

DRAFT  
FOR DISCUSSION ONLY

# DIRECTED TRUST ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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~~MEETING IN ITS ONE HUNDRED AND TWENTY-FIFTH YEAR  
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October 28-29, 2016 Committee Meeting

# ~~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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# DIRECTED TRUST ACT

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1  
2 *The Directed Trust Act.* Under this act, a nontrustee who holds a fiduciary power over the  
3 administration of a trust is called a “trust director.” A trustee that is subject to a power of a trust  
4 director is called a “directed trustee.” The core contribution of the act is to address the many  
5 complications created by giving a power over the administration of a trust to a person who is not  
6 a trustee. These complications include the fiduciary duty of a trust director (Section 7) and the  
7 fiduciary duty of a directed trustee (Sections 8 and 10).

8  
9 *Enabling Settlor Autonomy Subject to Fiduciary Minimums.* By validating terms of a trust  
10 that provide for a trust director with a power over the administration of a trust, this act supports  
11 the settlor’s freedom of disposition. At the same time, the act provides for certain mandatory  
12 minimum fiduciary safeguards in accordance with the venerable principle that a trust is a  
13 fiduciary relationship.

14  
15 *Structure of the Act.* The heart of the act appears in Sections 5 through 10, which address  
16 the powers and duties of trust directors and directed trustees. Sections 5 through 7 address the  
17 kinds of powers that the terms of a trust can grant to a trust director and the fiduciary duty of the  
18 director. Sections 8 through 10 address the fiduciary duty of a directed trustee, prescribing the  
19 ways in which the existence of a trust director changes the trustee’s normal fiduciary duty.  
20 Section 11 addresses the relationship between a directed trust and cotrusteeship. The remaining  
21 sections address a variety of important technical issues in the administration of a directed trust  
22 and in this act’s relationship to existing law.

23  
24 *Key Policy Questions.* The key policy questions on which the drafting committee focused  
25 are: (1) the scope of the powers that may be granted to a trust director (Sections 5 and 6); (2) the  
26 fiduciary duties of a trust director (Section 7) and a directed trustee (Sections 8 and 10); and (3)  
27 the extension of the fiduciary rules of a directed trust to cotrusteeship (Section 11). With respect  
28 to the fiduciary duties of a directed trustee, as explained in the comment to Section 8, of the  
29 viable options from among the existing directed trust statutes , the drafting committee preferred  
30 the one that protects beneficiaries most strongly. [Further prefatory note to come/for  
31 discussion—e.g., “willful misconduct” as a net increase in duty relative to nondirected  
32 trust.] October 28-29, 2016 Committee Meeting

## 33 34 **DIRECTED TRUST ACT**

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

### 36 **Comment**

37 This act governs a set of trust arrangements that are commonly known as “directed  
38 trusts.” In rough terms, a directed trust is a trust in which a person other than a trustee holds a  
39 fiduciary power to direct some aspect of the trust’s ~~management or~~ administration. Under this  
40 act, the person who holds such a ~~powerholder~~ power is called a “trust director,” and a trustee that  
41 is subject to such a fiduciary ~~power of a trust director~~ is called a “directed trustee” (see Section  
42 2(2) and (6)). ~~In addition to covering a trust director, this~~ This act ~~also covers a variety of similar~~  
43 ~~actors who may be called by different names~~ any arrangement that exhibits the functional features

1 ~~of a directed trust, even if the terms of the trust use other terminology,~~ such as a “trust protector  
2 ~~and” or a “trust advisor, both of which are treated as “trust directors” under this act. Section 6~~  
3 ~~schedules the kinds of fiduciary powers that may be given to a trust director.”~~  
4

5 ~~The title of this act uses the term “Trust,” rather than “Trusteeship,” because the purpose~~  
6 ~~of this act is to address the complications created by giving a fiduciary power over a trust to a~~  
7 ~~person who is not a trustee, and so a title focused exclusively on trusteeship would be inaccurate.~~  
8 ~~The usage of the term “trust” is also consistent with other uniform trust laws, including the~~  
9 ~~Uniform Trust Code (2000) and the Uniform Trust Decanting Act (2015).~~  
10

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

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

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

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

18 ~~(4)~~ “(4) “Power of appointment” means a power given by the terms of a trust to a person  
19 that enables the person in a nonfiduciary capacity to designate a recipient of an ownership  
20 interest in or a power of appointment over the trust property.

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

24 ~~(56)~~ “Terms of a trust” means the manifestation of a settlor’s intent regarding a trust’s  
25 provisions:

26 (A) as expressed in the trust instrument;

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

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

2 [or]

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

4 ~~[(E) as determined or amended by nonjudicial settlement agreement under~~

5 [Uniform Trust Code Section 111]].

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

10 *Legislative Note:* A state that has adopted Uniform Trust Code ~~§ 102 [to come: guidance re~~  
11 ~~“breach of trust” and Section 103(18) (2004) or Uniform Trust Decanting Act Section 2(28)~~  
12 ~~(2015), defining “terms of a trust”],~~ should consider updating those definitions to conform  
13 with paragraph (6) of this section. A state that has not adopted Uniform Trust Code ~~§ Section 111~~  
14 ~~(2000) should replace the bracketed language of subparagraph 6(E) with a cross reference to~~  
15 ~~the state’s law governing nonjudicial settlement.~~ A state that has not authorized amendment by  
16 nonjudicial settlement agreement or should omit paragraph 5 subparagraph 6(E) as indicated  
17 by if the brackets: state does not have such a law.

## 18 Comment

19  
20 (1) Breach of trust. The definition of “breach of trust” in paragraph (1) ~~expands the~~  
21 ~~comparable definition in~~ clarifies that the term “includes” a breach by a trust director of a duty  
22 imposed by this act or the terms of a trust. Historically, the term has been used to reference a  
23 breach of duty by a trustee, as under Uniform Trust Code § 1001(a) (2000) to include a breach  
24 by a trust director, and Restatement (Third) of Trusts § 93 (2012). By ~~including within~~ expanding  
25 the meaning of the term ~~a violation to include a breach of duty~~ by a trust director ~~of a duty~~  
26 ~~imposed by this act or by the terms of a trust,~~ this ~~definition~~ paragraph resolves any doubt about  
27 whether such conduct is also a “breach of trust.” ~~Under traditional law, by contrast, the term~~  
28 ~~“breach of trust” referred to “a failure by the trustee to comply with any duty that the trustee~~  
29 ~~owes [ ] as trustee.” Restatement (Third) of Trusts § 93 (2012).~~

30  
31 (2) Directed trustee. The definition of “directed trustee” in paragraph (2) includes only a  
32 trustee that is subject to a trust director’s power of direction by a trust director under Section 6. A  
33 cotrustee that is subject to direction by another cotrustee is not for that reason a directed trustee,  
34 ~~because~~ as paragraph (67) excludes a trustee from the definition of a “trust director.”  
35 ~~Since~~ Because a ~~cotrustee~~ trustee cannot be a trust director, a trustee ~~who~~ that is subject to  
36 direction only by a cotrustee is not ~~“subject to a power of a trust director” within the meaning of a~~  
37 directed trustee under this ~~definition~~ paragraph. Section 11 addresses the relationship between

1 this act and cotrusteeship.

2  
3 (3) Person. The definition of “person” in paragraph (3) tracks the current Uniform Law  
4 Commission ~~boilerplate definition~~ for that term except that ~~it~~ paragraph (3) excludes an “estate”  
5 and a “trust.” The intention is to exclude, which has the effect of excluding an “estate” and a  
6 “trust” from being ~~named as~~ a trust director.

7  
8 (4) Power of appointment. The definition of “power of appointment” in paragraph (4) is  
9 based on the similar definition in Uniform Powers of Appointment Act § 102(13) (2013). The  
10 definition is consistent with what Restatement (Third) of Property: Wills and Other Donative  
11 Transfers § 17.1 cmt. g (2011), refers to as a “discretionary” power of appointment, that is, one  
12 in which “the donee may exercise the power arbitrarily as long as the exercise is within the scope  
13 of the power.”

14  
15 If a power to designate a recipient of an ownership interest in or a power of appointment  
16 over trust property is held in a fiduciary capacity, then it is not a “power of appointment” under  
17 this paragraph. Instead, it is what Restatement (Third) of Property: Wills and Other Donative  
18 Transfers § 17.1 cmt. g (2011), calls a “fiduciary distributive power.” In the hands of a person  
19 other than a trustee, a fiduciary distributive power would ordinarily be a power of direction under  
20 Section 6.

21  
22 Section 6(c)(2) prescribes a default rule of construction under which a power to designate  
23 a recipient of an ownership interest in or a power of appointment over trust property is a power  
24 of appointment (and so not held in a fiduciary capacity) unless the terms of the trust provide  
25 otherwise.

26  
27 (5) State. The definition of state in paragraph (4) follows the standard Uniform Law  
28 Commission ~~boilerplate definition~~.

29  
30 (6) Terms of a trust. The definition of “terms of a trust” in paragraph (5) ~~takes is based on~~  
31 ~~Uniform Trust Decanting Act § 2(28) (2015) as its starting point, but makes several~~  
32 ~~improvements. The Uniform Trust Decanting Act), which~~ updates the comparable definition in  
33 Uniform Trust Code § 103(18) (~~amended 2004~~), to take notice of court orders and nonjudicial  
34 settlement agreements, both of which are of growing practical significance. Paragraph (5) ~~further~~  
35 ~~expands~~ improves on the Uniform Trust Decanting Act by further expanding the definition to  
36 include amendments (in addition to determinations) by court order and nonjudicial settlement  
37 agreement and to include amendments by ~~trustees and a trustee or~~ trust ~~directors.~~

38  
39 director. The Restatement likewise recognizes the possibility that the terms of a trust may  
40 later be varied from the settlor’s initial expression, though it does not mention as many  
41 mechanisms for variance as paragraph (56). See Restatement (Third) of Trusts § 76 cmt. b(1)  
42 (2007) (“References ... to the terms of the trust ... also refer to trust terms as reformed or  
43 modified by court decree, and as modified by the settlor or others or by consent of all  
44 beneficiaries.”) (internal cross-references omitted).

45  
46 (7) Trust director. The definition of a “trust director” in paragraph (67) includes any

1 | person other than a trustee who is given a power of direction under Section 6. A person  
2 | ~~with granted~~ a power by the terms of a trust that is a power of direction under Section 6 is a trust  
3 | director even if the terms of the trust or the parties call the person an “adviser” or “protector” or  
4 | otherwise purport to disclaim trust director status- and even if the person is also a beneficiary.  
5 | However, because the term excludes a trustee, a trustee is not a trust director even if the trustee  
6 | has a power over another trustee that ~~falls~~would be a power of direction under Section 6- ~~Such if~~  
7 | held by a person other than a trustee. The power of such a trustee, and the cotrustee over which  
8 | the trustee has athe power, are ~~instead~~ governed by the otherwise applicable law of cotrusteeship  
9 | as modified by Section 11.

10 |  
11 | If a person other than a trustee has a power over a trust that is not ~~included in a power of~~  
12 | direction under Section 6, that person is not a trust director with respect to that power, and ~~the~~  
13 | ~~person’s exercise or nonexercise of~~ the power is not governed by this act.

14 |  
15 | **SECTION 3. APPLICATION; PRINCIPAL PLACE OF ADMINISTRATION.**

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

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

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

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

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

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

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

2 | **Legislative Note:** A state that has adopted Uniform Trust Code ~~§Section~~ 108(a) (2000) could  
3 omit subsection (b) and instead add subsection (b)(2) to Section 108 of the state’s Uniform Trust  
4 Code.

