

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT
RELATING TO PROPERTY; ENACTING THE UNIFORM DIRECTED TRUST
ACT; MAKING CONFORMING AND TECHNICAL AMENDMENTS TO THE
UNIFORM TRUST DECANTING ACT AND THE UNIFORM TRUST CODE;
REPEALING SECTION 46A-8-808 NMSA 1978 (BEING LAWS 2003,
CHAPTER 122, SECTION 8-808).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--Sections 1 through 18 of this
act may be cited as the "Uniform Directed Trust Act".

SECTION 2. DEFINITIONS.--As used in the Uniform
Directed Trust Act:

A. "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, by the Uniform Directed
Trust Act or by another law of New Mexico pertaining to
trusts;

B. "directed trust" means a trust for which the
terms of the trust grant a power of direction;

C. "directed trustee" means a trustee that is
subject to a trust director's power of direction;

D. "person" means an individual; estate; business
or nonprofit entity; public corporation; government;
governmental subdivision, agency or instrumentality; or other
legal entity;

1 E. "power of direction":

2 (1) means a power over a trust granted to a
3 person by the terms of the trust to the extent the power is
4 exercisable while the person is not serving as a trustee;

5 (2) includes a power over the investment,
6 management or distribution of trust property or other matters
7 of trust administration; and

8 (3) excludes the powers described in
9 Subsection B of Section 5 of the Uniform Directed Trust Act;

10 F. "settlor" means a person, including a testator,
11 that creates, or contributes property to, a trust. If more
12 than one person creates or contributes property to a trust,
13 each person is a settlor of the portion of the trust property
14 attributable to that person's contribution except to the
15 extent another person has the power to revoke or withdraw
16 that portion;

17 G. "state" means a state of the United States, the
18 District of Columbia, Puerto Rico, the United States Virgin
19 Islands or any other territory or possession subject to the
20 jurisdiction of the United States;

21 H. "terms of a trust" means:

22 (1) except as otherwise provided in
23 Paragraph (2) of this subsection, the manifestation of the
24 settlor's intent regarding a trust's provisions as:

25 (a) expressed in the trust instrument;

1 or

2 (b) established by other evidence that
3 would be admissible in a judicial proceeding; or

4 (2) the trust's provisions as established,
5 determined or amended by:

6 (a) a trustee or trust director in
7 accordance with applicable law;

8 (b) court order; or

9 (c) a nonjudicial settlement agreement
10 under Section 46A-1-111 NMSA 1978;

11 I. "trust director" means a person that is granted
12 a power of direction by the terms of a trust to the extent
13 the power is exercisable while the person is not serving as a
14 trustee. The person is a trust director whether or not the
15 terms of the trust refer to the person as a trust director
16 and whether or not the person is a beneficiary or settlor of
17 the trust; and

18 J. "trustee" includes an original, additional and
19 successor trustee and a cotrustee.

20 SECTION 3. APPLICATION--PRINCIPAL PLACE OF
21 ADMINISTRATION.--

22 A. The Uniform Directed Trust Act applies to a
23 trust, whenever created, that has its principal place of
24 administration in New Mexico, subject to the following rules:

25 (1) if the trust was created before January

1 1, 2019, that act applies only to a decision or action
2 occurring on or after that date; and

3 (2) if the principal place of administration
4 of the trust is changed to New Mexico on or after
5 January 1, 2019, that act applies only to a decision or
6 action occurring on or after the date of the change.

7 B. Without precluding other means to establish a
8 sufficient connection with the designated jurisdiction in a
9 directed trust, the terms of the trust that designate the
10 principal place of administration of the trust are valid and
11 controlling if:

12 (1) a trustee's principal place of business
13 is located in, or a trustee is a resident of, the designated
14 jurisdiction;

15 (2) a trust director's principal place of
16 business is located in, or a trust director is a resident of,
17 the designated jurisdiction; or

18 (3) all or part of the administration occurs
19 in the designated jurisdiction.

