

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Trust and Trustees Act is amended by adding
5 Sections 16.3 and 16.7 as follows:

6 (760 ILCS 5/16.3 new)

7 Sec. 16.3. Directed trusts.

8 (a) Definitions. In this Section:

9 (1) "Directing party" means any investment trust
10 advisor, distribution trust advisor, or trust protector as
11 provided in this Section.

12 (2) "Distribution trust advisor" means any one or more
13 persons given authority by the governing instrument to
14 direct, consent to, veto, or otherwise exercise all or any
15 portion of the distribution powers and discretions of the
16 trust, including but not limited to authority to make
17 discretionary distribution of income or principal.

18 (3) "Excluded fiduciary" means any fiduciary that by
19 the governing instrument is directed to act in accordance
20 with the exercise of specified powers by a directing party,
21 in which case such specified powers shall be deemed granted
22 not to the fiduciary but to the directing party and such
23 fiduciary shall be deemed excluded from exercising such

1 specified powers. If a governing instrument provides that a
2 fiduciary as to one or more specified matters is to act,
3 omit action, or make decisions only with the consent of a
4 directing party, then such fiduciary is an excluded
5 fiduciary with respect to such matters.

6 (4) "Fiduciary" means any person expressly given one or
7 more fiduciary duties by the governing instrument,
8 including but not limited to a trustee.

9 (5) "Governing instrument" refers to the instrument
10 stating the terms of a trust, including but not limited to
11 any court order or nonjudicial settlement agreement
12 establishing, construing, or modifying the terms of the
13 trust in accordance with Section 16.1, 16.4, or 16.6 or
14 other applicable law.

15 (6) "Investment trust advisor" means any one or more
16 persons given authority by the governing instrument to
17 direct, consent to, veto, or otherwise exercise all or any
18 portion of the investment powers of the trust.

19 (7) "Power" means authority to take or withhold an
20 action or decision, including but not limited to an
21 expressly specified power, the implied power necessary to
22 exercise a specified power, and authority inherent in a
23 general grant of discretion.

24 (8) "Trust protector" means any one or more persons
25 given any one or more of the powers specified in subsection
26 (d), whether or not designated with the title of trust

1 protector by the governing instrument.

2 (b) Powers of investment trust advisor. An investment trust
3 advisor may be designated in the governing instrument of a
4 trust. The powers of an investment trust advisor may be
5 exercised or not exercised in the sole and absolute discretion
6 of the investment trust advisor, and are binding on all other
7 persons, including but not limited to each beneficiary,
8 fiduciary, excluded fiduciary, and any other party having an
9 interest in the trust. The governing instrument may use the
10 title "investment trust advisor" or any similar name or
11 description demonstrating the intent to provide for the office
12 and function of an investment trust advisor. Unless the terms
13 of the governing instrument provide otherwise, the investment
14 trust advisor has the authority to:

15 (1) direct the trustee with respect to the retention,
16 purchase, transfer, assignment, sale, or encumbrance of
17 trust property and the investment and reinvestment of
18 principal and income of the trust;

19 (2) direct the trustee with respect to all management,
20 control, and voting powers related directly or indirectly
21 to trust assets, including but not limited to voting
22 proxies for securities held in trust;

23 (3) select and determine reasonable compensation of
24 one or more advisors, managers, consultants, or
25 counselors, including the trustee, and to delegate to them
26 any of the powers of the investment trust advisor in

1 accordance with subsection (b) of Section 5.1; and

2 (4) determine the frequency and methodology for
3 valuing any asset for which there is no readily available
4 market value.

5 (c) Powers of distribution trust advisor. A distribution
6 trust advisor may be designated in the governing instrument of
7 a trust. The powers of a distribution trust advisor may be
8 exercised or not exercised in the sole and absolute discretion
9 of the distribution trust advisor, and are binding on all other
10 persons, including but not limited to each beneficiary,
11 fiduciary, excluded fiduciary, and any other party having an
12 interest in the trust. The governing instrument may use the
13 title "distribution trust advisor" or any similar name or
14 description demonstrating the intent to provide for the office
15 and function of a distribution trust advisor. Unless the terms
16 of the governing instrument provide otherwise, the
17 distribution trust advisor has authority to direct the trustee
18 with regard to all decisions relating directly or indirectly to
19 discretionary distributions to or for one or more
20 beneficiaries.