5 **Comment**

6  
7 | ~~Subsection (a)—This subsection prescribes.~~ Subsection (a) addresses two rules matters.  
8 First, because powers and duties in a directed trust are matters of trust administration, *see*  
9 Restatement (Second) of Conflict of Laws § 271 cmt. a (1971), this subsection follows the  
10 prevailing conflict of laws rule by linking application of this act to the trust’s principal place of  
11 administration. As with other matters of administration, the parties are protected against  
12 inconsistent court orders by the common law principle of “primary supervision.” *See id.*, § 267  
13 cmt. e.  
14

15 Second, this subsection applies this act to all trusts administered in an enacting state  
16 regardless of whether the trust was in existence on the effective date of this act, ~~but.~~ However,  
17 under subsections (a)(1) and (2), this act applies only with respect to conduct ~~occurring~~  
18 effective date or, if the trust’s principal place of administration was changed to the enacting state  
19 after the effective date, only with respect to conduct after that change. Because some of the  
20 standards of conduct prescribed by this act depart from Uniform Trust Code § 808 (2000) and the  
21 common law, *see* Restatement (Third) of Trusts § 75 (2007), the drafting committee reasoned  
22 that the act should apply prospectively, following the model of Uniform Prudent Investor Act §  
23 11 (1994).  
24

25 | ~~Subsection (b)—This subsection,~~ Subsection (b), which derives from Uniform Trust  
26 Code § 108(a) (2000), establishes a safe harbor for a settlor’s designation of a trust’s principal  
27 place of administration. Such a designation is valid if (1) a trustee is located in the designated  
28 jurisdiction, (2) a trust director is located in the designated jurisdiction, or (3) at least some of the  
29 trust administration occurs in the designated jurisdiction. Subsections (b)(1) and (b)(3) reproduce  
30 without change the safe harbor prescribed by Uniform Trust Code § 108(a) (2000). Subsection  
31 (b)(2) is an innovation in that it expands the safe harbor of Section 108(a) to include ~~also~~ the  
32 location of a trust director, in addition to the location of a trustee, as a sufficient connection with  
33 the designated jurisdiction. This expansion reflects this act’s validation of a directed trust with a  
34 trust director. Other than this expansion, the drafting committee followed the Uniform Trust  
35 Code in “not attempt[ing] to further define principal place of administration.” Uniform Trust  
36 Code § 108 cmt.

37 **SECTION 4. LAW AND PRINCIPLES OF EQUITY.** Unless displaced by a  
38 provision of this [act], the law and principles of equity of this state supplement this [act].

39 **Comment**

40 This section confirms that the law and principles of equity of an enacting state remain  
41 applicable to a directed trust except to the extent modified or displaced by this act. For example,

1 other than the safe harbor under Section 3(b) for a term of a trust that designates the trust’s  
2 principal place of administration, the law of an enacting state by which principal place of  
3 administration is determined would continue to apply to a directed trust. Provisions such as this  
4 one are familiar from other uniform acts. *See, e.g.*, Uniform Powers of Appointment Act § 104  
5 (2013); Uniform Trust Code § 106 (2000). This section departs from other uniform acts,  
6 however, by referencing “the law” rather than the “common law.” ~~In making this change, the~~  
7 ~~drafting committee intended to reference both common law and statute law, given~~ Given that so  
8 much ~~relevant background~~ trust law has ~~now~~ been codified by statutes such as the Uniform Trust  
9 Code (2000) ~~as well as the~~, Uniform Trust Decanting Act (2015), Uniform Principal and Income  
10 Act (1997), and Uniform Prudent Investor Act (1994). the drafting committee intended for this  
11 section to reference both common law and statute law.

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

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

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

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

16 (34) a power of a beneficiary with respect to a trust to the extent the exercise or

17 nonexercise of the power affects only the interest of the beneficiary or another beneficiary

18 represented by the beneficiary under [Uniform Trust Code Sections 301- through 305]; or

19 ~~(4)~~ Alternative A for Paragraph (5)

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

22 Alternative B for Paragraph (5)

23 (5) a power to substitute ~~in place of~~ trust property other property of equivalent value to  
24 the extent the power must be held in a nonfiduciary capacity to achieve the settlor’s federal tax  
25 objectives;

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

27 **Legislative Note:** A state that has not adopted Uniform Trust Code §§Sections 301-305 (2000)  
28 should replace the bracketed language with a cross reference to the state’s law governing virtual  
29 representation.

30 **Comment**

1 This section ~~prescribes~~excludes five categories of ~~exclusions from powers that the~~  
2 drafting committee concluded should not be covered by this act. ~~for reasons of policy, coverage~~  
3 by other law, or both. A power that falls within one of these exclusions is governed by law other  
4 than this act.

5  
6 ~~Nonfiduciary power~~ (1) Power of appointment. Paragraph (1) excludes a ~~nonfiduciary~~  
7 “power of appointment, that is, a discretionary,” which is defined by Section 2(4) to mean “a  
8 power given by the terms of a trust to a person other than a trustee that enables the person in a  
9 nonfiduciary capacity to designate a recipient of an ownership interest in or a power of  
10 appointment in which “the donee over the trust property.” A nonfiduciary power of appointment  
11 that may exercise the power be exercised arbitrarily as long as the exercise is within the scope of  
12 the power.” Restatement (Third) of Property: Wills and Other Donative Transfers § 17.1 cmt. g  
13 (2011). ~~A nonfiduciary or discretionary power of appointment is governed by other statutory~~  
14 ~~law, such as the Uniform Powers of Appointment Act (2013), and by extensive common law,~~  
15 ~~such as under Restatement (Third) of Property: Wills and Other Donative Transfers §§17.1-23.1~~  
16 ~~(2011). By contrast, a fiduciary distributive power in a person other than a trustee is a power of~~  
17 ~~direction under Section 6(b)(1), and the person holding the power is a trust director under~~  
18 ~~Section 2(6). Without the exclusion of this paragraph, Section 6(b)(1) could have been read to~~  
19 ~~transform all nonfiduciary or discretionary powers of appointment into fiduciary powers of a~~  
20 ~~trust director.~~

21  
22 ~~—~~ In consequence of this exclusion, the terms of a trust may grant to a person a  
23 nonfiduciary power over distribution of the trust property—that is, a power of appointment—  
24 without that person becoming a trust director subject to this act. Not every power of distribution  
25 is excluded, however. If the terms of a trust indicate that a power of distribution is held in a  
26 fiduciary capacity, then the power is not a power of appointment within the exclusion in this  
27 section. In the hands of a person other than a trustee, such a fiduciary distribution power would  
28 be a power of direction under Section 6.

29  
30 Section 6(c)(2) prescribes a default rule of construction under which a power to designate  
31 a recipient of an ownership interest in or a power of appointment over trust property is a power  
32 of appointment (and so not held in a fiduciary capacity) unless the terms of the trust provide  
33 otherwise.

34  
35 (2) Power to appoint or remove. Paragraph (2) excludes “a power to appoint or remove a  
36 trustee or trust director.” This exclusion is responsive to multiple suggestions to the drafting  
37 committee that such a power, in particular a power to remove a trustee and appoint a successor  
38 corporate trustee, is a normal and customary drafting practice that arose separately from the  
39 phenomenon of directed trusts. Under prevailing law, the only limit on the exercise of such a  
40 power is that it “must conform to any valid requirements or limitations imposed by the trust  
41 terms.” Restatement (Third) of Trusts § 37 cmt. c (2003). If the terms of the trust do not impose  
42 any requirements or limitations on the power to remove, then it may be exercised without cause.  
43 See Austin Wakeman Scott, William Franklin Fratcher & Mark L. Ascher, Scott and Ascher on  
44 Trusts § 11.10.2 (5th ed. 2006) (“If the terms of the trust confer the power of removal without  
45 any limitation, it is unnecessary for the holder to show cause.”).

1 | (3) Revocable trust. Paragraph (23) excludes a power of a settlor with respect to a  
2 | revocable trust. Because the settlor of a revocable trust may at any time revoke the trust and take  
3 | back the trust property, under modern law the trustee’s duties run to the settlor rather than to the  
4 | beneficiaries, *see* Uniform Trust Code § 603(a) (2004), and the trustee must “comply with a  
5 | direction of the settlor even though the direction is contrary to the terms of the trust or the  
6 | trustee’s normal fiduciary duties.” Restatement (Third) of Trusts § 74(1)(a)(i) (2007). Without  
7 | the exclusion of this paragraph, Section ~~6(b)(1) or (b)(3)(A)~~ could have been read to transform  
8 | all powers retained by a settlor in a revocable trust into fiduciary powers of a trust director. A  
9 | nonfiduciary power in a person other than the settlor to withdraw the trust property is a power of  
10 | appointment that would fall within paragraph (1) of this section.

11 |  
12 | (4) Power of a beneficiary. Paragraph (34) excludes a power of a beneficiary to the extent  
13 | that the exercise or nonexercise of the power affects only the interest of the beneficiary (or the  
14 | interest of another beneficiary who is represented by the beneficiary under applicable virtual  
15 | representation law). This exclusion follows traditional law, under which “[a] power that is for the  
16 | sole benefit of the person holding the power is not a fiduciary power.” Restatement (Third) of  
17 | Trusts § 75 cmt. d (2007). By contrast, if the exercise or nonexercise of a power held by a  
18 | beneficiary affects the interests of another beneficiary, and the power falls within the scope of  
19 | Section 6, then under this act the beneficiary is a trust director subject to the standards of conduct  
20 | prescribed by this act to the extent ~~that of~~ the effect on the other beneficiary’s ~~powers affect the~~  
21 | ~~other beneficiary interests.~~

22 | For example, a power in a beneficiary to release a trustee from a claim by the beneficiary  
23 | is excluded from this act. But a power in a beneficiary to release the trustee from a claim by  
24 | another beneficiary (other than by virtual representation) is a power of consent direction under  
25 | Section ~~6~~, (b), and the beneficiary would be a trust director under Section 2(67) to the extent the  
26 | beneficiary’s power to release the trustee affects the claims of the other beneficiary.

27 |  
28 | ~~Paragraph (4) excludes a power to substitute in place of trust property other property of~~  
29 | ~~equivalent value to the extent that the power must be held in a nonfiduciary capacity to achieve~~  
30 | ~~the settlor’s tax objectives. This paragraph is meant to preserve the viability of [insert]. Without~~  
31 | ~~this exception, [insert]. [Relevant tax law is IRC 675(4)(C), Treas. Reg. 1.675(b)(4), and~~  
32 | (5) Tax-related powers. [For discussion: (1) Choice of alternative A or B, and (2)  
33 | whether to include provisions guarding against powers with adverse tax consequences or  
34 | affecting charitable status or special needs trusts, as discussed in the accompanying memo.]