20 SECTION 4. COMMON LAW AND PRINCIPLES OF EQUITY.--The
21 common law and principles of equity supplement the Uniform
22 Directed Trust Act, except to the extent modified by that act
23 or another law of New Mexico.

24 SECTION 5. EXCLUSIONS.--

25 A. As used in this section, "power of appointment" SB 101
Page 4

1 means a power that enables a person acting in a nonfiduciary
2 capacity to designate a recipient of an ownership interest
3 in, or another power of appointment over, trust property.

4 B. The Uniform Directed Trust Act does not apply
5 to a:

6 (1) power of appointment;

7 (2) power to appoint or remove a trustee or
8 trust director;

9 (3) power of a settlor over a trust to the
10 extent the settlor has a power to revoke the trust;

11 (4) power of a beneficiary over a trust to
12 the extent the exercise or nonexercise of the power affects
13 the beneficial interest of:

14 (a) the beneficiary; or

15 (b) another beneficiary represented by
16 the beneficiary under Sections 46A-3-301 through 46A-3-305
17 NMSA 1978 with respect to the exercise or nonexercise of the
18 power; or

19 (5) power over a trust if:

20 (a) the terms of the trust provide that
21 the power is held in a nonfiduciary capacity; and

22 (b) the power must be held in a
23 nonfiduciary capacity to achieve the settlor's tax objectives
24 under the United States Internal Revenue Code of 1986, as
25 amended, and regulations issued thereunder, as amended.

1 C. Unless the terms of a trust provide otherwise,
2 a power granted to a person to designate a recipient of an
3 ownership interest in, or power of appointment over, trust
4 property that is exercisable while the person is not serving
5 as a trustee is a power of appointment and not a power of
6 direction.

7 SECTION 6. POWERS OF TRUST DIRECTOR.--

8 A. Subject to Section 7 of the Uniform Directed
9 Trust Act, the terms of a trust may grant a power of
10 direction to a trust director.

11 B. Unless the terms of a trust provide otherwise:

12 (1) a trust director may exercise any
13 further power appropriate to the exercise or nonexercise of a
14 power of direction granted to the director under Subsection A
15 of this section; and

16 (2) trust directors with joint powers shall
17 act by majority decision.

18 SECTION 7. LIMITATIONS ON TRUST DIRECTOR.--A trust
19 director is subject to the same rules as a trustee in a like
20 position and under similar circumstances in the exercise or
21 nonexercise of a power of direction or further power under
22 Paragraph (1) of Subsection B of Section 6 of the Uniform
23 Directed Trust Act regarding:

24 A. a payback provision in the terms of the trust
25 necessary to comply with the reimbursement requirements of

1 medicaid law in Section 1917 of the Social Security Act, 42
2 U.S.C. Section 1396p(d)(4)(A), as amended, and regulations
3 issued thereunder, as amended; and

4 B. a charitable interest in the trust, including
5 notice regarding the interest to the attorney general.

6 SECTION 8. DUTY AND LIABILITY OF TRUST DIRECTOR.--

7 A. Subject to Subsection B of this section, with
8 respect to a power of direction or a further power under
9 Paragraph (1) of Subsection B of Section 6 of the Uniform
10 Directed Trust Act:

11 (1) a trust director has the same fiduciary
12 duty and liability in the exercise or nonexercise of the
13 power:

14 (a) if the power is held individually,
15 as a sole trustee in a like position and under similar
16 circumstances; or

17 (b) if the power is held jointly with a
18 trustee or another trust director, as a cotrustee in a like
19 position and under similar circumstances; and

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

24 B. Unless the terms of a trust provide otherwise,
25 if a trust director is licensed, certified or otherwise

1 authorized or permitted by law other than the Uniform
2 Directed Trust Act to provide health care in the ordinary
3 course of the director's business or practice of a
4 profession, to the extent the director acts in that capacity,
5 the director has no duty or liability under that act.

6 C. The terms of a trust may impose a duty or
7 liability on a trust director in addition to the duties and
8 liabilities imposed by the Uniform Directed Trust Act.