21 (d) Powers of trust protector. A trust protector may be
22 designated in the governing instrument of a trust. The powers
23 of a trust protector may be exercised or not exercised in the
24 sole and absolute discretion of the trust protector, and are
25 binding on all other persons, including but not limited to each
26 beneficiary, investment trust advisor, distribution trust

1 advisor, fiduciary, excluded fiduciary, and any other party
2 having an interest in the trust. The governing instrument may
3 use the title "trust protector" or any similar name or
4 description demonstrating the intent to provide for the office
5 and function of a trust protector. The powers granted to a
6 trust protector by the governing instrument may include but are
7 not limited to authority to do any one or more of the
8 following:

9 (1) modify or amend the trust instrument to achieve
10 favorable tax status or respond to changes in the Internal
11 Revenue Code, federal laws, State law, or the rulings and
12 regulations under such laws;

13 (2) increase, decrease, or modify the interests of any
14 beneficiary or beneficiaries of the trust;

15 (3) modify the terms of any power of appointment
16 granted by the trust; provided, however, such modification
17 or amendment may not grant a beneficial interest to any
18 individual, class of individuals, or other parties not
19 specifically provided for under the trust instrument;

20 (4) remove, appoint, or remove and appoint, a trustee,
21 investment trust advisor, distribution trust advisor,
22 another directing party, investment committee member, or
23 distribution committee member, including designation of a
24 plan of succession for future holders of any such office;

25 (5) terminate the trust, including determination of
26 how the trustee shall distribute the trust property to be

1 consistent with the purposes of the trust;

2 (6) change the situs of the trust, the governing law of
3 the trust, or both;

4 (7) appoint one or more successor trust protectors,
5 including designation of a plan of succession for future
6 trust protectors;

7 (8) interpret terms of the trust instrument at the
8 request of the trustee;

9 (9) advise the trustee on matters concerning a
10 beneficiary; or

11 (10) amend or modify the trust instrument to take
12 advantage of laws governing restraints on alienation,
13 distribution of trust property, or to improve the
14 administration of the trust.

15 If a charity is a current beneficiary or a presumptive
16 remainder beneficiary of the trust, a trust protector must give
17 notice to the Attorney General's Charitable Trust Bureau at
18 least 60 days before taking any of the actions authorized under
19 item (2), (3), (4), (5), or (6) of this subsection. The
20 Attorney General's Charitable Trust Bureau may, however, waive
21 this notice requirement.

22 (e) Duty and liability of directing party. A directing
23 party is a fiduciary of the trust subject to the same duties
24 and standards applicable to a trustee of a trust as provided by
25 applicable law unless the governing instrument provides
26 otherwise, but the governing instrument may not, however,

1 relieve or exonerate a directing party from the duty to act or
2 withhold acting as the directing party in good faith reasonably
3 believes is in the best interests of the trust.

4 (f) Duty and liability of excluded fiduciary. The excluded
5 fiduciary shall act in accordance with the governing instrument
6 and comply with the directing party's exercise of the powers
7 granted to the directing party by the governing instrument.
8 Unless otherwise provided in the governing instrument, an
9 excluded fiduciary has no duty to monitor, review, inquire,
10 investigate, recommend, evaluate, or warn with respect to a
11 directing party's exercise or failure to exercise any power
12 granted to the directing party by the governing instrument,
13 including but not limited to any power related to the
14 acquisition, disposition, retention, management, or valuation
15 of any asset or investment. Except as otherwise provided in
16 this Section or the governing instrument, an excluded fiduciary
17 is not liable, either individually or as a fiduciary, for any
18 action, inaction, consent, or failure to consent by a directing
19 party, including but not limited to any of the following:

