

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 19 of the District of Columbia Official Code to enact the Uniform Directed Trust Code, to provide clear rules that allow a settlor to freely structure a directed trust while preserving key fiduciary safeguards for beneficiaries, to provide default rules for information sharing among trustees and trust directors, the procedures for accepting appointment as a trust director, and the distinction between a power of direction and a nonfiduciary power of appointment, and to make conforming and clarifying amendments concerning directed trusts and insurable interests in trustees.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Uniform Directed Trust Amendment Act of 2024”.

Sec. 2. Title 19 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding at the end the phrase: “21. Uniform Directed Trust Code . . . 19-2101.”.

(b) Chapter 13 is amended as follows:

(1) Section 19-1301.05(20) is amended to read as follows:

“(20) “Terms of a trust” means:

“(A) Except as otherwise provided in subparagraph (B) of this paragraph, the manifestation of the settlor’s intent regarding a trust’s provisions as:

“(i) Expressed in the trust instrument; or

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

“(B) The trust’s provisions as established, determined, or amended by:

“(i) A trustee or trust director in accordance with applicable law;

“(ii) Court order; or

“(iii) A nonjudicial settlement agreement under § 19-1301.11.”.

(2) Section 19-1301.05(b)(2) is amended to read as follows:

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“(2) Subject to §§ 19-2109, 19-2111, and 19-2112, the duty of a trustee to act in good faith and in accordance with the purposes of the trust;”.

(3) A new section 19-1301.12 is added to read as follows:

“§ 19-1301.12. Insurable interest of trustee.

“(a) For the purposes of this section, the term “settlor” means a person that executes a trust instrument. The term “settlor” includes a person for which a fiduciary or agent is acting.

“(b) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

“(1) The insured is:

“(A) A settlor of the trust; or

“(B) An individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

“(2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries that have:

“(A) An insurable interest in the life of the insured; or

“(B) A substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under subparagraph (A) of this paragraph, who are:

“(i) Related within the third degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or law, to the insured; or

“(ii) Stepchildren of the insured.”.

(4) Section 19-1306.03 is amended by adding the following new subsection (d) to read as follows:

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

(5) Section 19-1307.03 is amended as follows:

(A) Subsection (c) is amended by striking the word “A” and inserting the phrase “Subject to § 19-2112, a” in its place.

(B) Subsection (g) is amended by striking the word “Each” and inserting the phrase “Subject to § 19-2112, each” in its place.

(6) Section 19-1308.08 is repealed.

(7) Section 19-1310.09 is amended to read as follows:

“§ 19-1310.09. Beneficiary’s consent, release, or ratification.

“(a) For the purposes of this section, the term “interested party” means a beneficiary, representative of a beneficiary, co-trustee, successor trustee, or any other person having an interest in or authority over a trust.

“(b) A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

“(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

“(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary’s rights or of the material facts relating to the breach.

“(c) A trustee may elect to follow the procedures set forth in subsection (d) of this section concerning the release of the trustee from liability for the administration of the trust when any of the following occur:

“(1) A trust terminates pursuant to the terms of the trust;

“(2) A trust terminates early pursuant to § 19-1304.11; or

“(3) A trustee resigns or is removed.

“(d)(1) A trustee seeking a release of the trustee from liability under subsection (c) of this section shall send to the interested party from whom the trustee is seeking the release, by first-class and certified mail, return receipt requested, all of the following:

“(A) A statement showing the fair market value of the assets to be distributed from a terminating trust or to a successor trustee;

“(B) A trust accounting for the prior 2 years showing all receipts and disbursements and inventory value of the net assets;

“(C) An estimate for any items reasonably anticipated to be received or disbursed;

“(D) The amount of any fees, including trustee fees, remaining to be paid;

“(E) Notice that the trust is terminating, or that the trustee has resigned or been removed, and a clear and conspicuous statement providing that if no objections are received from the interested party within 120 days after the notice was sent by the trustee, or if the interested party signs the waiver described in subsection (f)(2) of this section, that the interested party is barred from bringing claims against the trustee for breach of trust;

“(F) A statement from the trustee that the trustee is unaware of any undisclosed information that could give rise to a claim by an interested party;

“(G) The name and mailing address of the trustee; and

“(H) The name and telephone number of a person who may be contacted for additional information.

“(2) The trustee may also provide the information described in this subsection to any other person who the trustee reasonably believes may have an interest in the trust.

