

AN ACT concerning civil law.

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

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

(760 ILCS 5/16.3 new)

Sec. 16.3. Directed trusts.

(a) Definitions. In this Section:

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

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

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

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

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

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

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

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

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

protector by the governing instrument.

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

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

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

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

accordance with subsection (b) of Section 5.1; and

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

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

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

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

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

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

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

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

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

consistent with the purposes of the trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

relate to a decision or action of the directing party.

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

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

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

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

this Section; or

(2) any existing or future trust that:

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

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

(760 ILCS 5/16.7 new)

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

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