

Article - Estates and Trusts

[Previous][Next]

§15–114.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Fiduciary” means:
- (i) A trust company;
 - (ii) An investment advisor that is controlled by or is under common control with a trust company; or
 - (iii) A person who makes an election under subsection (g) of this section.
- (3) “Fiduciary assets” means assets held by a fiduciary as trustee, guardian, conservator, committee, custodian under the Maryland Uniform Transfers to Minors Act, investment manager, or investment advisor.
- (4) “Investment advisor” means any company registered under the provisions of the federal Investment Advisers Act of 1940.
- (b) A fiduciary shall:
- (1) Invest and manage fiduciary assets as a prudent investor would, considering the purposes, terms, distribution requirements, and other circumstances of the governing instrument and the nature of the fiduciary appointment;
 - (2) Exercise reasonable care, skill, and caution regarding the anticipated effect on the fiduciary assets as a whole under the facts and circumstances prevailing at the time of any action by the fiduciary;
 - (3) Invest and manage not in isolation but in the context of the fiduciary assets as a whole and as part of an overall investment strategy that incorporates risk and return objectives reasonably suitable under the terms of the governing instrument and the nature of the fiduciary appointment;
 - (4) Diversify investments unless, under the circumstances, the fiduciary reasonably believes it is in the best interests of the beneficiaries or furthers the purposes for which the fiduciary was appointed not to diversify;
 - (5) Review fiduciary assets within a reasonable time after acceptance of the fiduciary appointment and make and implement decisions concerning the retention or disposition of investments existing prior to the appointment in order to conform with this section;

(6) Pursue an investment strategy that considers both the reasonable production of income and safety of capital, consistent with the fiduciary's duty of loyalty and impartiality and the purposes for which the fiduciary was appointed;

(7) Act with prudence in deciding whether and how to delegate authority and in the selection and supervision of agents; and

(8) Incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the fiduciary appointment.

(c) A fiduciary's investment decisions shall be judged in accordance with the following guidelines and standards:

(1) No specific investment or course of action is, taken alone, prudent or imprudent;

(2) The fiduciary may exercise reasonable business judgment regarding the anticipated effect on the portfolio of fiduciary assets as a whole under the facts and circumstances prevailing at the time of the decision or action;

(3) The fiduciary shall have no liability for continuing to hold fiduciary assets existing at the time the fiduciary appointment was accepted or subsequently added pursuant to proper authority if, and as long as, the fiduciary, in the exercise of good faith and reasonable prudence, considers the retention to be in the best interests of the beneficiaries or in the furtherance of the goals of the governing instrument;

(4) Subject to all other provisions of this section, the fiduciary may retain as fiduciary assets an interest in the fiduciary, if the fiduciary is a corporation, or in any corporation controlling, controlled by, or under common control with the fiduciary; and

(5) In making an investment decision, the fiduciary may consider, without limitation:

(i) General economic conditions;

(ii) The possible effect of inflation;

(iii) The expected tax consequences of investment decisions or strategies;

(iv) The role each investment or course of action plays within the investment of the portfolio of fiduciary assets as a whole;

(v) The expected total return of the investment including both income yield and appreciation of capital;

(vi) The reasonableness of any costs associated with the investment;

and

(vii) The status of related assets of beneficiaries.

(d) To the extent that any provision of this section is inconsistent with the terms of a governing instrument, the terms of the governing instrument shall control.

(e) If more than one person has investment authority over fiduciary assets, this section shall apply if any of those persons is a fiduciary.

(f) Nothing in this section shall abrogate or restrict the power of a court to:

(1) Direct or permit a fiduciary to deviate from the terms of a governing instrument; or

(2) Direct or permit a fiduciary to take, or to restrain a fiduciary from taking, any action regarding the making or retention of investments.

(g) This section shall apply to any person who:

(1) Is a trustee, guardian, conservator, committee, custodian under the Maryland Uniform Transfers to Minors Act, investment manager, or investment advisor; and

(2) Files with the Commissioner of Financial Regulation a statement that the person elects to have this section apply to all fiduciary assets controlled by the person.

[Previous][Next]