35 |  
36 | ~~Rev. Rul. 2008-22.]~~

37 |  
38 | ~~Paragraph (5) excludes a power with respect to a trust other than a power under Section~~  
39 | ~~6(b) (c). This exclusion confirms that the list of powers prescribed in Section 6(b) (c) is~~  
40 | ~~exclusive. This act does not affect the ability of a settlor to give a person other than a trustee a~~  
41 | ~~power affecting the management or administration of a trust other than those listed in Section~~  
42 | ~~6(b) (c) to the extent that the power is permissible under otherwise applicable law.~~

43 | **SECTION 6. POWERS OF TRUST DIRECTOR.**

44 | (a) A trust director has only those powers granted to the director by the terms of athe trust

1 ~~under this section.~~

2 ~~\_\_\_\_\_~~(b) The terms of a trust may grant a trust director:

3 ~~\_\_\_\_\_~~(1) a power of direction ~~to invest, manage, or distribute~~under which the director  
4 may administer the trust ~~property~~ or ~~to~~ direct a trustee or another trust director in the ~~trustee's or~~  
5 ~~director's~~ administration of the trust, including in the investment, management, or distribution of  
6 the trust property;

7 ~~\_\_\_\_\_~~(2) a power of consent under which:

8 ~~\_\_\_\_\_~~(A) a trustee or another trust director must obtain the permission of the  
9 ~~director before exercising a power of the trustee or other director; or~~

10 ~~\_\_\_\_\_~~(B) the director may release a trustee or another trust director from  
11 ~~liability for an action proposed or previously taken by the trustee or other director;~~

12 ~~\_\_\_\_\_~~(3) a power of protection to:

13 ~~\_\_\_\_\_~~(A) amend or modify the terms of the trust or terminate the trust;

14 ~~\_\_\_\_\_~~(B) ~~change the principal place of administration, situs, or governing law of~~  
15 ~~the trust; or~~

16 ~~\_\_\_\_\_~~(C) determine the capacity of the settlor or a trustee, trust director,  
17 beneficiary, or other party.

18 ~~\_\_\_\_\_~~(D) appoint or remove a trustee or another trust director, or a successor to  
19 ~~either; or~~

20 ~~\_\_\_\_\_~~(E) prosecute, defend, or join an action, claim, or judicial proceeding  
21 ~~relating to the trust.~~

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

23 (1) a trust director may exercise any further power appropriate to the exercise of

1 the director’s express powers under subsection (b);

2 ~~\_\_\_\_\_ (2) a power to designate a recipient of an ownership interest in or~~  
3 ~~a power of appointment over trust property is a power of appointment and not a power of~~  
4 ~~direction under subsection (b);~~

5 ~~\_\_\_\_\_ (3) the powers of a trust director are not affected by the incapacity or death of the~~  
6 settlor; and

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

8 **Legislative Note:** *A state that has adopted Uniform Probate Code § 2-907(c)(4) (1993) or*  
9 *Uniform Trust Code §§ 408(b) or 409(2) (2000) should revise those provisions to ~~add a cross-~~*  
10 *reference to subsection (b)(3)(E) of this section. [For discussion: should an enforcer under*  
11 *those sections be a “trust director” under this act?]*

### 12 13 Comment

14 *Validating a trust director.* This section validates a provision for a trust director in the  
15 terms of a trust. Although many states would allow a trust director without ~~specific~~ statutory  
16 authorization, ~~see this section resolves any doubt.~~ *See, e.g., In re Eleanor Pierce (Marshall*  
17 *Stevens Living Trust, 159 So. 3d 1101 (La. Ct. App. 2015) (upholding the appointment of a trust*  
18 *protector without specific statutory authorization), ~~this section resolves any doubt.~~* A specific  
19 trust director may be named by the terms of a trust, by the action of a trustee or another trust  
20 director acting in accordance with the terms of the trust, as in *Minassian v. Rachins, 152 So. 3d*  
21 *719 (Fla. Dist. Ct. App. 2014), or in accordance with Section 15(2).*

22  
23 *Background law on trust purposes.* Although this section ~~recognizes~~ validates terms of a  
24 trust that provide for a trust director, ~~this section~~ it does not override the background law that  
25 regulates the formation of trusts, such as the requirements that a trust be lawful, not contrary to  
26 public policy, and possible to achieve. *See* Uniform Trust Code § 404 (2000); Restatement  
27 (Third) of Trusts §§ 29-30 (2003).

28  
29 ~~*Exclusivity.* The list of powers that may be given to a trust director under this section is~~  
30 ~~exclusive. A person who holds a power that does not fall within this section is not a trust director~~  
31 ~~(see Section 2(6)). The validity, meaning, and effect of a power that does not fall within this~~  
32 ~~section is therefore governed by law other than this act. For example, a power to arbitrate a~~  
33 ~~dispute between or among trustees and beneficiaries is not included in this section. The holder of~~  
34 ~~such a power is thus not a trust director and the power is valid only to the extent authorized by~~  
35 ~~other law.~~

36  
37 ~~*Subsections (a) and (b).*~~ Subsection (a). Subsection (a) confirms that a trust director has  
38 only those powers expressly granted to the director by the terms of the trust. ~~Subsection (b)~~

1 ~~prescribes three categories of powers~~ This act does not provide any default powers to a trust  
2 ~~director. Nor does the act specify the scope or parameters of any power that the terms of a trust~~  
3 ~~might grant to a director. For a trust director to have any powers, the scope and content of those~~  
4 ~~powers must be prescribed by the terms of a trust.~~

5  
6 Subsection (b). By validating terms of a trust that authorize a trust director to  
7 “administer” the trust or direct a trustee in the “administration” of the trust, subsection (b)  
8 enables a broad array of director powers, including powers that go beyond those customarily  
9 held by a trustee. As used in this subsection, the term “administration” has a meaning at least as  
10 broad as it has in the context of determining a trust’s “principal place of administration,” such as  
11 under Section 3(b). For the avoidance of doubt, the last clause of subsection (b) confirms that the  
12 terms of a trust may grant to a trust director: (1) powers of direction, (2) powers of consent, and  
13 (3) powers of protection.

14  
15 ~~Subsection (b)(1)—power of direction. A power of direction~~ administration includes any power to  
16 “invest, manage, or distribute” trust property. ~~The trio of the kinds of investment, management,~~  
17 ~~and distribution, which is taken from powers that are customarily given to a trustee, such as~~  
18 ~~under Uniform Trust Code § 815(a)(2)(b) (2000), is meant to incorporate). The drafting~~  
19 ~~committee further intended the entire field of trustee term to include other powers. For example,~~  
20 ~~that might affect the administration of a trust, such as the power to modify a trust or to release a~~  
21 ~~trustee from liability.~~

22  
23 Capaciousness of subsection (b). Without limiting the set of powers enabled by  
24 subsection (b), the drafting committee specifically contemplated that the terms of a trust could  
25 create a power in a trust director to-:

- 26  
27 • direct a trustee in the investments, including a power to
- 28 ▪ acquire, dispose of, exchange, or retain any investment of some or all of
  - 29 the trust property would be a power of direction. A power to direct a
  - 30 trustee in the distribution of trust property would likewise be a power of
  - 31 direction. So too would be a power to direct the trustee to-;
  - 32 ▪ make or take loans; ~~to~~
  - 33 ▪ vote proxies for securities held in trust; ~~to~~
  - 34 ▪ adopt a particular valuation of trust property; ~~to~~ or determine the
  - 35 frequency or methodology of valuation; ~~to interpret the trust; to~~
  - 36 ▪ adjust between principal and income or convert to a unitrust; ~~or to decant~~
  - 37 the trust. In sum, as regards a directed trustee, the “power of direction”
  - 38 category encompasses any power in a trust director to direct the trustee in
  - 39 the trustee’s exercise of any of the trustee’s powers:
  - 40 ▪ manage a trust-owned business; or
  - 41 ▪ select custodians for trust assets;
- 42 • modify, reform, terminate, or decant a trust;
- 43 • direct a trustee’s or another director’s delegation of the trustee’s or other
- 44 director’s powers;
- 45 change the principal place of administration, situs, or governing law of the trust;
- 46 A power of direction can also take the form of a direct exercise of authority by a trust

1 director. The terms of a trust may, for example, give a trust director a power to sign subscription  
2 documents or to hold certain trust property. Such powers to act directly are powers of direction if  
3 they involve the investment, management, or distribution of trust property.  
4

5 *Nonfiduciary power of appointment.* Because Section 5(1) excludes a nonfiduciary power  
6 of appointment from this act, a settlor can give a nontrustee a nonfiduciary power over  
7 distribution of the trust property, which would be a power of appointment, without subjecting the  
8 power holder to this act. By contrast, if the settlor intends for the holder of the power to be  
9 subject to fiduciary duty, then the holder is a trust director and the power is a power of direction  
10 subject to this act.  
11

12 *Subsection (b)(2)—power of consent.* A power of consent can include two related but  
13 distinct kinds of powers. One is a power to grant or withhold permission before a trustee or other  
14 trust director may act. For example, a trustee could be required to obtain the consent of a trust  
15 director before selling certain trust property or before making a distribution. Any power held by  
16 a trustee or another trust director can be subjected to this kind of power of consent. The core  
17 distinction between this kind of a power of consent and a power of direction is that a power of  
18 consent contemplates initiative on the part of the party subject to the power, whereas a “power of  
19 direction” contemplates initiative on the part of the party holding the power.  
20

21 The other form of consent power is a power to release a trustee or other trust director  
22 from liability. Under this kind of power of consent, a trustee or trust director that is subject to the  
23 power may act without the director’s permission, but if the trustee or trust director receives  
24 permission, the trustee or director will be exonerated from liability for acting consistently with  
25 the permission.  
26

27 Both kinds of power of consent can be combined in the hands of a single trust director.  
28 For example, the terms of a trust may prohibit a trustee from acting without a director’s consent  
29 and may also release the trustee from liability if the trustee receives that consent. The precise  
30 scope and effect of a power of consent, such as whether it may be exercised prospectively or  
31 retrospectively, is a question of construction of the terms of the trust.  
32

- 33
- 34 • ascertain the happening of an event that affects the administration of the trust;
  - 35 • determine the capacity of a trustee, settlor, director, or beneficiary of the trust;
  - 36 • determine the compensation to be paid to a trustee or trust director;
  - 37 • prosecute, defend, or join an action, claim, or judicial proceeding relating to the  
38 trust;
  - 39 • grant permission before a trustee or another director may exercise a power of the  
40 trustee or other director; or
  - 41 • release a trustee or another trust director from liability for an action proposed or  
42 previously taken by the trustee or other director.

43 *Manner of direction.* Subsection (b) provides that a trust director may either “administer”  
44 a trust or “direct a trustee or another trust director in the administration of the trust.” The terms  
45 of a trust may thus allow a director to exercise its powers either independently or through  
46 directions given to a trustee. For example, in connection with a power to direct investments, the

1 terms of a trust might enable a trust director to enter into an investment subscription agreement  
2 by signing that agreement itself or by directing the trustee to sign the agreement. Note, however,  
3 that this act does not specify by default the manner in which a director may act. Whether a  
4 director may act independently or only by directing a trustee's actions is governed by the terms  
5 of the trust.

6  
7 *Exclusions.* Like the other provisions of this act, subsection (b) does not apply to matters  
8 that are excluded by Section 5. Thus, because Section 5(2) excludes a power “to appoint or  
9 remove a trustee or trust director,” subsection (b) does not include such a power as a power of  
10 direction within the meaning of this act. The validity and construction of such a power is  
11 governed by law other than this act.

