and delegate to them any of its powers”²
- “[S]elect and determine reasonable compensation of one or more advisors, managers, consultants, or counselors, including the trustee, and to delegate to them any of the powers of the investment trust advisor”³

Modification and Termination

- “[D]irect the modification or termination of the trust”⁴
- “[I]ncrease, decrease, or modify the interests of any beneficiary or beneficiaries of the trust”⁵
- “[M]odify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including, but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws”⁶
- “[M]odify the terms of any power of appointment granted by the trust. However, a modification or amendment may not grant a beneficial interest to any individual or class of individuals not specifically provided for under the trust instrument”⁷
- “Change the principal place of administration, the tax situs of the trust, or the governing law of the trust”⁸

¹ Wis. Stat. § 701.0818(2)(b)(2)(f); *see also* Alaska Stat. § 13.36.370(b)(1); 760 Ill. Comp. Stat. 5/16.3(d)(4), (7); S.D. Codified Laws § 55-1B-6(4), (8); Idaho Code Ann. § 15-7-501(6)(g); Ariz. Rev. Stat. Ann. § 14-10818(B)(1); Cal. Prob. Code § 16602(a)(3), (5) [proposed]; Miss. Code Ann. § 91-8-1201(a)(3), (6), (7); Mo. Rev. Stat. § 456.8-808(3)(1); Nev. Rev. Stat. § 163.5553(1)(e), (i); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(3), (6), (7); N.C. Gen. Stat. § 36C-8A-2(b)(2); Tenn. Code Ann. § 35-15-1201(a)(3), (6), (7); Wyo. Stat. Ann. § 4-10-710(a)(iii), (vi), (vii).

² Idaho Code Ann. § 15-7-501(10)(c); *see also* Md. Code Ann., Est. & Trusts §14.5-808(d)(3); Nev. Rev. Stat. § 163.5557(2)(c); S.D. Codified Laws § 55-1B-10(3); Miss. Code Ann. § 91-8-1201(a)(19); Tenn. Code Ann. § 35-15-1201(a)(20).

³ 760 Ill. Comp. Stat. 5/16.3(b)(3); *see also* Wis. Stat. § 701.0902(1)(c).

⁴ UTC § 808(c); *see also* Idaho Code Ann. § 15-7-501(6)(d); 760 Ill. Comp. Stat. 5/16.3(d)(5); Md. Code Ann., Est. & Trusts §14.5-808(e); Mich. Comp. Laws § 700.7809(6); N.H. Rev. Stat. Ann. § 564-B:8-808(c); S.D. Codified Laws § 55-1B-6(5); Tenn. Code Ann. § 35-15-808(c); Wis. Stat. § 701.0818(2)(b)(2)(g); Miss. Code Ann. § 91-8-1201(a)(14); Mo. Rev. Stat. § 456.8-808(3)(4); Nev. Rev. Stat. § 163.5553(1)(f); Tenn. Code Ann. § 35-15-1201(a)(15); Wyo. Stat. Ann. § 4-10-710(a)(xi).

⁵ 760 Ill. Comp. Stat. 5/16.3(d)(2); *see also* Alaska Stat. § 13.36.370(b)(3); Idaho Code Ann. § 15-7-501(6)(b); S.D. Codified Laws § 55-1B-6(2); Wis. Stat. § 701.0818(2)(b)(2)(d); Ariz. Rev. Stat. Ann. § 14-10818(B)(3); Cal. Prob. Code § 16602(a)(8) [proposed]; Miss. Code Ann. § 91-8-1201(a)(9); Mo. Rev. Stat. § 456.8-808(3)(3); Nev. Rev. Stat. § 163.5553(1)(c); N.C. Gen. Stat. § 36C-8A-2(b)(3); Tenn. Code Ann. § 35-15-1201(a)(9).

⁶ Miss. Code Ann. § 91-8-1201(a)(1); *see also* Cal. Prob. Code § 16602(a)(1) [proposed]; Wis. Stat. § 701.0818(2)(b)(2)(b); 760 Ill. Comp. Stat. 5/16.3(d)(1); Idaho Code Ann. § 15-7-501(6)(a); Alaska Stat. § 13.36.370(b)(2); S.D. Codified Laws § 55-1B-6(1); Ariz. Rev. Stat. Ann. § 14-10818(B)(2); Mo. Rev. Stat. § 456.8-808(3)(2)(a); Nev. Rev. Stat. § 163.5553(1)(a); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(1); N.C. Gen. Stat. § 36C-8A-2(b)(1)(a); Tenn. Code Ann. § 35-15-1201(a)(1); Wyo. Stat. Ann. § 4-10-710(a)(i).