9 SECTION 9. DUTY AND LIABILITY OF DIRECTED TRUSTEE.--

10 A. Subject to Subsection B of this section, a
11 directed trustee shall take reasonable action to comply with
12 a trust director's exercise or nonexercise of a power of
13 direction or further power under Paragraph (1) of Subsection
14 B of Section 6 of the Uniform Directed Trust Act, and the
15 trustee is not liable for the action.

16 B. A directed trustee shall not comply with a
17 trust director's exercise or nonexercise of a power of
18 direction or further power under Paragraph (1) of Subsection
19 B of Section 6 of the Uniform Directed Trust Act to the
20 extent that, by complying, the trustee would engage in
21 willful misconduct.

22 C. An exercise of a power of direction under which
23 a trust director may release a trustee or another trust
24 director from liability for breach of trust is not effective
25 if:

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

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

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

8 D. A directed trustee that has reasonable doubt
9 about its duty under this section may petition the district
10 court for instructions.

11 E. The terms of a trust may impose a duty or
12 liability on a directed trustee in addition to the duties and
13 liabilities imposed by the Uniform Directed Trust Act.

14 SECTION 10. DUTY TO PROVIDE INFORMATION TO TRUST
15 DIRECTOR OR TRUSTEE.--

16 A. Subject to Section 11 of the Uniform Directed
17 Trust Act, a trustee shall provide information to a trust
18 director to the extent the information is reasonably related
19 both to:

20 (1) the powers or duties of the trustee; and

21 (2) the powers or duties of the director.

22 B. Subject to Section 11 of the Uniform Directed
23 Trust Act, a trust director shall provide information to a
24 trustee or another trust director to the extent the
25 information is reasonably related both to:

1 (1) the powers or duties of the director;
2 and

3 (2) the powers or duties of the trustee or
4 other director.

5 C. A trustee that acts in reliance on information
6 provided by a trust director is not liable for a breach of
7 trust to the extent the breach resulted from the reliance,
8 unless by so acting the trustee engages in willful
9 misconduct.

10 D. A trust director that acts in reliance on
11 information provided by a trustee or another trust director
12 is not liable for a breach of trust to the extent the breach
13 resulted from the reliance, unless by so acting the trust
14 director engages in willful misconduct.

15 SECTION 11. NO DUTY TO MONITOR, INFORM OR ADVISE.--

16 A. Unless the terms of a trust provide otherwise:

17 (1) a trustee does not have a duty to:

18 (a) monitor a trust director; or

19 (b) inform or give advice to a settlor,
20 beneficiary, trustee or trust director concerning an instance
21 in which the trustee might have acted differently than the
22 director; and

23 (2) by taking an action described in
24 Paragraph (1) of this subsection, a trustee does not assume
25 the duty excluded by that paragraph.

1 B. Unless the terms of a trust provide otherwise:

2 (1) a trust director does not have a duty

3 to:

4 (a) monitor a trustee or another trust
5 director; or

6 (b) inform or give advice to a settlor,
7 beneficiary, trustee or another trust director concerning an
8 instance in which the director might have acted differently
9 than a trustee or another trust director; and

10 (2) by taking an action described in
11 Paragraph (1) of this subsection, a trust director does not
12 assume the duty excluded by that paragraph.

13 SECTION 12. APPLICATION TO COTRUSTEE.--The terms of a
14 trust may relieve a cotrustee from duty and liability with
15 respect to another cotrustee's exercise or nonexercise of a
16 power of the other cotrustee to the same extent that, in a
17 directed trust, a directed trustee is relieved from duty and
18 liability with respect to a trust director's power of
19 direction under Sections 9 through 11 of the Uniform Directed
20 Trust Act.

21 SECTION 13. LIMITATION OF ACTION AGAINST TRUST
22 DIRECTOR.--

23 A. An action against a trust director for breach
24 of trust shall be commenced within the same limitation period
25 provided for in Section 46A-10-1005 NMSA 1978 for an action

1 for breach of trust against a trustee in a like position and
2 under similar circumstances.