12  
13 *Subsection (b)(3)—power of protection.* A “power of protection” category includes five  
14 specific kinds of powers. **[Placeholder pending further committee review of this list in light**  
15 **of questions about trustee removal and amendment/termination.]**

16 The language in subsection (b)(3)(E), which validates a power in a trust director to  
17 “prosecute, defend, or join an action, claim, or judicial proceeding,” is based on Uniform Trust  
18 Code § 816(24). Paragraph (E) thus enables a settlor to give a trust director a power of protection  
19 to litigate matters pertaining to the trust. Paragraph (E) would therefore ~~reverse the result in~~  
20 ~~*Schwartz v. Wellin*, No. 2:13-CV-3595-DCN, 2014 WL 1572767 (D.S.C. Apr. 17, 2014).~~ In that  
21 case, the court held that a trust director (i.e., the “trust protector”) lacked standing because Rule  
22 17(a)(1) of the Federal Rules of Civil Procedure does not include a trust director as a party who  
23 may bring litigation if not the “real party in interest.” However, Rule 17(a)(1) does allow “a  
24 party authorized by statute” to bring such litigation, and this subsection provides the requisite  
25 statutory authorization.

26  
27 *Pet and other noncharitable purpose trusts.* Most states have enacted statutes, often  
28 based on Uniform Probate Code § 2-907(c)(4) (1993) or Uniform Trust Code §§ 408(b) and  
29 409(2) (2000), that authorize a settlor or the court to name a person with standing to enforce a  
30 trust for a pet animal or other noncharitable purpose. Because the enforcement power of such a  
31 person falls under subsection (b)(3)(E), upon the effective date of this act the person would be a  
32 trust director subject to this act.

33  
34 *Subsection (c)*—~~This subsection prescribes three~~*c*). This subsection prescribes four  
35 default rules of construction that apply unless the terms of a trust provide otherwise. ~~These rules~~  
36 ~~concern (1) further appropriate powers, (2) settlor incapacity or death, and (3) joint powers.~~

37  
38 *Subsection (c)(1)—~~further~~*Further* appropriate powers.* Subsection (c)(1) prescribes a  
39 default rule under which a trust director may exercise any “further” power that is “appropriate”  
40 to the director’s exercise of the director’s express powers under the terms of the trust as  
41 authorized by subsection (b). The term “appropriate” is drawn from Uniform Trust Code §  
42 815(a)(2)(B) (2000). ~~The drafting committee intended that appropriateness~~  
43 ~~would~~*Appropriateness should* be judged in relation to the purpose or function being carried out  
44 by the director. Examples of further powers that might be appropriate include ~~power~~*a power* to:  
45 (1) incur reasonable costs and direct indemnification for those costs; (2) make a report or  
46 accounting to a beneficiary or other interested party; (3) direct a trustee to issue a certification of

1 trust under Uniform Trust Code § 1013 (2000); or (4) prosecute, defend, or join an action, claim,  
2 or judicial proceeding relating to ~~the~~ trust. In some circumstances, it ~~might~~may be appropriate  
3 for a trust director to delegate the director’s powers, much as it may sometimes ~~it is~~be prudent  
4 for a trustee to do so.

5  
6 Subsection (c)(1) would reverse the result in *Schwartz v. Wellin*, No. 2:13-CV-3595-  
7 DCN, 2014 WL 1572767 (D.S.C. Apr.

8 ~~The further powers granted to a trust director by subsection (c)(1) extend only as far as is~~  
9 ~~appropriate to the exercise of the director’s powers expressly granted by the terms of the trust~~  
10 ~~under subsection (b). Thus, for example, a trust director who under the terms of a trust has a~~  
11 ~~power to direct the trustee in the making of investments would also have a further power under~~  
12 ~~subsection (c)(1) to bring an action against the trustee to remedy the trustee’s failure to~~  
13 ~~implement such a direction. But such a director would not normally have a power under~~  
14 ~~subsection (c)(1) to sue the trustee for imprudence in the distribution of trust property.~~

15 17, 2014) if under the circumstances it would be “appropriate” for a trust director to  
16 prosecute, defend, or join an action, claim, or judicial proceeding pertaining to the trust. In  
17 *Wellin*, the court held that a trust director (which the terms of the trust referred to as a “trust  
18 protector”) lacked standing because under Rule 17(a)(1) of the Federal Rules of Civil Procedure  
19 it was neither a real party in interest nor a party who could pursue a claim if not a real party in  
20 interest. However, Rule 17(a)(1) does allow “a party authorized by statute” to bring such  
21 litigation, and subsection (c)(1) supplies the requisite statutory authorization if appropriate under  
22 the circumstances in light of the terms of the trust. Subsection (b) would also provide the  
23 requisite statutory authorization if the terms of the trust expressly confer a power of litigation on  
24 the director.

25  
26 *Rule of construction for powers of appointment.* Subsection (c)(2) prescribes a default  
27 rule of construction under which a power to designate a recipient of an ownership interest in or a  
28 power of appointment over trust property is a power of appointment unless the terms of the trust  
29 provide otherwise. Powers of appointment, the exercise of which are not subject to fiduciary duty  
30 but must be in accord with the terms of the power, are excluded from the scope of this act by  
31 Section 5(1).

### 32 Settlor

33  
34 ~~Subsection (c)(2) — settlor incapacity or death.~~ Subsection (c)(~~23~~) specifies a default rule  
35 ~~that under which~~ a trust director’s powers survive the incapacity or death of the settlor. Following  
36 the directed trust statutes in several states, including Nevada and South Dakota, see *Nev. Rev.*  
37 *Nevada N.R.S.Stat.* § 163.555, *South Dakota SDCL* (2015); *S.D. Codified Laws* § 55-1B-3;  
38 (2016), the drafting committee included this section to confirm that the common law rule of  
39 agency under which an agent’s authority terminates on the incapacity or death of the principal  
40 would not apply to a trust director. *See* Restatement (Third) of Agency §§ 3.07-3.08 (2006).

41  
42 *Majority decision.* Subsection (c)(~~2~~) — *majority decision.* Subsection (c)(~~24~~) provides a  
43 default rule of majority action for multiple trust directors with “joint powers,” such as ~~in the case~~  
44 ~~of~~ a three-person committee with a power of direction over investment or distribution. Majority  
45 rule action is the ~~modern prevailing~~ default for multiple trustees. *See* Uniform Trust Code § 703(a)  
46 (2000); Restatement (Third) of Trusts § 39 (2003). In the event of a deadlock among trust

1 directors with joint powers, by analogy to a deadlock among cotrustees, a court could “direct  
2 exercise of the [joint] power or take other action to break the deadlock.” Id. cmt. e. ~~The  
3 question of information sharing among trust directors with related but not “joint” powers, such as  
4 between a trust director with a power of direction over investment and a trust director with a  
5 power of direction over distribution, is addressed by Section 9. e.~~

## 7 SECTION 7. DUTY AND LIABILITY OF TRUST DIRECTOR.

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

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

12 and

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

15 ~~—— (b) Subject to subsection (c), with respect to a power of protection under Section 6(b)(3)  
16 or a further power under Section 6(c)(1) appropriate to the power of protection, the trust director:~~

17 ~~—— (1) must act in accord with the terms and purposes of the trust; and~~

18 ~~—— (2) is not liable for breach of trust unless the director’s exercise or nonexercise of  
19 the power was done in bad faith or with reckless indifference to the purposes of the trust or the  
20 interests of the beneficiaries.~~

21 ~~(eb)~~ Unless the terms of a trust provide otherwise, if a trust director is ~~a licensed medical~~  
22 ~~professional and, certified, or otherwise authorized or permitted by law to provide health care in~~  
23 ~~the ordinary course of the director’s business or practice of a profession, and the director~~ acts in  
24 ~~the director’s such a capacity as such~~, the director is not subject to ~~a~~ duty or liability under this  
25 [act].

26 ~~(dc)~~ The terms of a trust may impose a duty or liability on a trust director in addition to

1 the duties and liabilities under this [act].

## 2 Comment

3 ~~Subsection (a)—powers of direction and consent. For powers of direction and consent,~~  
4 ~~subsection). Subsection~~ (a) imposes the same ~~system of~~ fiduciary duties on a trust director that  
5 would ordinarily apply to a trustee. ~~Under subsection (a)(1), for example, a A trust~~ director with  
6 a power to make or direct investments-, ~~for example,~~ has the same duties ~~to act in the sole~~  
7 ~~interest of the beneficiary and to act prudently~~ that a trustee would have in making investments-  
8 ~~to act prudently, in the sole interest of the beneficiaries, and impartially with due regard for the~~  
9 ~~respective interests of the beneficiaries.~~ See, e.g., Restatement (Third) of Trusts §§ 77-~~78~~79, 90-  
10 ~~92~~ (2007). The theory behind subsection (a) is that ~~within the scope of if a trust director exercises~~  
11 a power ~~of direction, the director is the most appropriate person to bear the duty associated with~~  
12 ~~the exercise or consent, thenonexercise of that power. Put differently, in a directed trust, a trust~~  
13 director functions much like a trustee in a ~~trust that is not directed.~~ non-directed trust, and thus  
14 should have the same duties as a trustee.

15  
16 Accordingly, subsection (a)(1) sets the default duties of a trust director ~~with respect to a~~  
17 ~~power of direction or a power of consent~~ by absorbing the ~~default fiduciary law~~ duties that would  
18 ordinarily apply to a trustee, and subsection (a)(2) sets the mandatory minimum duties of such a  
19 director by absorbing the mandatory ~~fiduciary rules minimum~~ duties that a settlor cannot waive  
20 for a trustee. In ~~giving strong default~~ aligning the fiduciary duties ~~to of~~ a trust director with those  
21 of a trustee, subsection (a) follows the great majority of the existing state directed trust statutes.

22  
23 ~~[Placeholder for discussion about trustee’s general duties of loyalty and prudence,~~  
24 ~~and how those general duties can be applied to a variety of circumstances.]~~

25  
26 *Absorption of existing trust fiduciary law.* Subsection (a) operates by absorbing existing  
27 state law rather than ~~reinventing it for~~ by inventing a new body of law. Incorporating existing  
28 trust director. This absorption technique fiduciary law in this manner offers several advantages.  
29 First, it avoids the need to spell out the entirety of trust fiduciary law. That is, it avoids the need  
30 to replicate something like Article 8 of the Uniform Trust Code. Second, absorbing the trust  
31 fiduciary law of each enacting state accommodates diversity across the states in the particulars of  
32 a trustee’s default and mandatory fiduciary duties, such as the duties to diversify and to give  
33 information to beneficiaries, both of which have become increasingly differentiated across the  
34 states. Third, absorption allows for changes to the law of a trustee’s fiduciary duties to be  
35 absorbed automatically into the duties of a trust director without need for periodic conforming  
36 ~~revision~~ revisions to this act.

