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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO FIDUCIARIES --UNIFORM DIRECTED TRUST ACT

Introduced By: Senators Archambault, Lombardi, Lynch Prata, Raptakis, and  
McKenney

Date Introduced: February 13, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 18 of the General Laws entitled "FIDUCIARIES" is hereby amended  
2 by adding thereto the following chapter:

3 CHAPTER 17

4 UNIFORM DIRECTED TRUST ACT

5 **18-17-1. Short title.**

6 This act shall be known and may be cited as the "Uniform Directed Trust Act".

7 **18-17-2. Definitions.**

8 As used in this chapter:

9 (1) "Breach of trust" means and includes a violation by a trust director or trustee of a duty  
10 imposed on that director or trustee by the terms of the trust this chapter or law of this state other  
11 than this chapter.

12 (2) "Directed trust" means a trust for which the terms of the trust grant a power of  
13 direction.

14 (3) "Directed trustee" means a trustee who is subject to a trust director's power of  
15 direction.

16 (4) "Person" means a person, estate, business or nonprofit entity, public corporation,  
17 government or governmental subdivision, agency, or instrumentality, or other legal entity.

18 (5) "Power of direction" means a power over a trust granted to a person by the terms of a  
19 trust to the extent the power is exercisable while the person is not serving as a trustee. The term

1 includes a power over the investment management or distribution of trust property or other  
2 matters of trust administration. The term excludes the powers described in § 18-17-5(b).

3 (6) "Settlor" means a person, including a testator who creates or contributes property to a  
4 trust. If more than one person creates or contributes property to a trust, each person is a settlor of  
5 the portion of the trust property attributable to that person's contribution, except to the extent  
6 another person has the power to revoke or withdraw that portion.

7 (7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
8 United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the  
9 United States.

10 (8) "Terms of a trust" means:

11 (i) Except as otherwise provided in subsection (2) of this section, the manifestation of the  
12 settlor's intent regarding a trust's provisions as:

13 (A) Expressed in the trust instrument: or

14 (B) Established by other evidence that would be admissible in a judicial proceeding; or

15 (ii) The trust's provisions as established, determined, or amended by:

16 (A) A trustee or trust director in accordance with applicable law: or

17 (B) Court order.

18 (9) "Trust director" means a person who is granted a power of direction by the terms of a  
19 trust to the extent the power is exercisable while the person is not serving as a trustee. The person  
20 is a trust director whether or not the terms of the trust refer to the person as a trust director and  
21 whether or not the person is a beneficiary or settlor of the trust.

22 (10) "Trustee" includes an original, additional and successor trustee, and a co-trustee.

23 **18-17-3. Application; Principal place of administration.**

24 (a) This chapter applies to a trust wherever created, that has its principal place of  
25 administration in this state, subject to the following rules:

26 (1) If the trust was created before the effective date of this chapter, this chapter applies  
27 only to a decision or action occurring on or after the effective date of this chapter.

28 (2) If the principal place of administration of the trust is changed to this state on or after  
29 the effective date of this chapter, this chapter applies only to a decision or action occurring on or  
30 after the date of the change.

31 (b) Without precluding other means to establish a sufficient connection with the  
32 designated jurisdiction in a directed trust, terms of the trust which designate the principal place of  
33 administration of the trust are valid and controlling if:

34 (1) A trustee's principal place of business is located in or a trustee is a resident of the

1 designated jurisdiction:

2 (2) A trust director's principal place of business is located in or a trust director is a  
3 resident of the designated jurisdiction: or

4 (3) All or part of the administration occurs in the designated jurisdiction.

5 **18-17-4. Common law and principles of equity.**

6 The common law and principles of equity supplement this chapter except to the extent  
7 modified by this chapter or law of this state other than this chapter.

8 **18-17-5. Exclusions.**

9 (a) As used in this section, "power of appointment" means a power that enables a person  
10 acting in a non-fiduciary capacity to designate a recipient or an ownership interest in or another  
11 power of appointment over trust property.

12 (b) This chapter does not apply to a:

13 (1) Power of appointment;

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

15 (3) Power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

16 (4) Power of a beneficiary over a trust to the extent the exercise or non-exercise of the  
17 power affects the beneficial interest of the beneficiary.