3 B. A report or accounting has the same effect on
4 the limitation period for an action against a trust director
5 for breach of trust that the report or accounting would have
6 under Section 46A-10-1005 NMSA 1978 in an action for breach
7 of trust against a trustee in a like position and under
8 similar circumstances.

9 SECTION 14. DEFENSES IN ACTION AGAINST TRUST

10 DIRECTOR.--In an action against a trust director for breach
11 of trust, the director may assert the same defenses a trustee
12 in a like position and under similar circumstances could
13 assert in an action for breach of trust against the trustee.

14 SECTION 15. JURISDICTION OVER TRUST DIRECTOR.--

15 A. By accepting appointment as a trust director of
16 a trust subject to the Uniform Directed Trust Act, the
17 director submits to the personal jurisdiction of the courts
18 of New Mexico regarding any matter related to a power or duty
19 of the director.

20 B. This section does not preclude other methods of
21 obtaining jurisdiction over a trust director.

22 SECTION 16. OFFICE OF TRUST DIRECTOR.--Unless the terms
23 of a trust provide otherwise, the rules applicable to a
24 trustee apply to a trust director regarding the following
25 matters:

- 1 A. acceptance under Section 46A-7-701 NMSA 1978;
2 B. giving of bond to secure performance under
3 Section 46A-7-702 NMSA 1978;
4 C. reasonable compensation under Section 46A-7-708
5 NMSA 1978;
6 D. resignation under Section 46A-7-705 NMSA 1978;
7 E. removal under Section 46A-7-706 NMSA 1978; and
8 F. vacancy and appointment of successor under
9 Section 46A-7-704 NMSA 1978.

10 SECTION 17. UNIFORMITY OF APPLICATION AND
11 CONSTRUCTION.--In applying and construing the Uniform
12 Directed Trust Act, consideration shall be given to the need
13 to promote uniformity of the law with respect to its subject
14 matter among states that enact it.

15 SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
16 AND NATIONAL COMMERCE ACT.--The Uniform Directed Trust Act
17 modifies, limits or supersedes the Electronic Signatures in
18 Global and National Commerce Act, 15 U.S.C. Section 7001 et
19 seq., but does not modify, limit or supersede Section 101(c)
20 of that act, 15 U.S.C. Section 7001(c), or authorize
21 electronic delivery of any of the notices described in
22 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

23 SECTION 19. Section 46-12-102 NMSA 1978 (being Laws
24 2016, Chapter 72, Section 1-102) is amended to read:

25 "46-12-102. DEFINITIONS.--As used in the Uniform Trust

1 Decanting Act:

2 A. "appointive property" means the property or
3 property interest subject to a power of appointment;

4 B. "ascertainable standard" means a standard
5 relating to an individual's health, education, support or
6 maintenance within the meaning of 26 U.S.C. Section
7 2041(b)(1)(A), as amended, or 26 U.S.C. Section 2514(c)(1),
8 as amended, and any applicable regulations;

9 C. "authorized fiduciary" means:

10 (1) a trustee or other fiduciary, other than
11 a settlor, that has discretion to distribute, or direct a
12 trustee to distribute, part or all of the principal of the
13 first trust to one or more current beneficiaries;

14 (2) a special fiduciary appointed under
15 Section 46-12-109 NMSA 1978; or

16 (3) a special-needs fiduciary under Section
17 46-12-113 NMSA 1978;

18 D. "beneficiary" means a person that:

19 (1) has a present or future, vested or
20 contingent, beneficial interest in a trust;

21 (2) holds a power of appointment over trust
22 property; or

23 (3) is an identified charitable organization
24 that will or may receive distributions under the terms of the
25 trust;

1 E. "charitable interest" means an interest in a
2 trust that:

3 (1) is held by an identified charitable
4 organization and makes the organization a qualified
5 beneficiary;

6 (2) benefits only charitable organizations
7 and, if the interest were held by an identified charitable
8 organization, would make the organization a qualified
9 beneficiary; or