37  
38 *Absorption and circumstances of trust directors.* In applying the law of trustee fiduciary  
39 duties to a trust director, a court must make use of the flexibility built into trust fiduciary law.  
40 Courts have long applied the duties of loyalty and prudence across a wide array of  
41 circumstances, including many different kinds of trusts as well as other fiduciary relationships,  
42 such as corporations and agencies. Courts are thus capable of applying fiduciary duties in a  
43 manner that is sensitive to the wide variation that is possible across powers of direction. In  
44 assessing the actions of a director that holds a power to modify a trust, for example, a court

1 should apply the standards of loyalty and prudence in a manner that is appropriate to the  
2 particular context, including the trust’s terms and purposes and the director’s particular powers.  
3

4 *Springing powers without a duty to monitor.* The drafting committee contemplated that a  
5 settlor could construct a director’s power to be springing and without an ongoing obligation to  
6 monitor the administration of the trust. For example, a settlor could grant a trust director a power  
7 to direct a distribution, but only if requested to do so by a beneficiary. A director holding such a  
8 power would not be under a duty to act unless requested to do so by a beneficiary. Moreover,  
9 because under subsection (a)(2) a settlor can vary the fiduciary duties of a trust director to the  
10 same extent that the settlor could vary the fiduciary duties of a trustee, in the example just given  
11 under Uniform Trust Code § 105(b)(2) (amended 2004) the settlor could waive all of the  
12 director’s otherwise applicable duties other than the duty to act in good faith. In such a situation,  
13 the director would be subject to the minimum duty to act in good faith in the director’s response  
14 to the beneficiary’s request for a distribution.  
15

16 *Extended discretion and exculpation or exoneration.* Under the framework of subsection  
17 (a), the terms of a trust could give a trust director extended discretion, such as in the form of  
18 “sole,” “absolute,” or “uncontrolled” discretion, with the same effect as those terms would have  
19 on the discretion of a trustee. Under prevailing law, “words such as ‘absolute’ or ‘unlimited’ or  
20 ‘sole and uncontrolled’ are not interpreted literally. Even under the broadest grant of fiduciary  
21 discretion, a trustee must act honestly and in a state of mind contemplated by the settlor. Thus,  
22 the court will not permit the trustee to act in bad faith or for some purpose or motive other than  
23 to accomplish the purposes of the discretionary power.” Restatement (Third) of Trusts § 50 cmt.  
24 c (2003); *see also* Uniform Trust Code § 814(a) (amended 2004). Likewise, Under subsection  
25 (a)(2), the same rules would apply to a grant of a trust could give extended discretion to a  
26 trust director.  
27

28 A trust director is likewise subject to the protection of same rules as a trustee with regard  
29 to an exculpation or exoneration clause, but only to the extent that a trustee could likewise be  
30 exculpated or exonerated. Under prevailing law, such as under Uniform Trust Code § 1008  
31 (2000) and Restatement (Third) of Trusts § 96 (2012), an exculpation or exoneration clause  
32 cannot protect a trustee against liability for acting in bad faith or with reckless indifference.  
33 Under subsection (a)(2), the same rules would apply to an exculpation or exoneration clause for a  
34 trust director.  
35

36 *Subsection (b)—power of protection.* For a power of protection, subsection (b)  
37 distinguishes between a trust director’s duty in paragraph (1) and the threshold for the trust  
38 director’s liability in paragraph (2). Subsection (b)(1) imposes a duty on a trust director to “act in  
39 accord with the terms and purposes of the trust.” [To come: discussion of the drafting  
40 committee’s reasoning, and the problem of “latent” powers, subject to the drafting  
41 committee’s further deliberations at the next drafting session in light of questions in  
42 particular about powers to amend or terminate the trust and to replace the trustee.]  
43

44 Subsection (b)(2) prescribes a threshold for liability of “bad faith” or “reckless  
45 indifference,” which is consistent with the maximum exoneration allowed by Uniform Trust  
46 Code § 1008(a)(1) (2000). See also Restatement (Third) of Trusts § 96 cmt. c (2012) (“[A]n

1 ~~exculpatory clause cannot excuse a trustee for a breach of trust committed in bad faith. Nor can~~  
2 ~~the trustee be excused for a breach committed with indifference to the interests of the~~  
3 ~~beneficiaries or to the terms and purposes of the trust—that is, committed without reasonable~~  
4 ~~effort to understand and conform to applicable fiduciary duties.”).~~

5  
6 The distinction between a trust director’s duty and its threshold for liability is  
7 meaningful, because it preserves equitable remedies in a situation in which a trust director has  
8 breached its duty but failed to cross the threshold for liability. If a trust director acts in a manner  
9 that is inconsistent with the terms and purposes of the trust, but not in bad faith, injunctive relief  
10 might be appropriate, even if damages are not available. Section 15(6) absorbs the law governing  
11 trustee removal for removal of a trust director. And nothing in this section limits the inherent  
12 power of the court to issue an order enjoining a trust fiduciary, such as a trust director, “to take  
13 or refrain from taking certain action(s) or otherwise to avoid committing a breach of trust” or  
14 other appropriate injunctive relief. Restatement (Third) of Trusts § 95 cmt. c (2012); *see also*  
15 Uniform Trust Code § 1001 (2000).

16 ~~–health-care~~

17 ~~Subsection (e)—licensed medical professionals.~~ Subsection (e) prescribes a default rule that  
18 ~~exempts~~ refers to a trust director who is ~~a licensed medical professional~~ “licensed, certified, or  
19 otherwise authorized or permitted by law to provide health care in the ordinary course of the  
20 director’s business or practice of a profession.” This phrasing is based on the definition of  
21 “health-care provider” in Uniform Health-Care Decisions Act § 1(8) (1993). To the extent that a  
22 trust director acts in the director’s business or practice of a profession to provide health care, the  
23 director is relieved from duty or liability under this act ~~to~~ unless the ~~extent~~ terms of the ~~director~~  
24 ~~acts in~~ trust provide otherwise.

25 The rule of this subsection, which applies unless the ~~director’s~~ medical capacity. The  
26 ~~provision is responsive to~~ terms of the trust provide otherwise, addresses the concern that a  
27 ~~medical~~ health-care professional might refuse ~~to accept~~ appointment as a trust director if ~~doing~~  
28 ~~such service~~ would expose the ~~professional~~ provider to fiduciary duty under this act ~~in addition~~  
29 ~~to the other regulations and professional rules ordinarily applicable to such a professional.~~ For  
30 example, a trust might call for a ~~licensed medical~~ health-care professional to determine a  
31 ~~beneficiary’s~~ the capacity or sobriety ~~or in a revocable trust to determine of a beneficiary or~~ the  
32 capacity of the settlor. In making such a determination, ~~the medical~~ under subsection (b) the  
33 health-care professional would not be subject to ~~the usual regulations applicable to the~~  
34 ~~professional, but not to~~ duty or liability under this act. ~~Furthermore, this section only excludes~~  
35 ~~the licensed medical professional from duty and liability. It does not exclude the licensed~~  
36 ~~medical professional from the other provisions of the act, such as the provisions in Section 15~~  
37 ~~that provide helpful clarity on mechanical issues such as acceptance, resignation, and vacancy.~~  
38 instead the professional would be subject to the rules and regulations otherwise applicable to the  
39 professional.

40  
41 *Subsection (dc)—no ceiling on duties.* Subsection (~~dc~~) confirms that the duties prescribed  
42 by this section are defaults and minimums, not ceilings. The terms of a trust can impose further  
43 duties in addition to those prescribed by this section.  
44

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 | **Legislative Note:** A state that has adopted Uniform Trust Code ~~§Section~~ 808 [~~to come: guidance~~  
13 | ~~re pointer to this act and changes to~~ For discussion: what recommendation should we make  
14 | about revision or repeal of UTC Section 808-1-?].

15 | **Comment**

16 | ~~——Duties of a directed trustee.~~ This section addresses the ~~fundamental question of~~  
17 | ~~the~~ duties of a directed trustee. It should be read in conjunction with Section 9, which governs  
18 | information sharing among directed trustees and trust directors, and Section 10, which provides  
19 | that a directed trustee has no duty to monitor ~~or advise~~ a trust director or inform or give advice to  
20 | ~~warn or advise~~ a settlor, beneficiary, trustee, or trust director about the director’s exercise or  
21 | nonexercise of the director’s powers.

22 |  
23 | Subsection (conducta)—duty of a trust director obedience. Subsection (a) requires a  
24 | directed trustee to obey the terms of a power of direction. The ~~sharing of information among~~  
25 | ~~directed trustees and trust directors is governed by Section 13.~~ “terms of a power of direction”  
26 | may impose a variety of demands on a directed trustee. The terms of a trust may require a trustee  
27 | to follow the express directions of a trust director, such as if the terms of the trust allow the  
28 | director to direct the trustee to invest trust assets in a particular security. The terms of a trust may  
29 | require a trustee to request permission from a director before acting or to refrain from acting if  
30 | the director so directs. The terms of a trust may also allow a director to modify the trust or to  
31 | impose particular administrative procedures. The duty imposed by subsection (a) requires a  
32 | trustee to comply with any such terms in a power of direction, subject to the limitation in  
33 | subsection (b).

34 |

1 ~~Traditional law. [To come: Discussion of traditional law, including Uniform Trust~~  
2 ~~Code § 808 (2000) and Restatement (Third) of Trusts § 75 (2007).] [See the accompanying~~  
3 ~~2016 Annual Meeting memo.]~~

4  
5 ~~The specialized modern legislation. [To come: Discussion of the two kinds of~~  
6 ~~specialized legislation, and the policy arguments for each.]~~

7  
8 ~~This act willful misconduct. [To come: Discussion of the decision of the drafting~~  
9 ~~committee to follow the states that preserve some fiduciary duty, employing the common~~  
10 ~~“willful misconduct” standard to that end.]~~

11  
12 ~~Subsection (a)—compliance with direction or protection. Paragraph (1) of this subsection~~  
13 ~~imposes on a directed trustee a duty to comply with a trust director’s exercise of a power of~~  
14 ~~direction or protection. For example, a directed trustee must take steps reasonably necessary to~~  
15 ~~implement the director’s exercise of the director’s power. Paragraph (2) imposes a similar duty~~  
16 ~~not to act in the absence of the director’s exercise of the director’s power if the terms of the trust~~  
17 ~~so require. The duties of compliance prescribed by paragraphs (1) and (2) are qualified by~~  
18 ~~paragraph (3), which imposes a duty on a directed trustee not to comply with a trust director’s~~  
19 ~~exercise~~The terms of a power of direction or protection, or a term of the trust that provides that  
20 ~~the trustee may not act in the absence of the director’s exercise of such a power, to the extent that~~  
21 ~~by complying the trustee would engage in willful misconduct.~~

22  
23 ~~\_\_\_\_\_ . The reference in to “the first clause~~terms of this subsection to “a matter for  
24 ~~which a directed trustee is subject to a power of direction under Section 6(b)(1) or a power of~~  
25 ~~protection under Section 6(b)(3)”~~” limits a directed trustee’s duty to comply to  
26 ~~circumstances in~~which a direction ~~that~~ is within the trust director’s power of direction or protection. It follows,  
27 ~~therefore, that a. A trustee should not comply with an action of a direction by~~ a trustee should not comply with an action of a direction by  
28 ~~is outside of the director’s power of direction or protection. To do so would violate the trustee’s~~  
29 ~~duty to comply with the terms of the power of direction and the trustee’s broader~~ background  
30 ~~duty of a trustee to act in accordance with the terms of thea trust. See, e.g., Uniform Trust Code §~~  
31 ~~105(b)(2) (amended 2005) (making mandatory “the duty of a trustee to act ... in accordance with~~  
32 ~~terms ... of the trust”); Restatement (Third) of Trusts § 76 (2007) (“The trustee has a duty to~~  
33 ~~administer the trust ... in accordance with the terms of the trust.”). For example, a direction~~  
34 ~~rendered in a form contrary to that required by the terms of the trust, such as an oral direction if~~  
35 ~~the terms of the trust require a writing, is not within the trust director’s power of direction.~~

36  
37 Duty to take “reasonable action.” Subsection (a) requires that a trustee take “reasonable  
38 action” in complying with the terms of a power of direction. If a trust director with a power to  
39 direct investments directs the trustee to purchase a particular security, for example, the trustee  
40 must take reasonable care and must refrain from self-dealing and conflicts of interest in selecting  
41 a broker or executing the trade. The duty to act reasonably in complying with the terms of a  
42 power of direction does not, however, impose a duty to ensure that the substance of a direction is  
43 reasonable. Although a trustee must take reasonable care in executing a direction to purchase a  
44 security, for example, the trustee is not required to assess whether the purchase of that security  
45 would be prudent in relation to the trust’s investment portfolio.