⁷ Idaho Code Ann. § 15-7-501(6)(c); *see also* Alaska Stat. § 13.36.370(a)(4); 760 Ill. Comp. Stat. 5/16.3(d)(3); S.D. Codified Laws § 55-1B-6(3); Wis. Stat. § 701.0818(2)(b)(2)(e); Ariz. Rev. Stat. Ann. § 14-10818(B)(4); Nev. Rev. Stat. § 163.5553(1)(d); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(9); N.C. Gen. Stat. § 36C-8A-2(b)(4).

- “Modify or amend the trust instrument to respond to opportunities related to, or changes in, restraints on alienation or other state laws restricting the terms of a trust, the distribution of trust property, or the administration of the trust”⁹
- “Appoint assets to a new trust”¹⁰
- “Correct errors or ambiguities in the terms of the trust that might otherwise require court construction or defeat the settlor’s intent”¹¹
- “[E]lect for the trust to become a qualified spendthrift trust”¹²

Investment

- “Consent to or veto investment actions”¹³
- “[D]irect the acquisition, disposition, or retention of any trust investment”¹⁴
- “Vote proxies for securities held in trust”¹⁵
- “Direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the governing instrument”¹⁶
- “[D]etermine the frequency and methodology for valuing any asset for which there is no readily available market value”¹⁷
- “[B]orrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust”¹⁸
- “[M]ake loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances”¹⁹

⁸ Wis. Stat. § 701.0818(2)(b)(2)(c); *see also* 760 Ill. Comp. Stat. 5/16.3(d)(6); Idaho Code Ann. § 15-7-501(6)(f); S.D. Codified Laws § 55-1B-6(7); Ariz. Rev. Stat. Ann. § 14-10818(B)(5); Cal. Prob. Code § 16602(a)(4) [proposed]; Miss. Code Ann. § 91-8-1201(a)(5); Mo. Rev. Stat. § 456.8-808(3)(5); Nev. Rev. Stat. § 163.5553(1)(h); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(5); N.C. Gen. Stat. § 36C-8A-2(a)(3), (b)(5); Tenn. Code Ann. § 35-15-1201(a)(5); Wyo. Stat. Ann. § 4-10-710(a)(v).

⁹ Wis. Stat. § 701.0818(2)(b)(2)(a); *see also* 760 Ill. Comp. Stat. 5/16.3(d)(10); Idaho Code Ann. § 15-7-501(6)(j); S.D. Codified Laws § 55-1B-6(11); Cal. Prob. Code § 16602(a)(2) [proposed]; Miss. Code Ann. § 91-8-1201(a)(2); Mo. Rev. Stat. § 456.8-808(3)(2)(b); Nev. Rev. Stat. § 163.5553(1)(b); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(2); N.C. Gen. Stat. § 36C-8A-2(b)(1)(b); Tenn. Code Ann. § 35-15-1201(a)(2); Wyo. Stat. Ann. § 4-10-710(a)(ii).

¹⁰ Wis. Stat. § 701.0818(2)(b)(2)(h).

¹¹ Wis. Stat. § 701.0818(2)(b)(2)(j); *see also* Mo. Rev. Stat. § 456.8-808(3)(2)(c), (d)

¹² Wyo. Stat. Ann. § 4-10-710(a)(xii).

¹³ Wis. Stat. § 701.0818(2)(b)(1)(e); *see also* Cal. Prob. Code § 16602(a)(9) [proposed]; Miss. Code Ann. § 91-8-1201(a)(12); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(12); N.C. Gen. Stat. § 36C-8A-2(a)(1); Tenn. Code Ann. § 35-15-1201(a)(12); Wyo. Stat. Ann. § 4-10-712(a)(iii).

¹⁴ N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(13); *see also* 760 Ill. Comp. Stat. 5/16.3(b)(1); Md. Code Ann., Est. & Trusts §14.5-808(d)(1); Nev. Rev. Stat. § 163.5557(2)(a); Idaho Code Ann. § 15-7-501(10)(a); S.D. Codified Laws § 55-1B-10(1); Wis. Stat. § 701.0902(1)(a); Cal. Prob. Code § 16602(a)(10) [proposed]; Miss. Code Ann. § 91-8-1201(a)(13); Tenn. Code Ann. § 35-15-1201(a)(13); Wyo. Stat. Ann. § 4-10-712(a)(iv).

¹⁵ S.D. Codified Laws § 55-1B-10(2); *see also* 760 Ill. Comp. Stat. 5/16.3(b)(2); Md. Code Ann., Est. & Trusts §14.5-808(d)(2); Nev. Rev. Stat. § 163.5557(2)(b); Idaho Code Ann. § 15-7-501(10)(b); S.D. Codified Laws § 55-1B-10(2); Wis. Stat. § 701.0902(1)(b); Miss. Code Ann. § 91-8-1201(a)(18); Tenn. Code Ann. § 35-15-1201(a)(19).