10 (3) is held solely for charitable purposes
11 and, if the interest were held by an identified charitable
12 organization, would make the organization a qualified
13 beneficiary;

14 F. "charitable organization" means:

15 (1) a person, other than an individual,
16 organized and operated exclusively for charitable purposes;
17 or

18 (2) a government or governmental
19 subdivision, agency or instrumentality, to the extent it
20 holds funds exclusively for a charitable purpose;

21 G. "charitable purpose" means the relief of
22 poverty, the advancement of education or religion, the
23 promotion of health, a municipal or other governmental
24 purpose or another purpose the achievement of which is
25 beneficial to the community;

1 H. "court" means the district court;

2 I. "current beneficiary" means a beneficiary that,
3 on the date the beneficiary's qualification is determined, is
4 a distributee or permissible distributee of trust income or
5 principal. "Current beneficiary":

6 (1) includes the holder of a presently
7 exercisable general power of appointment; and

8 (2) does not include a person that is a
9 beneficiary only because the person holds any other power of
10 appointment;

11 J. "decanting power" or "the decanting power"
12 means the power of an authorized fiduciary under the Uniform
13 Trust Decanting Act to distribute property of a first trust
14 to one or more second trusts or to modify the terms of the
15 first trust;

16 K. "expanded distributive discretion" means a
17 discretionary power of distribution that is not limited to an
18 ascertainable standard or a reasonably definite standard;

19 L. "first trust" means a trust over which an
20 authorized fiduciary may exercise the decanting power;

21 M. "first-trust instrument" means the trust
22 instrument for a first trust;

23 N. "general power of appointment" means a power of
24 appointment exercisable in favor of a powerholder, the
25 powerholder's estate, a creditor of the powerholder or a

1 creditor of the powerholder's estate;

2 O. "jurisdiction", with respect to a geographic
3 area, includes a state or country;

4 P. "person" means an individual; an estate; a
5 business or nonprofit entity; a public corporation; a
6 government or governmental subdivision, agency or
7 instrumentality; or another legal entity;

8 Q. "power of appointment" means a power that
9 enables a powerholder acting in a nonfiduciary capacity to
10 designate a recipient of an ownership interest in or another
11 power of appointment over the appointive property. "Power of
12 appointment" does not include a power of attorney;

13 R. "powerholder" means a person in which a donor
14 creates a power of appointment;

15 S. "presently exercisable power of appointment"
16 means a power of appointment exercisable by the powerholder
17 at the relevant time. "Presently exercisable power of
18 appointment":

19 (1) includes a power of appointment
20 exercisable only after the occurrence of a specified event,
21 the satisfaction of an ascertainable standard or the passage
22 of a specified time only after:

23 (a) the occurrence of the specified
24 event;

25 (b) the satisfaction of the

1 ascertainable standard; or

2 (c) the passage of the specified time;
3 and

4 (2) does not include a power exercisable
5 only at the powerholder's death;

6 T. "qualified beneficiary" means a beneficiary
7 that on the date the beneficiary's qualification is
8 determined:

9 (1) is a distributee or permissible
10 distributee of trust income or principal;

11 (2) would be a distributee or permissible
12 distributee of trust income or principal if the interests of
13 the distributees described in Paragraph (1) of this
14 subsection terminated on that date without causing the trust
15 to terminate; or

16 (3) would be a distributee or permissible
17 distributee of trust income or principal if the trust
18 terminated on that date;

19 U. "reasonably definite standard" means a clearly
20 measurable standard under which a holder of a power of
21 distribution is legally accountable within the meaning of 26
22 U.S.C. Section 674(b)(5)(A), as amended, and any applicable
23 regulations;

24 V. "record" means information that is inscribed on
25 a tangible medium or that is stored in an electronic or other

1 medium and is retrievable in perceivable form;

2 W. "second trust" means:

3 (1) a first trust after modification under
4 the Uniform Trust Decanting Act; or

5 (2) a trust to which a distribution of
6 property from a first trust is or may be made under the
7 Uniform Trust Decanting Act;