46 ~~Subsection (b)—effect of power of consent. Paragraph (1) of this willful misconduct.~~

1 Subsection (b) provides an exception to the duty of obedience prescribed by subsection (a). Under subsection (b), a trustee must not comply with the terms of a power of direction to the extent that by complying the trustee would engage in “willful misconduct.”  
2 The drafting committee settled upon the term willful misconduct after a review of the existing  
3 specialized directed trust statutes.  
4  
5  
6

7 Roughly speaking, the existing directed trust statutes fall into two groups. In one group,  
8 which constitutes a majority, are the statutes that fully relieve a directed trustee from duty or  
9 liability for complying with an action of a trust director. This group includes the statutes in  
10 Alaska, New Hampshire, Nevada, and South Dakota. The policy rationale for these statutes is  
11 that duty should follow power. A director who possesses a power of direction should be the  
12 exclusive bearer of fiduciary duty in the exercise or nonexercise of that power. Moreover, the  
13 settlor of a directed trust could have made the trust director the sole trustee instead. Thus, on  
14 greater-includes-the-lesser reasoning, the settlor should also be able to eliminate a directed  
15 trustee’s duty and liability for complying with an action of a trust director. Under these statutes, a  
16 beneficiary’s only recourse for misconduct by the trust director is an action against the director  
17 for breach of the director’s fiduciary duty to the beneficiary.

18 In the other group, which includes Delaware, Illinois, Colorado, North Carolina, and  
19 Virginia, are the statutes under which the directed trustee is not permitted to act without the  
20 permission of the trust director. Paragraph (1) provides that a directed trustee is not liable for  
21 complying with a direction of a trust director, unless by so doing the directed trustee would  
22 personally engage in “willful” or “intentional” misconduct. The policy rationale for these statutes  
23 is that, because a trustee stands at the center of a trust, the trustee must bear at least some duty  
24 even if the trustee is directed. Although the settlor could have made the trust director the sole  
25 trustee, the settlor did not actually do so—and under traditional understandings of trust law, a  
26 trustee must always be accountable to a beneficiary in some way. See, e.g., Restatement (Third)  
27 of Trusts § 96 cmt. c (2012) (“Notwithstanding the breadth of language in a trust provision  
28 relieving a trustee from liability for breach of trust, for reasons of policy trust fiduciary law  
29 imposes limitations on the types and degree of misconduct for which the trustee can be excused  
30 from liability.”).

31  
32 The states in the second group also recognize, however, that to facilitate the settlor’s  
33 intent that the trust director rather than the directed trustee be the primary decisionmaker, it is  
34 appropriate to reduce the trustee’s duty and liability below the usual level with respect to a  
35 matter subject to a power of direction. Accordingly, under these statutes a beneficiary’s main  
36 recourse for misconduct by the trust director is an action against the director for breach of the  
37 director’s fiduciary duty to the beneficiary. The beneficiary also has recourse against the trustee,  
38 but only if the trustee’s compliance with the terms of the power of direction amounted to “willful  
39 misconduct” by the trustee. Relative to a non-directed trust, this second approach has the effect  
40 of increasing the total fiduciary duties owed to a beneficiary. All of the usual duties of  
41 trusteeship are preserved in the trust director, and in addition the directed trustee also has a duty  
42 to avoid willful misconduct.

43  
44 After extensive deliberation and debate, the drafting committee opted to follow the  
45 second group of statutes, which includes the prominent Delaware act, on the grounds that this  
46 model does more to protect a beneficiary and is more consistent with traditional fiduciary policy.

1 even while remaining viable and popular, as evidenced by the large number of directed trusts in  
2 Delaware. To put the point otherwise, the popularity of directed trusts in Delaware establishes  
3 that a directed trust regime that preserves a “willful misconduct” safeguard is workable and that  
4 a total elimination of duty in a directed trustee is unnecessary.

5  
6 The willful misconduct standard prescribed by this subsection changes the policy of  
7 Uniform Trust Code § 808 (2000), which provides the current uniform law treatment of directed  
8 trusts and is similar in substance to Restatement (Third) of Trusts § 75 (2007). Section 808(b)  
9 provides: “If the terms of a trust confer upon a person other than the settlor of a revocable trust  
10 power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise  
11 of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the  
12 trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that  
13 the person holding the power owes to the beneficiaries of the trust.” In deciding to change this  
14 standard, the drafting committee was deeply influenced by the fact that a growing number of  
15 states that had previously adopted Section 808 have since abandoned it or modified it to follow  
16 one of the two other models discussed above. The drafting committee was also strongly  
17 influenced by the fact that a review of every existing specialized state statute on directed trusts  
18 showed that no state that has legislated specifically on the issue of directed trustee fiduciary  
19 duties has chosen to follow Section 808.

20 The willful misconduct standard in subsection (b) is to be distinguished from the duty to  
21 take reasonable action in subsection (a). The reasonability standard of subsection (a) applies to  
22 the manner in which a trustee complies with a power of direction. The willful misconduct  
23 standard of subsection (b) applies to the decision of whether to comply with a power of direction.  
24

25 *Subsection (c)—release by trust director.* Subsection (c) provides additional substantive  
26 and procedural safeguards for a release by a trust director of a trustee from liability. Under  
27 Section 6, the terms of a trust may empower a trust director to release a trustee or another trust  
28 director from liability for breach of trust. If the director grants such a release, the trustee or other  
29 director is not liable to the extent of the release. The terms of a trust may enable such a release to  
30 be given at any time, whether before or after the trustee or other director acts reasonably in  
31 proposing an action but the director does not grant permission, the trustee is liable only for.  
32

33 This subsection imposes certain substantive and procedural limitations on a release by a  
34 trust director. First, consistent with the policy of subsection (b) as described above, a trustee  
35 cannot be released for a breach that involves the trustee’s own willful misconduct. ~~In~~  
36 ~~undertaking to obtain the director’s permission, however, the trustee is subject to the normal~~  
37 ~~duties of trusteeship applicable under the terms of the trust and the enacting state’s law. Second,~~  
38 consistent with prevailing law governing a release of a trustee by a beneficiary, *see, e.g.*,  
39 Uniform Trust Code § 1009 (amended 2001); Restatement (Third) of Trusts § 97 (2012), a  
40 release by a trust director is not enforceable if it was induced by improper conduct of the trustee  
41 or if at the time of the release the director did not know of the material facts relating to the  
42 breach.

43  
44 Paragraph (2) provides that a trustee is not liable for breach of trust if in accordance with  
45 the terms of the trust a trust director approved or ratified the conduct constituting the breach.  
46 Such an approval or ratification is only permissible, however, if the conduct constituting the

1 ~~breach does not involve willful misconduct (paragraph (2)(A)), and if the director’s release was~~  
2 ~~not induced by improper conduct of the trustee and the director knew of the material facts~~  
3 ~~relating to the breach (paragraph(2)(B)–(C)). These limits on release are drawn from Uniform~~  
4 ~~Trust Code § 1009 (2000) and are similar in substance to those stated in Restatement (Third) of~~  
5 ~~Trusts § 97 (2012).~~

6  
7 **[To discuss: (1) release can also be of another trust director but with the same**  
8 **“willful misconduct” substantive safeguard; (2) the interaction of this section with the**  
9 **exclusion in Section 5(4) as regards a release by a beneficiary that affects the interest of**  
10 **another beneficiary. Per the comment to Section 5(4), a power in a beneficiary to release a**  
11 **trustee from a claim by the beneficiary is excluded from this act. But a power in a**  
12 **beneficiary to release the trustee from a claim by another beneficiary (other than by virtual**  
13 **representation) is a power of direction under Section 6(b), and the beneficiary would be a**  
14 **trust director under Section 2(7), subject to fiduciary duty under this Section 8, to the**  
15 **extent the beneficiary’s power to release the trustee affects the claims of the other**  
16 **beneficiary. This act would therefore reverse the result in *Vena v. Vena*, 899 N.E.2d 522 (Ill.**  
17 **App. 2008), which we should discuss.]**

18  
19 *Subsection (ed)—petition for instructions.* Subsection (ed) provides that a directed trustee  
20 may satisfy its duty under this section by petitioning for instructions. The specific language of  
21 this subsection parallels Restatement (Third) of Trusts § 71 (2007) (“A trustee or beneficiary  
22 may apply to an appropriate court for instructions regarding the administration or distribution of  
23 the trust if there is reasonable doubt about the powers or duties of the trusteeship or about the  
24 proper interpretation of the trust provisions.”). The safe harbor of this subsection is bounded by  
25 two limits. ~~First,~~ a trustee must have “reasonable doubt” about its duty ~~under this section.~~  
26 ~~Second, a, and the~~ trustee’s petition for instructions must be “timely.”

27  
28 The safe harbor of this subsection is permissive, rather than mandatory. ~~This subsection~~  
29 ~~confirms that a~~ trustee may satisfy its duties by petitioning for instructions. ~~It~~ ~~But this~~  
30 ~~subsection~~ does not, by itself, require a trustee to bring such a petition.

31  
32 **[To discuss: Question from the floor about affiliates.]**

33  
34 *Subsection (d)—no ceiling on duties.* Subsection (d) confirms that the duties prescribed  
35 by this section are merely defaults and minimums, not ceilings. The terms of a trust can impose  
36 further duties in addition to those prescribed by this section.

37  
38 **SECTION 9. DUTY TO PROVIDE INFORMATION TO TRUSTEE OR TRUST**  
39 **DIRECTOR.**

40 (a) A directed trustee shall provide information to a trust director to the extent the  
41 information is reasonably related to the powers or duties of the trustee and the powers or duties  
42 of the director.

1 (b) A trust director shall provide information to a trustee or another trust director to the  
2 extent the information is reasonably related to the powers or duties of the director and the powers  
3 or duties of the trustee or other director.

#### 4 **Comment**

5  
6 *Duty to provide information.* This section imposes a duty on a directed ~~trustee~~trustee and  
7 trust ~~directors~~director to provide information to each other. Subsection (a) imposes this duty on a  
8 directed trustee, and subsection (b) imposes this duty on a trust director.

9  
10 *Reasonableness.* This section relies heavily on the concept of reasonableness.  
11 Information must be disclosed only if it is reasonably related both to the powers or duties of the  
12 person making the disclosure and to the powers or duties of the person receiving the disclosure.  
13 The information must be reasonably related to the powers or duties of the person making the  
14 disclosure, because otherwise that person cannot be expected to ~~have access to and control~~  
15 ~~over~~possess the information. The information must also be reasonably related to the powers or  
16 duties of the person receiving the disclosure, because otherwise ~~the~~that person would not need  
17 the information. Examples of matters that might require disclosure under this section include  
18 modifications to the terms of a trust, changes to investment policy or strategy ~~of the trust,~~  
19 distributions ~~of trust property,~~ changes in accounting procedure or valuations, and removal or  
20 appointment of trustees ~~or~~and trust directors.