“(e)(1) If, after receiving the notice and trust information described in subsection (d) of this section, an interested party that received the notice and trust information objects to a disclosed act or omission, the interested party shall provide written notice of the objection to the

trustee not later than 120 days after the notice was sent by the trustee. If no written objection is provided in the 120-day time period, the information provided under subsection (d) of this section shall be considered ratified by that interested party. The trustee, in the case of a trust terminating pursuant to the terms of the trust or the trustee's resignation or removal, within a reasonable period of time following the expiration of the 120-day time period, shall distribute the assets as provided in the trust or to the successor trustee. If an interested party gives the trustee a written objection within the applicable 120-day time period, the trustee or the interested party may do either of the following:

“(A) Submit the written objection to the court for resolution and charge the expense of commencing a proceeding to the trust; or

“(B) Resolve the objection by a nonjudicial settlement agreement or other written agreement.

“(2) Any agreement entered into pursuant to paragraph (1)(B) of this subsection may include a release, an indemnity clause, or both, on the part of the interested party against the trustee relating to the trust. Upon a resolution of an objection under this subsection, within a reasonable period of time, the trustee shall distribute the remaining trust assets as provided in the trust or to the successor trustee.

“(f) An interested party to whom a report was sent under subsection (d)(1) of this section shall be deemed to have released the trustee and consented to and ratified all actions of the trustee if, within 120 days after the trustee mailed the report, the interested party:

“(1) Does not submit a written objection to the trustee; or

“(2) Submits a written statement to the trustee that the interested party does not object.

“(g) When a trustee distributes assets of a terminating trust or to the successor trustee after complying with this section and having received no objections, each interested party who received notice and either consented or failed to object pursuant to this section is barred from bringing a claim against the trustee for breach of trust to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account.

“(h) §§ 19-1303.01 through 19-1303.04 shall apply to this section.

“(i) Nothing in this section shall preclude a trustee from proceeding under § 19-1302.01 to have the trustee's accounts reviewed and settled by the court.”.

(c) A new chapter 21 is added to read as follows:

“CHAPTER 21.

“UNIFORM DIRECTED TRUST CODE

“Section

“§ 19-2101. Short title

“§ 19-2102. Definitions.

“§ 19-2103. Application; principal place of administration.

- “§ 19-2104. Common law and principles of equity.
- “§ 19-2105. Exclusions.
- “§ 19-2106. Powers of trust director.
- “§ 19-2107. Limitations on trust director.
- “§ 19-2108. Duty and liability of trust director.
- “§ 19-2109. Duty and liability of directed trustee
- “§ 19-2110. Duty to provide information to trust director or trustee.
- “§ 19-2111. No duty to monitor, inform, or advise.
- “§ 19-2112. Application to cotrustee.
- “§ 19-2113. Limitation of action against trust director.
- “§ 19-2114. Defenses in action against trust director.
- “§ 19-2115. Jurisdiction over trust director.
- “§ 19-2116. Office of trust director.
- “§ 19-2117. Uniformity of application and construction.
- “§ 19-2118. Relation to Electronic Signatures in Global and National Commerce Act
 - “§ 19-2101. Short title.
 - “This chapter may be cited as the “Uniform Directed Trust Act”.
 - “§ 19-2102. Definitions.
 - “For the purposes of this chapter, the term:
 - “(1) “Breach of trust” includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this chapter, or law of the District other than this chapter pertaining to trusts.
 - “(2) “Directed trust” means a trust for which the terms of the trust grant a power of direction.
 - “(3) “Directed trustee” means a trustee that is subject to a trust director’s power of direction.
 - “(4) “District” means the District of Columbia.
 - “(5) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
 - “(6) “Power of direction” means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term “power of direction” includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term “power of direction” does not include the powers described in § 19-2105(b).
 - “(7) “Settlor” means a person, including a testator, that creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person

is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

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

“(9) “Terms of a trust” means:

“(A) Except as otherwise provided in subparagraph (B) of this paragraph, the manifestation of the settlor's intent regarding a trust's provisions as:

“(i) Expressed in the trust instrument; or

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

“(B) The trust's provisions as established, determined, or amended by:

“(i) A trustee or trust director in accordance with applicable law;

“(ii) Court order; or

“(iii) A nonjudicial settlement agreement under § 19-1301.11.

“(10) “Trust director” means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

“(11) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

“§ 19-2103. Application; principal place of administration.

“(a) This chapter applies to a trust, whenever created, that has its principal place of administration in the District, subject to the following rules:

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

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

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

“(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

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

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

“§ 19-2104. Common law and principles of equity.