8 X. "second-trust instrument" means the trust
9 instrument for a second trust;

10 Y. "settlor", except as otherwise provided in
11 Section 46-12-125 NMSA 1978, means a person, including a
12 testator, that creates or contributes property to a trust.
13 If more than one person creates or contributes property to a
14 trust, each person is a settlor of the portion of the trust
15 property attributable to the person's contribution except to
16 the extent that another person has power to revoke or
17 withdraw that portion;

18 Z. "sign" means, with present intent to
19 authenticate or adopt a record:

20 (1) to execute or adopt a tangible symbol;
21 or

22 (2) to attach to or logically associate with
23 the record an electronic symbol, sound or process;

24 AA. "state" means a state of the United States,
25 the District of Columbia, Puerto Rico, the United States

1 Virgin Islands or any territory or insular possession subject
2 to the jurisdiction of the United States. "State" includes
3 an Indian tribe, pueblo, nation or band located within the
4 United States and recognized by federal law or formally
5 acknowledged by a state of the United States;

6 BB. "terms of the trust" means:

7 (1) except as otherwise provided in
8 Paragraph (2) of this subsection, the manifestation of the
9 settlor's intent regarding a trust's provisions as:

10 (a) expressed in the trust instrument;

11 or

12 (b) established by other evidence that
13 would be admissible in a judicial proceeding; or

14 (2) the trust's provisions as established,
15 determined or amended by:

16 (a) a trustee or trust director in
17 accordance with applicable law;

18 (b) court order; or

19 (c) a nonjudicial settlement agreement
20 under Section 46A-1-111 NMSA 1978; and

21 CC. "trust instrument" means a record executed by
22 the settlor to create a trust or by any person to create a
23 second trust that contains some or all of the terms of the
24 trust, including any amendments."

25 SECTION 20. Section 46A-1-103 NMSA 1978 (being Laws

1 2003, Chapter 122, Section 1-103, as amended) is amended to
2 read:

3 "46A-1-103. DEFINITIONS.--As used in the Uniform Trust
4 Code:

5 A. "action", with respect to an act of a trustee,
6 includes a failure to act;

7 B. "ascertainable standard" means a standard
8 relating to an individual's health, education, support or
9 maintenance within the meaning of Subparagraph (A) of
10 Paragraph (1) of Subsection (b) of Section 2041 and Paragraph
11 (1) of Subsection (c) of Section 2514 of the Internal Revenue
12 Code of 1986, as amended;

13 C. "beneficiary" means a person that:

14 (1) has a present or future beneficial
15 interest in a trust, vested or contingent; or

16 (2) in a capacity other than that of
17 trustee, holds a power of appointment over trust property;

18 D. "charitable trust" means a trust or portion of
19 a trust created for a charitable purpose described in
20 Subsection A of Section 46A-4-405 NMSA 1978;

21 E. "conservator" means a person appointed by the
22 court to administer the estate of a minor or adult
23 individual;

24 F. "environmental law" means a federal, state or
25 local law, rule, regulation or ordinance relating to

1 protection of the environment;

2 G. "guardian" means a person appointed by the
3 court or a parent to make decisions regarding the support,
4 care, education, health and welfare of a minor or adult
5 person. "Guardian" does not include a guardian ad litem;

6 H. "interests of the beneficiaries" means the
7 beneficial interests provided in the terms of the trust;

8 I. "jurisdiction", with respect to a geographic
9 area, includes a state or country;

10 J. "person" means an individual, corporation,
11 business trust, estate, trust, partnership, limited liability
12 company, association, joint venture, government, governmental
13 subdivision, agency or instrumentality, public corporation or
14 any other legal or commercial entity;

15 K. "power of withdrawal" means a presently
16 exercisable general power of appointment other than a power
17 exercisable:

18 (1) by a trustee and limited by an
19 ascertainable standard; or

20 (2) by another person only upon consent of
21 the trustee or a person holding an adverse interest;

22 L. "property" means anything that may be the
23 subject of ownership, whether real or personal, legal or
24 equitable, or any interest therein;