21  
22 *An affirmative and a responsive duty to inform.* This section imposes ~~both~~ an affirmative  
23 duty to provide information even in the absence of a request for that information and a  
24 responsive duty to inform. ~~In other words, it imposes a duty both to provide information~~  
25 ~~independently and to~~ reply to requests for information. For example, if a trust director exercises a  
26 power ~~of protection to~~ amendmodify the terms of ~~the~~a trust, the director would have an  
27 affirmative duty to inform the trustees and other trust directors whose powers or duties are  
28 reasonably related to the amendment, whether or not the trustees or other trust directors inquired  
29 about ~~the amendment~~it. Similarly, the director would have a responsive duty to provide  
30 information about the amendment upon a request by a trustee or another trust director whose  
31 powers or duties were reasonably related to the amendment.

32  
33 *Shelton v. Tamposi.* In *Shelton v. Tamposi*, 62 A.3d 741 (N.H. 2013), the terms of the  
34 trust left distribution in the hands of the trustee, but shifted power over investment to a trust  
35 director (~~i.e.,~~ the “investment director”). In consequence, the trustee could not raise the cash  
36 necessary to fund a distribution to one of the beneficiaries. Under ~~the terms of~~ this section, the  
37 trust director would have been under a duty to give the trustee information about the liquidity  
38 effects of the director’s investment program on the trust’s cash position, and the trustee would  
39 have been under a duty to give the director information about the liquidity needscash  
40 requirements of the trustee’s distribution program. Moreover, in making and implementing the  
41 investment program, under Section 7(a) the trust director would be subject to the same duties as  
42 a similarly situated trustee, in parallel to the trustee’s duties in making and implementing the  
43 distribution program.

1  
2        *Interaction with Section 10.* Section 10 provides that a directed trustee does not have a  
3 duty to monitor, inform, or advise other parties about the actions of a trust director. Section 10  
4 does not, however, eliminate the trustee’s duty to provide information related to ~~the trustee’s~~  
5 own powers and duties. This section, which requires a directed trustee to provide information  
6 “reasonably related to the powers or duties of the trustee” is therefore not inconsistent with  
7 Section 10.

8  
9        ~~*Interaction with Section 11.* Section 11 authorizes a settlor to subject cotrustees to the  
10 more narrow disclosure rules of this section, conditioning each cotrustee’s access to information  
11 on a reasonable relation to the cotrustee’s powers or duties, instead of the broader information  
12 rights under the common law, as under Restatement (Third) of Trusts § 81 ~~cmf. b~~ (2007)  
13 (“Furthermore, absent clear provision in the trust to the contrary, even in the absence of any duty  
14 to intervene or grounds for suspicion, a trustee is entitled to request and receive reasonable  
15 information regarding an aspect of trust administration in which the trustee is not required to  
16 participate.”).~~

17  
18        *Disclosure to beneficiaries.* This section governs disclosure of information to trustees and  
19 trust directors, rather than to beneficiaries. The duty of a trust director to disclose information to  
20 a beneficiary is governed by Section 7, which prescribes the fiduciary duties of a trust director.  
21 The duty of a directed trustee to disclose information to a beneficiary is governed by the  
22 background law of an enacting state ~~by way of Section 4~~ under Section 4, and by Section 10,  
23 which limits a directed trustee’s duty to inform a beneficiary about the actions of a trust director.

24  
25        *Mandatory floor, not a ceiling.* This section imposes a mandatory floor on a directed  
26 trustee’s and a trust director’s duty to share information, rather than a ceiling. The terms of a  
27 trust ~~can~~ may specify more extensive duties of information sharing among directed trustees and  
28 trust directors.

29  
30        **SECTION 10. NO LIABILITY FOR FAILED DUTY TO MONITOR, INFORM,**  
31 **OR ADVISE.** Unless the terms of a trust provide otherwise, a directed trustee:

32        (1) ~~is~~ does not ~~liable for~~ have a ~~failed~~ duty to monitor a trust director or inform or give  
33 advice to a settlor, beneficiary, trustee, or trust director about the director’s exercise or  
34 nonexercise of the director’s powers; and

35        (2) does not ~~become liable for a failure~~ assume the duty described in paragraph (1)  
36 because the directed trustee on another occasion monitors a trust director or informs or gives  
37 advice to a settlor, beneficiary, trustee, or trust director about a trust director’s exercise or  
38 nonexercise of the director’s powers.

## Comment

1  
2        *Following the weight of existing statute law.* This section provides that a directed trustee  
3 ~~is~~ does not ~~liable for failing~~ have a duty to monitor a trust director or ~~for failing to~~ inform or give  
4 advice to a settlor, beneficiary, trustee, or trust director about a trust director's actions. Many  
5 existing state statutes have provisions to similar effect, though the language in this section is  
6 more direct and simpler than those provisions.

7  
8        The existing provisions ~~in the existing state statutes~~ on which this section is based were  
9 meant to reverse the result in *Rollins v. Branch Banking & Trust Company of Virginia*, 56 Va.  
10 Cir. 147 (2002), in which the court considered the liability of a trustee that was subject to  
11 direction in investment. The court declined to hold the trustee directly liable for the investment  
12 director's failure to direct ~~the~~ diversification of the trust's investments, but the court nevertheless  
13 held the trustee liable for failing to advise the beneficiaries about the risks of the investment  
14 director's actions.

15  
16        *Survival of trustee's general duty of disclosure.* Although this section confirms that a  
17 directed trustee ~~is not liable for failing~~ has no duty to monitor, inform, or advise regarding a trust  
18 director's exercise or nonexercise of its powers, this section does not relieve a trustee of its  
19 ordinary duties to disclose and report under otherwise applicable law such as under Uniform  
20 Trust Code § 813 (amended 2004) or Restatement (Third) of Trusts § 82 (2007). For example,  
21 although a directed trustee would not ~~be liable for failing~~ have a duty to advise a beneficiary  
22 about the risks of a portfolio concentration, the trustee would remain under a duty to make  
23 periodic reports or accountings to the beneficiary and to answer reasonable inquiries by the  
24 beneficiary about the administration of the trust to the extent required by otherwise applicable  
25 state law.

26  
27        This section does not relieve a trustee of the duty under Section 9 to provide a trust  
28 director with information reasonably related to the director's powers or duties.

29  
30        *The trust director's ~~specific duties~~ duty of disclosure.* Under Section 7(a), a trust director  
31 ~~holding a power of direction or consent~~ is subject to the same disclosure duties as a trustee would  
32 be ~~in the exercise or nonexercise of the same power under the same circumstances. For. Thus, for~~  
33 example, if a trust director intended to direct a nonroutine transaction, to change "investment ...  
34 strategies," or to take "significant actions ... involving hard-to-value assets or special sensitivity  
35 to beneficiaries," the director might be under a duty of affirmative advance disclosure. See  
36 Restatement (Third) of Trusts § 82 cmt. d (2007); ~~see also~~ *Allard v. Pacific Nat'l Bank*, 663 P.2d  
37 104, 110 (Wash. 1983) ("The trustee must inform beneficiaries, however, of all material facts in  
38 connection with a nonroutine transaction which significantly affects the trust estate and the  
39 interests of the beneficiaries prior to the transaction taking place.").

40  
41        *Administrative classification. No assumption of duty.* In addition to waiving a directed  
42 trustee's ~~duties~~ duty to monitor, inform, or advise as under paragraph (1) of this section, many  
43 state statutes ~~also~~ go further and say also provide that if a trustee for some reason chooses to do  
44 so, those monitoring, informing, or advising activities will be deemed to be "administrative  
45 actions." The purpose of these provisions is to ensure that if a directed trustee chooses for some

1 reason to inform, monitor, or advise, the trustee does not assume a continuing obligation to do so  
2 nor concede a prior duty to have done so. This section dispenses with the opacity of an  
3 administrative classification and achieves the intended result more directly in paragraph (2),  
4 ~~which provides) by providing~~ that if a trustee monitors, informs, or advises about the actions of a  
5 trust director on one occasion, the trustee does not thereby ~~become liable for a prior or~~  
6 ~~subsequent failure~~assume a duty to monitor, inform, or advise on another occasion.

7  
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~~  
24 ~~trust;~~

25 ~~—— (C) determine the capacity of the settlor, a trustee, a trust director, a beneficiary,~~  
26 ~~or other party;~~

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

1 ~~or~~

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

3 ~~the trust.~~

4 **Legislative Note:** A state that has adopted Uniform Trust Code § 703(c), (f), and (g) should  
5 revise those sections by [~~to discuss~~for discussion at next ~~committee~~ meeting].

6 **Comment**

7 Cotrusteeship and directed trusteeship compared. Cotrusteeship and directed trusteeship  
8 are similar in many ways. The principal difference is that in a cotrusteeship, every person named  
9 as a cotrustee holds title to the trust property. In a directed trust, by contrast, title to trust property  
10 belongs only to the trustee, and not to the trust director. The placement of title can have  
11 important consequences for dealings with third parties and for tax, property, and other bodies of  
12 law outside of trust law.

13  
14 *Cotrusteeship by default.* Under this section the default rule is that, if a settlor names  
15 cotrustees, the traditional law of cotrusteeship applies. The fiduciary duties of directed  
16 trusteeship will only apply if the terms of the trust so provide.

17  
18 *Settlor autonomy.* Under traditional law governing cotrustees, each cotrustee “has a duty  
19 to use reasonable care to prevent a co-trustee from committing a breach of trust and, if a breach  
20 of trust occurs, to obtain redress.” Restatement (Third) of Trusts § 81(2) (2007). This rule applies  
21 even if the settlor limits the role or function of one of the cotrustees. “Even in matters for which  
22 a trustee is relieved of responsibility, . . . if the trustee knows that a co-trustee is committing or  
23 attempting to commit a breach of trust, the trustee has a duty to take reasonable steps to prevent  
24 the fiduciary misconduct.” *Id.* cmt. b. This rule for a cotrustee contrasts with the rules for a  
25 directed trustee under Sections 8 and 10 of this act, which impose a less demanding fiduciary  
26 standard ~~on a directed trustee.~~

27  
28 This section allows a settlor to choose either fiduciary regime for a cotrusteeship—the  
29 traditional rules of cotrusteeship or the more permissive rules of a directed trusteeship. ~~Given~~  
30 ~~that a settlor could have opted into the permissive rules of this act by naming a trust director and~~  
31 ~~a directed trustee instead of naming cotrustees, there~~ There seems little reason to prevent the  
32 settlor from ~~directing~~applying the ~~application of the~~fiduciary rules of this act to an arrangement  
33 that uses the labeling of ~~cotrustees, rather than trust directors.~~cotrusteeship because a settlor  
34 could choose the more permissive rules for a directed trusteeship by labeling one of the  
35 cotrustees as a trust director and another as a directed trustee.

36  
37 *Mechanics of choosing directed trustee duties.* Whether this section applies to a given  
38 trust is a question of ~~construing~~construction of the terms of that trust. This section does not  
39 impose a requirement of express reference to this section or to this act. Under Section 3(a), this  
40 section ~~may apply~~applies to a trust created before the effective date of this act, but only as to  
41 conduct ~~occurring~~ after that date.

