

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 1075 - L.D. 1468

An Act To Enact the Maine Uniform Directed Trust Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 18-B MRSA §103, sub-§17, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is repealed and the following enacted in its place:

17. Terms of a trust. "Terms of a trust" means:

A. Except as otherwise provided in paragraph B, the manifestation of the settlor's intent regarding a trust's provisions as:

- (1) Expressed in the trust instrument; or
- (2) Established by other evidence that would be admissible in a judicial proceeding; or

B. The trust's provisions as established, determined or amended by:

- (1) A trustee or other person in accordance with applicable law;
- (2) Court order; or
- (3) A nonjudicial settlement agreement under this Code.

Sec. 2. 18-B MRSA §105, sub-§2, ¶B, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

B. The Subject to the Maine Uniform Directed Trust Act, the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

Sec. 3. 18-B MRSA §603, sub-§1, as amended by PL 2005, c. 184, §13, is further amended to read:

1. Revocable trust. ~~While~~ To the extent a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

Sec. 4. 18-B MRSA §603, sub-§3 is enacted to read:

3. Revocable trust; direction of settlor. To the extent a trust is revocable by the settlor, the trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by the settlor in conjunction with a person other than the trustee or person holding an adverse interest, the trustee may follow a direction of the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

Sec. 5. 18-B MRSA §703, sub-§3, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

3. Participation by cotrustee. A Subject to the Maine Uniform Directed Trust Act, a cotrustee must shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

Sec. 6. 18-B MRSA §703, sub-§7, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

7. Reasonable care. Each Subject to the Maine Uniform Directed Trust Act, each trustee shall exercise reasonable care to:

- A. Prevent a cotrustee from committing a serious breach of trust; and
- B. Compel a cotrustee to redress a serious breach of trust.

Sec. 7. 18-B MRSA §808, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is repealed.

Sec. 8. 18-B MRSA Pt. 2 is enacted to read:

PART 2

MAINE UNIFORM DIRECTED TRUST ACT

CHAPTER 21

MAINE UNIFORM DIRECTED TRUST ACT

§2101. Short title

This Part may be known and cited as "the Maine Uniform Directed Trust Act."

§2102. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Act.** "Act" means the Maine Uniform Directed Trust Act.

2. Breach of trust. "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 Act or law of this State other than this Act pertaining to trusts.

3. Directed trust. "Directed trust" means a trust for which the terms of the trust grant a power of direction.

4. Directed trustee. "Directed trustee" means a trustee that is subject to a trust director's power of direction.

5. Person. "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. "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. "Power of direction" includes a power over the investment, management or distribution of trust property or other matters of trust administration. "Power of direction" excludes the powers described in section 2105, subsection 2.

7. Settlor. "Settlor" has the same meaning as in section 103, subsection 14.

8. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

9. Terms of a trust. "Terms of a trust" means:

A. Except as otherwise provided in paragraph B, the manifestation of the settlor's intent regarding a trust's provisions as:

(1) Expressed in the trust instrument; or

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

B. The trust's provisions as established, determined or amended by:

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

(2) Court order; or

(3) A nonjudicial settlement agreement under the Maine Uniform Trust Code.

10. Trust director. "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. "Trustee" includes an original, additional and successor trustee and a cotrustee.

§2103. Application; principal place of administration

1. Application. This Act applies to a trust, whenever created, that has its principal place of administration in this State, subject to the following rules:

A. If the trust was created before January 1, 2020, this Act applies only to a decision or action occurring on or after January 1, 2020.

B. If the principal place of administration of the trust is changed to this State on or after January 1, 2020, this Act applies only to a decision or action occurring on or after the date of the change.

2. Principal place of administration. Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust that designate the principal place of administration of the trust are valid and controlling if:

A. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

B. A trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

C. All or part of the administration occurs in the designated jurisdiction.

§2104. Common law and principles of equity

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

§2105. Exclusions

1. Power of appointment. In this section, "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.

2. Exclusions. This Act does not apply to a:

A. Power of appointment;

B. Power to appoint or remove a trustee or trust director;

C. Power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

D. Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(1) The beneficiary; or

(2) Another beneficiary represented by the beneficiary under the Maine Uniform Trust Code, sections 301 to 305 with respect to the exercise or nonexercise of the power; or

E. Power over a trust if:

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

(2) 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 amendments to that Code as of December 31, 2017.

3. Power of direction. 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 that is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

§2106. Powers of trust director

1. Power of direction. Subject to section 2107, the terms of a trust may grant a power of direction to a trust director.

2. Powers of trust director. Unless the terms of a trust provide otherwise:

A. 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 1; and

B. Trust directors with joint powers shall act by majority decision.

§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 section 2106, subsection 2, paragraph A regarding:

1. Medicaid payback provision. A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the federal Social Security Act, 42 United States Code, Section 1396p(d)(4)(A); and

2. Charitable interest. A charitable interest in the trust, including notice regarding the interest to the Attorney General.

§2108. Duty and liability of trust director

1. Duties and liabilities. Subject to subsection 2, with respect to a power of direction or further power under section 2106, subsection 2, paragraph A:

A. A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

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

(2) 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

B. The terms of the trust may vary a trust 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.

2. Health care provider. 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 Act 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 Act.

3. Additional duties and liabilities. 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.

§2109. Duty and liability of directed trustee

1. Reasonable action to comply. Subject to subsection 2, 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 section 2106, subsection 2, paragraph A, and the trustee is not liable for the action.

2. No compliance if willful misconduct. A directed trustee may not comply with a trust director's exercise or nonexercise of a power of direction or further power under section 2106, subsection 2, paragraph A to the extent that by complying the trustee would engage in willful misconduct.

3. Release from liability not effective. 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:

- A. The breach involved the trustee's or other director's willful misconduct;
- B. The release was induced by improper conduct of the trustee or other director in procuring the release; or
- C. At the time of the release, the director did not know the material facts relating to the breach.

4. Petition court for instructions. A directed trustee that has reasonable doubt about its duty under this section may petition the Probate Court or the Superior Court for instructions.

5. Additional duty or liability. 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.

§2110. Duty to provide information to trust director or trustee

1. Trustee's duty to provide information. Subject to section 2111, a trustee shall provide information to a trust director to the extent the information is reasonably related to both:

- A. The powers or duties of the trustee; and

B. The powers or duties of the director.

2. Trust director's duty to provide information. Subject to section 2111, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to both:

A. The powers or duties of the director; and

B. The powers or duties of the trustee or other director.

3. Trustee acts in reliance. 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.

4. Trust director acts in reliance. 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.

§2111. No duty to monitor, inform or advise

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

A. A trustee does not have a duty to:

(1) Monitor a trust director; or

(2) 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

B. By taking an action described in paragraph A, a trustee does not assume the duty excluded by paragraph A.

2. Trust director. Unless the terms of a trust provide otherwise:

A. A trust director does not have a duty to:

(1) Monitor a trustee or another trust director; or

(2) 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

B. By taking an action described in paragraph A, a trust director does not assume the duty excluded by paragraph A.

§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 sections 2109 to 2111.

§2113. Limitation of action against trust director

1. Action for breach of trust. An action against a trust director for breach of trust must be commenced within the same limitation period as in the Maine Uniform Trust Code, section 1005 for an action for breach of trust against a trustee in a like position and under similar circumstances.

2. Report or accounting. 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 the Maine Uniform Trust Code, section 1005 in an action for breach of trust against a trustee in a like position and under similar circumstances.

§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.

§2115. Jurisdiction over trust director

1. Personal jurisdiction. By accepting appointment as a trust director of a trust subject to this Act, the director submits to personal jurisdiction of the courts of this State regarding any matter related to a power or duty of the director.

2. Other methods not excluded. This section does not preclude other methods of obtaining jurisdiction over a trust director.

§2116. Office of trust director

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. Acceptance under the Maine Uniform Trust Code, section 701;

2. Bond to secure performance. Giving of bond to secure performance under the Maine Uniform Trust Code, section 702;

3. Reasonable compensation. Reasonable compensation under the Maine Uniform Trust Code, section 708;

4. Resignation. Resignation under the Maine Uniform Trust Code, section 705;

5. Removal. Removal under the Maine Uniform Trust Code, section 706; and

6. Successor. Vacancy and appointment of successor under the Maine Uniform Trust Code, section 704.

§2117. Uniformity of application and construction

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

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

This Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

§2119. Effective date

This Act takes effect January 1, 2020.