25 M. "qualified beneficiary" means a beneficiary

1 who, on the date the beneficiary's qualification is
2 determined:

3 (1) is a distributee or permissible
4 distributee of trust income or principal;

5 (2) would be a distributee or permissible
6 distributee of trust income or principal if the interests of
7 the distributees described in Paragraph (1) of this
8 subsection terminated on that date without causing the trust
9 to terminate; or

10 (3) would be a distributee or permissible
11 distributee of trust income or principal if the trust
12 terminated on that date;

13 N. "revocable", as applied to a trust, means
14 revocable by the settlor without the consent of the trustee
15 or a person holding an adverse interest;

16 O. "settlor" means a person, including a testator,
17 who creates or contributes property to a trust. If more than
18 one person creates or contributes property to a trust, each
19 person is a settlor of the portion of the trust property
20 attributable to that person's contribution, except to the
21 extent another person has the power to revoke or withdraw
22 that portion;

23 P. "spendthrift provision" means a term of a trust
24 that restrains both voluntary and involuntary transfer of a
25 beneficiary's interest;

1 Q. "state" means a state of the United States, the
2 District of Columbia, Puerto Rico, the United States Virgin
3 Islands or any territory or insular possession subject to the
4 jurisdiction of the United States. "State" includes an
5 Indian tribe, pueblo, nation or band recognized by federal
6 law or formally acknowledged by a state;

7 R. "terms of a trust" means:

8 (1) except as otherwise provided in
9 Paragraph (2) of this subsection, the manifestation of the
10 settlor's intent regarding a trust's provisions as:

11 (a) expressed in the trust instrument;

12 or

13 (b) established by other evidence that
14 would be admissible in a judicial proceeding; or

15 (2) the trust's provisions as established,
16 determined or amended by:

17 (a) a trustee or trust director in
18 accordance with applicable law;

19 (b) court order; or

20 (c) a nonjudicial settlement agreement
21 under Section 46A-1-111 NMSA 1978;

22 S. "trust instrument" means an instrument executed
23 by the settlor that contains terms of the trust, including
24 any amendments thereto; and

25 T. "trustee" includes an original trustee, an

1 additional trustee, a successor trustee and a co-trustee."

2 SECTION 21. Section 46A-1-105 NMSA 1978 (being Laws
3 2003, Chapter 122, Section 1-105, as amended) is amended to
4 read:

5 "46A-1-105. DEFAULT AND MANDATORY RULES.--

6 A. Except as otherwise provided in the terms of
7 the trust, the Uniform Trust Code governs the duties and
8 powers of a trustee, relations among trustees and the rights
9 and interests of a beneficiary.

10 B. The terms of a trust prevail over any provision
11 of the Uniform Trust Code except:

12 (1) the requirements for creating a trust;

13 (2) subject to Sections 9, 11 and 12 of the
14 Uniform Directed Trust Act, the duty of a trustee to act in
15 good faith and in accordance with the terms and purposes of
16 the trust and the interests of the beneficiaries;

17 (3) the requirement that a trust and its
18 terms be for the benefit of its beneficiaries and that the
19 trust have a purpose that is lawful, not contrary to public
20 policy and possible to achieve;

21 (4) the power of the court to modify or
22 terminate a trust under Sections 46A-4-410 through 46A-4-416
23 NMSA 1978;

24 (5) the effect of a spendthrift provision
25 and the rights of certain creditors and assignees to reach a

1 trust as provided in Chapter 46A, Article 5 NMSA 1978;

2 (6) the power of the court under Section
3 46A-7-702 NMSA 1978 to require, dispense with or modify or
4 terminate a bond;

5 (7) the power of the court under Subsection
6 B of Section 46A-7-708 NMSA 1978 to adjust a trustee's
7 compensation specified in the terms of the trust that is
8 unreasonably low or high;

9 (8) the duty under Paragraphs (2) and (3) of
10 Subsection B of Section 46A-8-813 NMSA 1978 to notify
11 qualified beneficiaries of an irrevocable trust who have
12 attained twenty-five years of age of the existence of the
13 trust, of the identity of the trustee and of their right to
14 request reports of the trustee;