“The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or law of the District other than this chapter.

“§ 19-2105. Exclusions.

“(a) For the purposes of this section, the term “power of appointment” means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

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

“(1) Power of appointment;

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

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

“(4) Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

“(A) The beneficiary; or

“(B) Another beneficiary represented by the beneficiary under §§ 19-1303.01 through 19-1303.05 with respect to the exercise or nonexercise of the power; or

“(5) Power over a trust if:

“(A) The terms of the trust provide that the power is held in a nonfiduciary capacity; and

“(B) The power must be held in a nonfiduciary capacity to achieve the settlor’s tax objectives under the United States Internal Revenue Code of 1986 and regulations issued thereunder.

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

“§ 19-2106. Powers of trust director.

“(a) Subject to § 19-2107, the terms of a trust may grant a power of direction to a trust director.

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

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

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

“§ 19-2107. Limitations on trust director.

“A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under § 19-2106(b)(1) regarding:

“(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in section 1917(d)(4)(A) of the Social Security Act, approved September 3, 1982 (96 Stat. 370; 42 U.S.C. § 1396p(d)(4)(A)), and regulations issued thereunder; and

“(2) A charitable interest in the trust, including notice regarding the interest to the Attorney General for the District of Columbia.

“§ 19-2108. Duty and liability of trust director.

“(a) Subject to subsection (b) of this section, with respect to a power of direction or further power under § 19-2106(b)(1):

“(1) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

“(A) If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

“(B) If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

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

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

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

“§ 19-2109. Duty and liability of directed trustee

“(a) Subject to subsection (b) of this section, a directed trustee shall take reasonable action to comply with a trust director’s exercise or nonexercise of a power of direction or further power under § 19-2106(b)(1), and the trustee is not liable for the action.

“(b) A directed trustee shall not comply with a trust director’s exercise or nonexercise of a power of direction or further power under § 19-2106(b)(1) to the extent that by complying the trustee would engage in willful misconduct.

“(c) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

“(1) The breach involved the trustee’s or other director’s willful misconduct;

“(2) The release was induced by improper conduct of the trustee or other director in procuring the release; or

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

“(d) A directed trustee that has reasonable doubt about its duty under this section may petition the Superior Court of the District of Columbia for instructions.

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

“§ 19-2110. Duty to provide information to trust director or trustee.

“(a) Subject to § 19-2111, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

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

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

“(b) Subject to § 19-2111, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

“(1) The powers or duties of the director; and

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

“(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

“(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

“§ 19-2111. No duty to monitor, inform, or advise.

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

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

“(A) Monitor a trust director; or

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

“(2) By taking an action described in paragraph (1) of this subsection, a trustee does not assume the duty excluded by paragraph (1) of this subsection.

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

“(1) A trust director does not have a duty to:

“(A) Monitor a trustee or another trust director; or

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

“(2) By taking an action described in paragraph (1) of this subsection, a trust director does not assume the duty excluded by paragraph (1) of this subsection.

“§ 19-2112. Application to cotrustee.

“The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee’s exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director’s power of direction under §§ 19-2109 through 19-2111.

“§ 19-2113. Limitation of action against trust director.

“(a) An action against a trust director for breach of trust must be commenced within the same limitation period as provided under § 19-1310.05 for an action for breach of trust against a trustee in a like position and under similar circumstances.

“(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under § 19-1310.05 in an action for breach of trust against a trustee in a like position and under similar circumstances.

“§ 19-2114. Defenses in action against trust director.

“In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

“§ 19-2115. Jurisdiction over trust director.

“(a) By accepting appointment as a trust director of a trust subject to this chapter, the director submits to personal jurisdiction of the courts of the District regarding any matter related to a power or duty of the director.

“(b) This section does not preclude other methods of obtaining jurisdiction over a trust director.

“§ 19-2116. Office of trust director.

“(a) Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

“(1) Acceptance under § 19-1307.01;

“(2) Giving of bond to secure performance under § 19-1307.02;

“(3) Reasonable compensation under § 19-1307.08;

“(4) Resignation under § 19-1307.05;

“(5) Removal under § 19-1307.06; and

“(6) Vacancy and appointment of successor under § 19-1307.04.

“§ 19-2117. Uniformity of application and construction.

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

“§ 19-2118. Relation to Electronic Signatures in Global and National Commerce Act.

“This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 *et seq.*), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize

electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto) and a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia