
By: **Senator Garagiola**

Introduced and read first time: February 3, 2006

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Fiduciaries - Directions from Advisors**

3 FOR the purpose of establishing that, unless the governing instrument provides
4 otherwise, a certain advisor is a fiduciary when exercising a certain authority;
5 establishing that, except in a case of willful misconduct or gross negligence by a
6 fiduciary, if the governing instrument provides that the fiduciary is to follow the
7 direction of an advisor, the fiduciary is not liable for a loss resulting directly or
8 indirectly from an act by the fiduciary made in accordance with the direction of
9 the advisor; establishing that, except in a case of willful misconduct or gross
10 negligence by a fiduciary, if the governing instrument provides that the
11 fiduciary is prohibited from making a certain investment decision without the
12 consent of a certain advisor, the fiduciary is not liable for a loss resulting
13 directly or indirectly from a failure to act as a result of the failure of the advisor
14 to provide consent after having been requested to do so by the fiduciary;
15 defining certain terms; providing for the application of this Act; and generally
16 relating to fiduciaries and directions from certain advisors.

17 BY adding to

18 Article - Estates and Trusts

19 Section 15-114.1

20 Annotated Code of Maryland

21 (2001 Replacement Volume and 2005 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Estates and Trusts**

25 15-114.1.

26 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (2) "ADVISOR" MEANS A PERSON WHO IS GIVEN AUTHORITY BY THE
29 TERMS OF A GOVERNING INSTRUMENT TO DIRECT, CONSENT TO, OR DISAPPROVE

1 ACTUAL OR PROPOSED INVESTMENT, DISTRIBUTION, OR OTHER DECISIONS BY A
2 FIDUCIARY.

3 (3) "INVESTMENT DECISION" INCLUDES A DECISION MADE WITH
4 RESPECT TO THE RETENTION, PURCHASE, SALE, EXCHANGE, TENDER, OR OTHER
5 TRANSACTION AFFECTING THE OWNERSHIP OF OR RIGHTS IN AN INVESTMENT.

6 (B) UNLESS THE GOVERNING INSTRUMENT PROVIDES OTHERWISE, AN
7 ADVISOR IS A FIDUCIARY WHEN EXERCISING THE AUTHORITY OF THE ADVISOR TO
8 DIRECT, CONSENT TO, OR DISAPPROVE AN ACTUAL OR PROPOSED INVESTMENT,
9 DISTRIBUTION, OR OTHER DECISION BY A FIDUCIARY.

10 (C) EXCEPT IN A CASE OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY
11 A FIDUCIARY, IF A GOVERNING INSTRUMENT PROVIDES THAT THE FIDUCIARY IS TO
12 FOLLOW THE DIRECTION OF AN ADVISOR, THE FIDUCIARY IS NOT LIABLE FOR A LOSS
13 RESULTING DIRECTLY OR INDIRECTLY FROM AN ACT OR FAILURE TO ACT BY THE
14 FIDUCIARY MADE IN ACCORDANCE WITH THE DIRECTION OF THE ADVISOR.

15 (D) EXCEPT IN A CASE OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY
16 A FIDUCIARY, IF A GOVERNING INSTRUMENT PROVIDES THAT THE FIDUCIARY IS
17 PROHIBITED FROM MAKING AN INVESTMENT DECISION WITHOUT THE CONSENT OF
18 AN ADVISOR, THE FIDUCIARY IS NOT LIABLE FOR A LOSS RESULTING DIRECTLY OR
19 INDIRECTLY FROM A FAILURE TO ACT AS A RESULT OF THE FAILURE OF THE
20 ADVISOR TO PROVIDE CONSENT AFTER HAVING BEEN REQUESTED TO DO SO BY THE
21 FIDUCIARY.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed to apply only prospectively and may not be applied or interpreted to have
24 any effect on or application to any action by a fiduciary before the effective date of this
25 Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 June 1, 2006.