20 (1) if a governing instrument provides that an excluded
21 fiduciary is to follow the direction of a directing party,
22 and such excluded fiduciary acts in accordance with such a
23 direction, then except in cases of willful misconduct on
24 the part of the excluded fiduciary in complying with the
25 direction of the directing party, the excluded fiduciary is
26 not liable for any loss resulting directly or indirectly

1 from following any such direction, including but not
2 limited to compliance regarding the valuation of assets for
3 which there is no readily available market value;

4 (2) if a governing instrument provides that an excluded
5 fiduciary is to act or omit to act only with the consent of
6 a directing party, then except in cases of willful
7 misconduct on the part of the excluded fiduciary, the
8 excluded fiduciary is not liable for any loss resulting
9 directly or indirectly from any act taken or omitted as a
10 result of such directing party's failure to provide such
11 consent after having been asked to do so by the excluded
12 fiduciary; or

13 (3) if a governing instrument provides that, or for any
14 other reason, an excluded fiduciary is required to assume
15 the role or responsibilities of a directing party, or if
16 the excluded party appoints a directing party or successor
17 to a directing party, then the excluded fiduciary shall
18 also assume the same fiduciary and other duties and
19 standards that applied to such directing party.

20 (g) Submission to court jurisdiction; effect on directing
21 party. By accepting an appointment to serve as a directing
22 party of a trust that is subject to the laws of this State, the
23 directing party submits to the jurisdiction of the courts of
24 this State even if investment advisory agreements or other
25 related agreements provide otherwise, and the directing party
26 may be made a party to any action or proceeding if issues

1 relate to a decision or action of the directing party.

2 (h) Duty to inform excluded fiduciary. Each directing party
3 shall keep the excluded fiduciary and any other directing party
4 reasonably informed regarding the administration of the trust
5 with respect to any specific duty or function being performed
6 by the directing party to the extent that the duty or function
7 would normally be performed by the excluded fiduciary or to the
8 extent that providing such information to the excluded
9 fiduciary or other directing party is reasonably necessary for
10 the excluded fiduciary or other directing party to perform its
11 duties, and the directing party shall provide such information
12 as reasonably requested by the excluded fiduciary or other
13 directing party. Neither the performance nor the failure to
14 perform of a directing party's duty to inform as provided in
15 this subsection affects whatsoever the limitation on the
16 liability of the excluded fiduciary as provided in this
17 Section.

18 (i) Reliance on counsel. An excluded fiduciary may, but is
19 not required to, obtain and rely upon an opinion of counsel on
20 any matter relevant to this Section.

21 (j) Applicability. On and after its effective date, this
22 Section applies to:

23 (1) all existing and future trusts that appoint or
24 provide for a directing party, including but not limited to
25 a party granted power or authority effectively comparable
26 in substance to that of a directing party as provided in

1 this Section; or

2 (2) any existing or future trust that:

3 (A) is modified in accordance with applicable law
4 or the terms of the governing instrument to appoint or
5 provide for a directing party; or

6 (B) is modified to appoint or provide for a
7 directing party, including but not limited to a party
8 granted power or authority effectively comparable in
9 substance to that of a directing party, in accordance
10 with (i) a court order, or (ii) a nonjudicial
11 settlement agreement made in accordance with Section
12 16.1, whether or not such order or agreement specifies
13 that this Section governs the responsibilities,
14 actions, and liabilities of persons designated as a
15 directing party or excluded fiduciary.

16 (760 ILCS 5/16.7 new)

17 Sec. 16.7. Application. Section 16.3 applies to all trusts
18 in existence on the effective date of this amendatory Act of
19 the 97th General Assembly or created after that date. Section
20 16.3 shall be construed as pertaining to the administration of
21 a trust and shall be available to any trust that is
22 administered in Illinois under Illinois law or that is governed
23 by Illinois law with respect to the meaning and effect of its
24 terms, except to the extent the governing instrument expressly
25 prohibits that Section by specific reference to that Section. A

1 provision in the governing instrument in the form: "The
2 provisions of Section 16.3 of the Trusts and Trustees Act and
3 any corresponding provision of future law may not be used in
4 the administration of this trust" or a similar provision
5 demonstrating that intent is sufficient to preclude the use of
6 Section 16.3.