18 (5) Power over a trust if:

19 (i) The terms of the trust provide that the power is held in a non-fiduciary capacity; and

20 (ii) The power must be held in a non-fiduciary capacity to achieve the settlor's tax  
21 objectives under the United States Internal Revenue Code, as amended, and regulations issued  
22 thereunder, as amended.

23 (c) Unless the terms of a trust provide otherwise, a power granted to a person to designate  
24 a recipient of an ownership interest in or power of appointment over trust property which is  
25 exercisable while the person is not serving as a trustee is a power of appointment and not a power  
26 of direction

27 **18-17-6. Powers of trust director.**

28 (a) Subject to § 18-17-7, the terms of a trust may grant a power of direction to a trust  
29 director.

30 (b) Unless the terms of a trust provide otherwise:

31 (1) A trust director may exercise any further power appropriate to the exercise or non-  
32 exercise of a power of direction granted to the director under subsection (a) of this section; and

33 (2) Trust directors with joint powers must act by majority decision.

34 **18-17-7. Limitations on trust director.**

1 A trust director is subject to the same rules as a trustee in a like position and under similar  
2 circumstances in the exercise or non-exercise of a power of direction or further power under § 18-  
3 17-6(b)(1).

4 (1) A payback provision in the terms of a trust necessary to comply with the  
5 reimbursement requirements of Medicaid law in section 1917 of the Social Security Act 42  
6 U.S.C. § 1396p(d)(4)(A), as amended, and regulations thereunder, as amended; and

7 (2) A charitable interest in the trust including notice regarding the interest of the attorney  
8 general.

9 **18-17-8. Duty and liability of trust director.**

10 (a) Subject to subsection (b) of this section, with respect to a power of direction or further  
11 power under § 18-17- 6(b)(1):

12 (1) A trust director has the same fiduciary duty and liability in the exercise or non-  
13 exercise of the powers granted in any trust:

14 (i) If the power is held individually, as a sole trustee in a like position and under similar  
15 circumstances: and

16 (ii) If the power is held jointly with a trustee or another trust director, as a co-trustee in a  
17 like position and under similar circumstances;

18 (2) The terms of the trust may vary the director's duty or liability to the same extent the  
19 terms of the trust could vary the duty or liability of a trustee in a like position and under similar  
20 circumstances.

21 (b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified or  
22 otherwise authorized or permitted by law other than this chapter to provide health care in the  
23 ordinary course of the director's business or practice of a profession, to the extent the director acts  
24 in that capacity, the director has no duty or liability under this chapter.

25 (c) The terms of a trust may impose a duty or liability on a trust director in addition to the  
26 duties and liabilities under this section.

27 **18-17-9. Duty and liability of directed trustee.**

28 (a) Subject to subsection (b) of this section, a directed trustee shall take reasonable action  
29 to comply with a trust director's exercise or non-exercise of a power of direction or further power  
30 under § 18-17-6(b)(1), and the trustee is not liable for the action.

31 (b) A directed trustee must refuse to comply with a trust director's exercise or non-  
32 exercise of a power of direction, or further power under § 18-17-6(b)(1), to the extent that by  
33 complying the trustee would engage in willful misconduct.

34 (c) An exercise of a power of direction under which a trust director may release a trustee

1 or another trust director from liability for breach of trust is not effective if:

2 (1) The breach involved the trustee's or other director's willful misconduct;

3 (2) The release was induced by improper conduct of the trustee or other director in  
4 procuring the release: or

5 (3) At the time of the release, the director did not know the material facts relating to the  
6 breach.

7 (d) A directed trustee that has reasonable doubt about its duty under this section may  
8 petition the superior court for instructions.

9 (e) The terms of a trust may impose a duty or liability on a directed trustee in addition to  
10 the duties and liabilities under this section.

11 **18-17-10. Duty to provide information to trust director or trustee.**

12 (a) Subject to § 18-17-11, a trustee shall provide information to a trust director to the  
13 extent the information is reasonably related both to:

14 (1) The powers or duties of the trustee; and

15 (2) The powers or duties of the director.

