

2018 -- S 2147

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO FIDUCIARIES -- TRUST

Introduced By: Senators Archambault, Lombardi, Jabour, McCaffrey, and Conley

Date Introduced: January 23, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Chapter 18-4 of the General Laws entitled "Powers of Fiduciaries" is  
2 hereby amended by adding thereto the following section:

3           **18-4-32. Trust advisors; Directed trusts.**

4           (a) Where one or more persons or entities are given authority by the terms of a governing  
5 instrument to direct, consent to or disapprove a fiduciary's actual or proposed investment  
6 decisions, distribution decisions or other decisions, such persons shall be considered to be  
7 advisors and fiduciaries when exercising such authority; provided, however, that the governing  
8 instrument may provide that any such advisor (including a protector) shall act in a non-fiduciary  
9 capacity.

10          (b) If a governing instrument provides that a fiduciary is to follow the direction of an  
11 advisor, and the fiduciary acts in accordance with such a director, then except in cases of willful  
12 misconduct on the part of the fiduciary so directed, the fiduciary shall not be liable for any loss  
13 resulting directly or indirectly from any such act.

14          (c) If a governing instrument provides that a fiduciary is to make decisions with the  
15 consent of an advisor, then except in cases of willful misconduct or gross negligence on the part  
16 of the fiduciary, the fiduciary shall not be liable for any loss resulting directly or indirectly from  
17 any act taken or omitted as a result of such advisor's failure to provide such consent after having  
18 been requested to do so by the fiduciary.

19          (d) For purposes of this section, "investment decision" means with respect to any

1 investment, the retention, purchase, sale, exchange, tender or other transaction affecting the  
2 ownership thereof or rights therein and with respect to non-publicly traded investments, the  
3 valuation thereof, and an advisor with authority with respect to such decisions is an investment  
4 advisor.

5 (e) Whenever a governing instrument provides that a fiduciary is to follow the direction  
6 of an advisor with respect to investment decisions, distribution decisions or other decisions of the  
7 fiduciary, then, except to the extent that the governing instrument provides otherwise, the  
8 fiduciary shall have no duty to:

9 (1) Monitor the conduct of the advisor;

10 (2) Provide advice to the advisor or consult with the advisor; or

11 (3) Communicate with or warn or apprise any beneficiary or third party concerning  
12 instances in which the fiduciary would or might have exercised the fiduciary's own discretion in a  
13 manner different from the manner directed by the advisor.

14 (f) Absent clear and convincing evidence to the contrary, the actions of the fiduciary  
15 pertaining to matters within the scope of the advisor's authority (such as confirming that the  
16 advisor's directions have been carried out and recording and reporting actions taken at the  
17 advisor's direction), shall be presumed to be administrative actions taken by the fiduciary solely  
18 to allow the fiduciary to perform those duties assigned to the fiduciary under the governing  
19 instrument and such administrative actions shall not be deemed to constitute an undertaking by  
20 the fiduciary to monitor the advisor or otherwise participate in actions within the scope of the  
21 advisor's authority.

22 (g) For purposes of this section, the term "advisor" shall include a "protector" who shall  
23 have all the power and authority granted to the protector by the terms of the governing  
24 instrument, which may include, but shall not be limited to:

25 (1) The power to remove and appoint trustees, advisors, trust committee members and  
26 other protectors;

27 (2) The power to modify or amend the governing instrument to achieve favorable tax  
28 status or to facilitate the efficient administration of the trust; and

29 (3) The power to modify, expand or restrict the terms of a power of appointment granted  
30 to a beneficiary of a governing instrument.

31 SECTION 2. This act shall take effect upon passage and shall apply to all trusts,  
32 whenever executed.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
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1           This act would permit the settlor of a trust to provide for a person other than the trustee to  
2 direct actions of the trustee, and would clearly establish the legal responsibilities of trust advisors  
3 and trust protectors.

4           This act would take effect upon passage and would apply to all trusts, whenever  
5 executed.

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