1            *Cotrustees as directed trustees and trust directors.* The terms of a trust can place a  
2 cotrustee in a position of ~~acting either giving direction,~~ like a trust director, or ~~taking direction,~~  
3 ~~like~~ a directed trustee. This section only applies to a cotrustee who ~~acts like a directed trustee.~~  
4 ~~takes direction.~~ This section does not address the duties of a cotrustee ~~who acts like a that gives~~  
5 ~~direction because under Section 7, the duties of a~~ trust director, ~~because the duties of a cotrustee~~  
6 ~~under traditional law~~ are ~~by definition comparable to~~ the ordinary duties of a ~~trust director under~~  
7 ~~Section 7. [Placeholder: For further discussion, what about a power of protection in a~~  
8 ~~cotrustee?]~~trustee.  
9

10            *No third-party effects.* ~~Nothing in this~~This section ~~changes~~does not change the rights of  
11 third parties who deal with a cotrustee in the cotrustee's capacity as such. Although this section  
12 changes the degree to which the terms of a trust may reduce a cotrustee's duties to a beneficiary,  
13 it does not alter the rules that affect the rights of third parties who contract with or otherwise  
14 interact with a cotrustee.  
15

## 16            SECTION 12. LIMITATION OF ACTION AGAINST TRUST DIRECTOR.

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

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

24            *Legislative Note:* A state that has adopted Uniform Trust Code Section 1005 should update the  
25 bracketed language to reference that enactment. A state that has adopted a statute other than  
26 Uniform Trust Code Section 1005 to govern limitation of an action against a trustee should  
27 replace the bracketed language with a cross reference to that statute. A state that has not  
28 adopted a statutory limitation should delete the bracketed language.

### 29            Comment

30            Subsection (a) extends to a trust director the same limits on liability that a trustee enjoys  
31 under the law of an enacting state by way of a statutory limitations period, such as under  
32 Uniform Trust Code § 1005(c) (2000). The limitations period absorbed by subsection (a) applies  
33 to all claims against a trust director for breach of trust, whether by a beneficiary, a trustee,  
34 another trust director, or some other party.  
35

36            Subsection (b) extends to a trust director the same limits on liability that a trustee enjoys  
37 under the law of an enacting state arising from the making of a report or accounting, such as

1 under Uniform Trust Code § 1005(a)-(b) (2000), except that the rule of subsection (b) applies  
2 regardless of whether the report or accounting was made by the trust director. A trust director  
3 may therefore be protected by a report or accounting made by a trustee or another trust director  
4 even though the director ~~is did not responsible for the content of make~~ the report or accounting, so  
5 long as the report or accounting fairly discloses the director's actions.

6  
7 Laches, which strictly speaking is an equitable defense rather than a limitations period, is  
8 ~~addressed made applicable to an action against a trust director~~ by Section 13(1).

9  
10 **SECTION 13. DEFENSES IN ACTION AGAINST TRUST DIRECTOR.** In an

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

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

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

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

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

17 **Comment**

18  
19 *Absorption.* This section applies to an action for breach of trust against a trust director the  
20 law of an enacting state governing defenses available to a trustee in a comparable action. ~~This~~  
21 ~~approach is consistent with the more general absorption of the law of fiduciary duties under~~  
22 ~~Section 7, and it offers the same advantages of allowing variation across the states and avoiding~~  
23 ~~conflicts with the Uniform Trust Code or other applicable state law. The defenses listed in~~  
24 ~~paragraphs (1)–(4) of this section are not exclusive.~~ A trust director can assert any defense that  
25 would be available to a trustee in an action for breach of trust, ~~including a defense not listed in~~  
26 ~~this section.~~ under existing state law, including: [For discussion: Should we move these  
27 examples into the blackletter, with bracketed UTC cross-references, and indicate that they  
28 are not exhaustive? We moved these examples to the comment in response to suggestions  
29 by several Commissioners at the Annual Meeting in July.]

30  
31 ~~*Paragraph (1)—laches or estoppel.* This paragraph addresses laches and estoppel. It is~~  
32 ~~important for this act to absorb and apply these doctrines for trust directors, because the common~~  
33 ~~law and principles of equity have not yet developed such an application.~~

- 34  
35 ~~● *Paragraph (2)—laches or estoppel (see Restatement (Third) of Trusts § 98 (2012));*~~  
36 ~~● *beneficiary consent, release, or ratification.* This paragraph recognizes a defense for a~~  
37 ~~trust director of beneficiary consent, release or ratification. Under prevailing law, such as~~  
38 ~~provided by (see Uniform Trust Code § 1009 (amended 2001) and); Restatement (Third)~~  
39 ~~of Trusts § 97(b)–(c) (2012), a beneficiary's consent, release, or ratification is a defense~~

1 ~~for a trustee to a claim of breach of trust if the consent, release, or ratification was~~  
2 ~~informed and not improperly obtained.);~~

3  
4 ● ~~Paragraph (3)—reasonable reliance on the terms of a trust. The law in many statutes,~~  
5 ~~such as provided by (see Uniform Trust Code § 1006 (2000) and); Uniform Prudent~~  
6 ~~Investor Act § 1(b) (1994), recognizes a defense for a trustee of reasonable reliance on~~  
7 ~~the terms of the trust as expressed in the trust instrument. This paragraph absorbs that law~~  
8 ~~for application to a trust director.); and~~

9  
10 ● ~~Paragraph (4)—event reasonable care in ascertaining the happening of an event~~  
11 ~~affecting administration or distribution. Prevailing law, such as provided by (see~~  
12 ~~Uniform Trust Code § 1007 (2000) and); Restatement (Third) of Trusts § 76 cmt. f~~  
13 ~~(2007), recognizes a defense for a trustee of reasonable care in ascertaining the happening~~  
14 ~~of an event that affects the administration of a trust. This paragraph absorbs that law for~~  
15 ~~application to a trust director.);~~

16  
17 *Exculpation or exoneration.* The ~~discussion notes~~ comments to Section 7 address the  
18 effect of an exculpation or exoneration clause ~~for~~ on the duty and liability of a trust director.

19  
20 *Attorney's fees and indemnification.* Attorney's fees and indemnification for a trust  
21 director are governed by Section 6(c)(1), which establishes a default rule that allows a trust  
22 director to exercise "any further power appropriate to the exercise of the director's express  
23 power" under Section 6(b). By default, therefore, a trust director has the power to incur  
24 attorney's fees and other expenses and to direct indemnification for them ~~so long as they are~~ if  
25 "appropriate" to the exercise of the director's express powers.

## 26 27 **SECTION 14. JURISDICTION OVER TRUST DIRECTOR.**

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

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

### 33 **Comment**

34  
35 Under subsection (a), by accepting appointment as trust director of a trust subject to this  
36 act, the director submits to the personal jurisdiction of the courts of the state. This rule is  
37 mandatory. The terms of a trust or an agreement among the trust director and other parties cannot  
38 ~~eliminate~~ negate a court's personal jurisdiction over a trust director under this section. However,  
39 this section does not preclude a court from declining to exercise jurisdiction under the doctrine of  
40 forum non conveniens.

1  
2 Subsection (b) confirms that subsection (a) does not prescribe the exclusive method of  
3 obtaining jurisdiction over a trust director.  
4

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

6 Unless the terms of a trust provide otherwise, the rules applicable to a trusteeship regarding the  
7 following matters apply to a trust directorship:

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

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

10 (3) giving of bond to secure performance; [as prescribed by Uniform Trust Code Section  
11 702];

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

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

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

15 (7) vacancy [as prescribed by Uniform Trust Code Section 704].

16 *Legislative Note: A state that has adopted the Uniform Trust Code sections referenced in this*  
17 *section should update the bracketed language to reference the appropriate portions of that*  
18 *enactment. A state that has adopted relevant statutory provisions other than the sections of the*  
19 *Uniform Trust Code referenced in this section should replace the bracketed language with cross*  
20 *references to those provisions. A state that has not adopted relevant statutory provisions should*  
21 *delete the bracketed language accordingly.*

22 **Comments**

23 This section ~~applies to a trust directorship~~ absorbs the state law of ~~an enacting state~~  
24 ~~applicable to a~~ trusteeship for a trust directorship with regard to seven subjects. The default or  
25 mandatory character of ~~that~~ the law as applied to a trusteeship governs whether the law is default  
26 or mandatory as applied to a trust directorship ~~turns on the default or mandatory character as~~  
27 ~~applied to a trusteeship.~~

28  
29 *Paragraph (1)—acceptance.* This paragraph absorbs an enacting state’s law governing  
30 acceptance of a trusteeship, such as under Uniform Trust Code § 701(a)–(b) (2000) or  
31 Restatement (Third) of Trusts § 35 (2003), for application to acceptance of a trust directorship.  
32

33 *Paragraph (2)—appointment.* This paragraph absorbs an enacting state’s law governing  
34 trustee appointment, such as under Uniform Trust Code § 704(c) and (e) (amended 2004) and

1 Restatement (Third) of Trusts § 34 (2003), for application to appointment of a trust director.

2  
3 *Paragraph (3)—bond.* This paragraph absorbs an enacting state’s law governing bond to  
4 secure performance by a trustee, such as under Uniform Trust Code § 702(a)–(b) (2000) and  
5 Restatement (Third) of Trusts § 34(3) (2003), for application to bond by a trust director.

6  
7 *Paragraph (4)—compensation.* This paragraph absorbs an enacting state’s law governing  
8 compensation of a trustee, such as under Uniform Trust Code § 708 (2000) and Restatement  
9 (Third) of Trusts § 38 cmt. i (2003), for application to compensation of a trust director. ~~Just~~The  
10 drafting committee contemplated that, just as in total “the reasonable fees for multiple trustees  
11 may be higher than for a single trustee,” ~~Restatement (Third) of Trusts § 38 cmt. i (2003); id.~~, so  
12 too the total reasonable fees infor a trust with multiple trusteea directed trustee and a trust  
13 directorsdirector may be higher than for a single trustee.

14  
15 On the other hand, the reasonable compensation of a directed trustee ~~that is subject to a~~  
16 ~~trust director’s power of direction or power of consent~~ is likely to be less than that for a similarly  
17 ~~situated~~ trustee that is not ~~subject to such a power directed.~~ An apt analogy is to a trustee ~~whothat~~  
18 hires others to “render services expected or normally to be performed by the trustee.”  
19 Restatement (Third) of Trusts § 38 cmt. c(1) (2003); *see also* Uniform Prudent Investor Act § 9  
20 cmt. (1994) (“If, for example, the trustee’s regular compensation schedule presupposes that the  
21 trustee will conduct the investment management function, it should ordinarily follow that the  
22 trustee will lower its fee when delegating the investment function to an outside manager.”).

23  
24 *Paragraph (5)—resignation.* This paragraph absorbs an enacting state’s law governing  
25 resignation by a trustee, such as under Uniform Trust Code § 705 (amended 2001) and  
26 Restatement (Third) of Trusts § 36 (2003), for application to resignation by a trust director.

27  
28 *Paragraph (6)—removal.* This subsection absorbs an enacting state’s law governing  
29 removal of a trustee, such as under Uniform Trust Code § 706 (2000) and Restatement (Third) of  
30 Trusts § 37 cmt. e (2003), for application to removal of a trust director.

31  
32 *Paragraph (7)—vacancy.* This section absorbs an enacting state’s law applicable to a  
33 vacancy in a trusteeship, such as under Uniform Trust Code § 704 (amended 2004), for  
34 application to a vacancy in a trust directorship.

35  
36 *Costs and indemnification.* The power of a trust director to incur reasonable costs and  
37 direct indemnification for expenses would in most cases be covered by Section 6(c)(1).

38  
39 **SECTION 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
40 applying and construing this uniform act, consideration must be given to the need to promote  
41 uniformity of the law with respect to its subject matter among states that enact it.

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

1 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic  
2 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
3 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
4 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
5 Section 7003(b).

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

7 (a) . . . .

8 (b) . . . .

9 (c) . . . .

10 **SECTION 19. EFFECTIVE DATE.** This [act] takes effect . . . .