16 (b) Subject to § 18-17-11, a trust director shall provide the information to a trustee or  
17 another trust director to the extent the information is reasonably related both to:

18 (1) The powers and duties of the director; and

19 (2) The powers or duties of the trustee or other director.

20 (c) A trustee who acts in reliance on information provided by a trust director is not liable  
21 for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the  
22 trustee would engage in willful misconduct.

23 (d) A trust director who acts in reliance on information provided by a trustee or another  
24 trust director is not liable for a breach of trust to the extent the breach resulted from the reliance,  
25 unless by acting the trust director would engage in willful misconduct.

26 **18-17-11. No duty to monitor, inform or advise.**

27 (a) Unless the terms of a trust provide otherwise:

28 (1) A trustee does not have a duty to:

29 (i) Monitor a trust director: or

30 (ii) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an  
31 instance in which the trustee might have acted differently than the director; and

32 (2) By taking an action described in this section, a trustee does not assume the duty  
33 excluded by this section.

34 (b) Unless the terms of a trust provide otherwise:

1 [\(1\) A trust director does not have a duty to:](#)  
2 [\(i\) Monitor a trustee or another trust director; or](#)  
3 [\(ii\) Inform or give advice to a settlor, beneficiary, trustee, or another trust director](#)  
4 [concerning an instance in which the director might have acted differently than a trustee or another](#)  
5 [trust director; and](#)

6 [\(2\) By taking an action described in this section, a trust director does not assume the duty](#)  
7 [excluded by this section.](#)

8 **18-17-12. Application to co-trustee.**

9 [The terms of a trust may relieve a co-trustee from duty and liability with respect to](#)  
10 [another co-trustee's exercise or non-exercise of a power of the other co-trustee to the same extent](#)  
11 [that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust](#)  
12 [director's power of direction under §§18-17-9 through 18-17-11.](#)

13 **18-17-13. Limitation of action against trust director.**

14 [\(a\) An action against a trust director for breach of trust must be commenced within the](#)  
15 [same limitation period as for an action for breach of trust against a trustee in a like position.](#)

16 [\(b\) A report or accounting has the same effect on the limitation period for an action](#)  
17 [against a trust director for breach of trust that the report or accounting would have in an action for](#)  
18 [breach of trust against a trustee in a like position and under similar circumstances.](#)

19 **18-17-14. Defenses in action against trust director.**

20 [In an action against a trust director for breach of trust, the director may assert the same](#)  
21 [defenses a trustee in a like position and under similar circumstances could assert in an action for](#)  
22 [breach of trust against the trustee.](#)

23 **18-17-15. Jurisdiction over trust director.**

24 [\(a\) By accepting appointment as a trust director of a trust subject to this chapter, the](#)  
25 [director submits to personal jurisdiction of the courts of this state regarding any matter related to](#)  
26 [a power or duty of the director.](#)

27 [\(b\) This section does not preclude other methods of obtaining jurisdiction over a trust](#)  
28 [director.](#)

29 **18-17-16. Office of trust director.**

30 [Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a](#)  
31 [trust director regarding the following matters.](#)

32 [\(1\) Acceptance;](#)

33 [\(2\) Giving of bond to secure performance;](#)

34 [\(3\) Reasonable compensation;](#)

1           (4) Resignation:

2           (5) Removal:

3           (6) Vacancy and appointment of successors.

4           **18-17-17. Uniformity of application and construction.**

5           In applying and construing this chapter consideration must be given to the need to  
6 promote uniformity of the law with respect to its subject matter among states that enact it.

7           **18-17-18. Relation to electronic signatures in global and national commerce act.**

8           This chapter modifies, limits or supersedes the Electronic Signatures in Global and  
9 National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede §  
10 101(c) of that act, 15 U.S.C. Section 7001(b), or authorize electronic delivery of any of the  
11 notices described in § 103(b) of that act, 15 U.S.C. § 7003(b).

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO FIDUCIARIES --UNIFORM DIRECTED TRUST ACT

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1           This act would permit the settlor of a trust to designate a trust director who shall be a  
2 person other than the trustee to direct actions relative to a trust and pursuant to any power of  
3 direction.

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

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