15 (9) except as otherwise provided in
16 Subsection F of Section 46A-8-813 NMSA 1978, the duty under
17 Subsection A of Section 46A-8-813 NMSA 1978 to respond to the
18 request of a qualified beneficiary of an irrevocable trust
19 for a trustee's reports and other information reasonably
20 related to the administration of a trust;

21 (10) the effect of an exculpatory term under
22 Section 46A-10-1008 NMSA 1978;

23 (11) the rights under Sections 46A-10-1010
24 through 46A-10-1013 NMSA 1978 of a person other than a
25 trustee or beneficiary;

1 (12) periods of limitation for commencing a
2 judicial proceeding; provided, however, any such period may
3 be increased;

4 (13) the power of the court to take such
5 action and exercise such jurisdiction as may be necessary in
6 the interests of justice; and

7 (14) the subject-matter jurisdiction of the
8 court and venue for commencing a proceeding as provided in
9 Sections 46A-2-203 and 46A-2-204 NMSA 1978."

10 SECTION 22. Section 46A-6-603 NMSA 1978 (being Laws
11 2003, Chapter 122, Section 6-603, as amended) is amended to
12 read:

13 "46A-6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

14 A. While a trust is revocable, the trustee may
15 follow a direction of the settlor that is contrary to the
16 terms of the trust.

17 B. While a trust is revocable and the settlor has
18 capacity to revoke the trust, rights of the beneficiaries are
19 subject to the control of, and the duties of the trustee are
20 owed exclusively to, the settlor.

21 C. During the period the power may be exercised,
22 the holder of a power of withdrawal has the rights of a
23 settlor of a revocable trust under this section to the extent
24 of the property subject to the power."

25 SECTION 23. Section 46A-7-703 NMSA 1978 (being Laws

1 2003, Chapter 122, Section 7-703) is amended to read:

2 "46A-7-703. CO-TRUSTEES.--

3 A. Co-trustees who are unable to reach a unanimous
4 decision may act by majority decision.

5 B. If a vacancy occurs in a co-trusteeship, the
6 remaining co-trustees may act for the trust.

7 C. Subject to Section 12 of the Uniform Directed
8 Trust Act, a co-trustee shall participate in the performance
9 of a trustee's function unless the co-trustee is unavailable
10 to perform the function because of absence, illness,
11 disqualification under other law or other temporary
12 incapacity, or the co-trustee has properly delegated the
13 performance of the function to another trustee.

14 D. If a co-trustee is unavailable to perform
15 duties because of absence, illness, disqualification under
16 other law or other temporary incapacity, and prompt action is
17 necessary to achieve the purposes of the trust or to avoid
18 injury to the trust property, the remaining co-trustee or a
19 majority of the remaining co-trustees may act for the trust.

20 E. A trustee shall not delegate to a co-trustee
21 the performance of a function the settlor reasonably expected
22 the trustees to perform jointly. Unless a delegation was
23 irrevocable, a trustee may revoke a delegation previously
24 made.

25 F. Except as otherwise provided in Subsection G of SB 101
Page 28

1 this section, a trustee who does not join in an action of
2 another trustee is not liable for the action.

3 G. Subject to Section 12 of the Uniform Directed
4 Trust Act, each trustee shall exercise reasonable care to:

5 (1) prevent a co-trustee from committing a
6 serious breach of trust; and

7 (2) compel a co-trustee to redress a serious
8 breach of trust.

9 H. A dissenting trustee who joins in an action at
10 the direction of the majority of the trustees and who
11 notified any co-trustee of the dissent at or before the time
12 of the action is not liable for the action unless the action
13 is a serious breach of trust."

14 SECTION 24. REPEAL.--Section 46A-8-808 NMSA 1978 (being
15 Laws 2003, Chapter 122, Section 8-808) is repealed.

16 SECTION 25. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is January 1, 2019. _____

18
19
20
21
22
23
24
25