

Article - Estates and Trusts

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§14.5–808.

(a) While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.

(b) (1) (i) Except as provided in paragraph (2) of this subsection, if the terms of a trust confer on one or more persons, other than the settlor of a revocable trust, a power to direct, consent to, or disapprove the actual or proposed investment decisions, distribution decisions, or other decisions of the trustee, the persons shall be considered advisers and fiduciaries that, as such, are required to act reasonably under the circumstances with regard to the purposes of the trust and the interests of the beneficiaries.

(ii) The trustee may not act in accordance with an exercise of the power if:

1. The attempted exercise is manifestly contrary to the terms of the trust, unless expressly waived in writing by the settlor; or

2. The trustee knows the attempted exercise would constitute a breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(2) A beneficiary that holds a power to direct, consent to, or disapprove of a trustee action may not be treated as a fiduciary with respect to the exercise of the power to the extent that the only persons whose interests in the trust are affected by the decision of the beneficiary are the beneficiary and those persons whose interests in the trust are subject to control by the beneficiary through the exercise of a power of appointment.

(3) An adviser under this subsection is liable for a loss that results from breach of a fiduciary duty.

(c) (1) If the terms of a trust require that a trustee shall follow the direction of an adviser with respect to proposed investment decisions, distribution decisions, or other decisions of the trustee:

(i) The trustee shall act in accordance with the direction of the adviser and may not be liable for a loss resulting directly or indirectly from the act except in the case of willful misconduct on the part of the trustee; and

(ii) The trustee shall have no duty to:

1. Monitor the conduct of the adviser;
2. Provide advice to the adviser; or
3. Communicate with, warn, or apprise a beneficiary or third party concerning instances in which the trustee would or might have exercised the discretion of the trustee in a manner different from the manner directed by the adviser.

(2) Absent a preponderance of the evidence to the contrary, the actions of the trustee pertaining to matters within the scope of the authority of the adviser, such as confirming that the directions of the adviser have been carried out and recording and reporting actions taken at the direction of the adviser, shall be presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee by the terms of the trust, and these administrative actions may not be deemed to constitute an undertaking by the trustee to monitor the adviser or otherwise participate in actions within the scope of the authority of the adviser.

(d) Unless the terms of a trust otherwise provide, an adviser that is given authority with respect to investment decisions has the power to perform the following:

(1) Direct the trustee with respect to the retention, purchase, sale, or encumbrance of the trust property and the investment and reinvestment of principal and income from the trust;

(2) Vote proxies for securities held in trust; and

(3) Select one or more investment advisers, managers, or counselors, including the trustee, and delegate to the advisers, managers, or counselors a power of the adviser.

(e) The terms of a trust may confer on a trustee or other person a power to direct the modification or termination of the trust.

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