

1 AN ACT concerning government.

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

4 Section 5. The Trusts and Trustees Act is amended by
5 changing Section 16.3 as follows:

6 (760 ILCS 5/16.3)

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. Notwithstanding
6 any provision of this Section to the contrary, a person
7 does not fail to qualify as an excluded fiduciary solely by
8 reason of having effectuated, participated in, or
9 consented to a transaction, including but not limited to
10 any transaction described in Section 16.1 or Section 16.4
11 of this Act, invoking the provisions of this Section with
12 respect to any new or existing trust.

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

16 (5) "Governing instrument" refers to the instrument
17 stating the terms of a trust, including but not limited to
18 any court order or nonjudicial settlement agreement
19 establishing, construing, or modifying the terms of the
20 trust in accordance with Section 16.1, 16.4, or 16.6 or
21 other applicable law.

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

26 (7) "Power" means authority to take or withhold an

1 action or decision, including but not limited to an
2 expressly specified power, the implied power necessary to
3 exercise a specified power, and authority inherent in a
4 general grant of discretion.

5 (8) "Trust protector" means any one or more persons
6 given any one or more of the powers specified in subsection
7 (d), whether or not designated with the title of trust
8 protector by the governing instrument.

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

22 (1) direct the trustee with respect to the retention,
23 purchase, transfer, assignment, sale, or encumbrance of
24 trust property and the investment and reinvestment of
25 principal and income of the trust;

26 (2) direct the trustee with respect to all management,

1 control, and voting powers related directly or indirectly
2 to trust assets, including but not limited to voting
3 proxies for securities held in trust;

4 (3) select and determine reasonable compensation of
5 one or more advisors, managers, consultants, or
6 counselors, including the trustee, and to delegate to them
7 any of the powers of the investment trust advisor in
8 accordance with subsection (b) of Section 5.1; and

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

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

1 beneficiaries.

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

16 (1) modify or amend the trust instrument to achieve
17 favorable tax status or respond to changes in the Internal
18 Revenue Code, federal laws, State law, or the rulings and
19 regulations under such laws;

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

22 (3) modify the terms of any power of appointment
23 granted by the trust; provided, however, such modification
24 or amendment may not grant a beneficial interest to any
25 individual, class of individuals, or other parties not
26 specifically provided for under the trust instrument;

1 (4) remove, appoint, or remove and appoint, a trustee,
2 investment trust advisor, distribution trust advisor,
3 another directing party, investment committee member, or
4 distribution committee member, including designation of a
5 plan of succession for future holders of any such office;

6 (5) terminate the trust, including determination of
7 how the trustee shall distribute the trust property to be
8 consistent with the purposes of the trust;

9 (6) change the situs of the trust, the governing law of
10 the trust, or both;

11 (7) appoint one or more successor trust protectors,
12 including designation of a plan of succession for future
13 trust protectors;

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

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

18 (10) amend or modify the trust instrument to take
19 advantage of laws governing restraints on alienation,
20 distribution of trust property, or to improve the
21 administration of the trust.

22 If a charity is a current beneficiary or a presumptive
23 remainder beneficiary of the trust, a trust protector must give
24 notice to the Attorney General's Charitable Trust Bureau at
25 least 60 days before taking any of the actions authorized under
26 item (2), (3), (4), (5), or (6) of this subsection. The

1 Attorney General's Charitable Trust Bureau may, however, waive
2 this notice requirement.

3 (e) Duty and liability of directing party. A directing
4 party is a fiduciary of the trust subject to the same duties
5 and standards applicable to a trustee of a trust as provided by
6 applicable law unless the governing instrument provides
7 otherwise, but the governing instrument may not, however,
8 relieve or exonerate a directing party from the duty to act or
9 withhold acting as the directing party in good faith reasonably
10 believes is in the best interests of the trust.

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

1 (1) if a governing instrument provides that an excluded
2 fiduciary is to follow the direction of a directing party,
3 and such excluded fiduciary acts in accordance with such a
4 direction, then except in cases of willful misconduct on
5 the part of the excluded fiduciary in complying with the
6 direction of the directing party, the excluded fiduciary is
7 not liable for any loss resulting directly or indirectly
8 from following any such direction, including but not
9 limited to compliance regarding the valuation of assets for
10 which there is no readily available market value;

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

20 (3) if a governing instrument provides that, or for any
21 other reason, an excluded fiduciary is required to assume
22 the role or responsibilities of a directing party, or if
23 the excluded party appoints a directing party or successor
24 to a directing party, then the excluded fiduciary shall
25 also assume the same fiduciary and other duties and
26 standards that applied to such directing party.

1 (g) Submission to court jurisdiction; effect on directing
2 party. By accepting an appointment to serve as a directing
3 party of a trust that is subject to the laws of this State, the
4 directing party submits to the jurisdiction of the courts of
5 this State even if investment advisory agreements or other
6 related agreements provide otherwise, and the directing party
7 may be made a party to any action or proceeding if issues
8 relate to a decision or action of the directing party.

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

25 (i) Reliance on counsel. An excluded fiduciary may, but is
26 not required to, obtain and rely upon an opinion of counsel on

1 any matter relevant to this Section.

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

4 (1) all existing and future trusts that appoint or
5 provide for a directing party, including but not limited to
6 a party granted power or authority effectively comparable
7 in substance to that of a directing party as provided in
8 this Section; or

9 (2) any existing or future trust that:

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

13 (B) is modified to appoint or provide for a
14 directing party, including but not limited to a party
15 granted power or authority effectively comparable in
16 substance to that of a directing party, in accordance
17 with (i) a court order, or (ii) a nonjudicial
18 settlement agreement made in accordance with Section
19 16.1, whether or not such order or agreement specifies
20 that this Section governs the responsibilities,
21 actions, and liabilities of persons designated as a
22 directing party or excluded fiduciary.

23 (Source: P.A. 97-921, eff. 1-1-13.)