¹⁶ S.D. Codified Laws § 55-1B-10(4); *see also* Miss. Code Ann. § 91-8-1201(a)(20); Tenn. Code Ann. § 35-15-1201(a)(21).

¹⁷ 760 Ill. Comp. Stat. 5/16.3(b)(4); *see also* S.D. Codified Laws § 55-1B-10(5); Wis. Stat. § 701.0902(1)(d).

¹⁸ Miss. Code Ann. § 91-8-1201(a)(16); *see also* Tenn. Code Ann. § 35-15-1201(a)(17).

¹⁹ Miss. Code Ann. § 91-8-1201(a)(17); *see also* Tenn. Code Ann. § 35-15-1201(a)(18).

Distributions

- “[V]eto or direct trust distributions”²⁰
- “[C]onsent to a trustee’s or cotrustee’s action or inaction in making distributions to beneficiaries”²¹

Other

- “Interpret or enforce the terms of the trust at the request of the trustee”²²
- “[A]dvise the trustee on matters concerning a beneficiary”²³
- “Provide direction regarding notification of qualified beneficiaries”²⁴
- “Review and approve the trustee’s reports or accounting”²⁵
- “Resolve disputes between the trustee or a directing party and a beneficiary”²⁶
- “[R]eceive any accountings that are required or permitted to be given to a beneficiary.”²⁷
- “[O]btain legal or other professional advice, at the trust’s expense, with respect to the exercise of the nontrustee fiduciary’s powers or the performance of the nontrustee fiduciary’s duties”²⁸
- “[R]eceive reasonable compensation or reimbursement or expenses, or both”²⁹
- “[P]erform a specific duty or function that would normally be required of a trustee or cotrustee”³⁰

²⁰ Idaho Code Ann. § 15-7-501(6)(e); *see also* 760 Ill. Comp. Stat. 5/16.3(c); Nev. Rev. Stat. § 163.5557(3); N.H. Rev. Stat. Ann. § 564-B:8-808(d); S.D. Codified Laws § 55-1B-6(6); Wis. Stat. § 701.0808(2); Idaho Code Ann. § 15-7-501(11); Wis. Stat. § 701.0818(2)(b)(1)(d); Cal. Prob. Code § 16602(a)(7) [proposed]; Colo. Rev. Stat. § 15-16-803(3)(c); Miss. Code Ann. § 91-8-1201(a)(15); Nev. Rev. Stat. § 163.5553(1)(g); N.C. Gen. Stat. § 36C-8A-2(a)(2); Tenn. Code Ann. § 35-15-1201(a)(16); Wyo. Stat. Ann. § 4-10-710(a)(x), 712(a)(v).

²¹ Miss. Code Ann. § 91-8-1201(a)(8); *see also* Cal. Prob. Code § 16602(a)(6) [proposed]; N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(8); Tenn. Code Ann. § 35-15-1201(a)(8).

²² Wis. Stat. § 701.0818(2)(b)(1)(a); *see also* Idaho Code Ann. § 15-7-501(6)(h); 760 Ill. Comp. Stat. 5/16.3(d)(8); S.D. Codified Laws § 55-1B-6(9); Nev. Rev. Stat. § 163.5553(1)(j); Wyo. Stat. Ann. § 4-10-710(a)(viii).

²³ Idaho Code Ann. § 15-7-501(6)(i); *see also* 760 Ill. Comp. Stat. 5/16.3(d)(9); S.D. Codified Laws § 55-1B-6(10); Wis. Stat. § 701.0818(2)(b)(2)(i); Miss. Code Ann. § 91-8-1201(a)(11); Nev. Rev. Stat. § 163.5553(1)(k); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(11); Tenn. Code Ann. § 35-15-1201(a)(11); Wyo. Stat. Ann. § 4-10-710(a)(ix), 712(a)(ii).

²⁴ S.D. Codified Laws § 55-1B-6(12).

²⁵ Wis. Stat. § 701.0818(2)(b)(1)(b); *see also* Miss. Code Ann. § 91-8-1201(a)(4); Nev. Rev. Stat. § 163.5553(1)(l); N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(4); Tenn. Code Ann. § 35-15-1201(a)(4); Wyo. Stat. Ann. § 4-10-710(a)(iv).

²⁶ Wis. Stat. § 701.0818(2)(b)(1)(c).

²⁷ Ind. Code § 30-4-3-9.3(2) [proposed].

²⁸ Ind. Code § 30-4-3-9.3(4) [proposed].

²⁹ Ind. Code § 30-4-3-9.3(5) [proposed].

³⁰ Miss. Code Ann. § 91-8-1201(a)(10); *see also* N.H. Rev. Stat. Ann. § 564-B:12-1201(a)(10); Tenn. Code Ann. § 35-15-1201(a)(10); Wyo. Stat. Ann. § 4-10-712(a)(i).