

## **Part 9**

### **Utah Uniform Prudent Investor Act**

#### **75-7-901 Prudent investor rule.**

- (1) Except as otherwise provided in Subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter. If a trustee is named on the basis of a trustee's representations of special skills or expertise, the trustee has a duty to use those special skills or expertise.
- (2) The prudent investor rule is a default rule and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Enacted by Chapter 89, 2004 General Session

#### **75-7-902 Standard of care -- Portfolio strategy -- Risk and return objectives.**

- (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- (2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- (3) Among circumstances that a trustee shall consider in investing and managing trust assets are the following which may be relevant to the trust or its beneficiaries:
  - (a) general economic conditions;
  - (b) the possible effect of inflation or deflation;
  - (c) the expected tax consequences of investment decisions or strategies;
  - (d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
  - (e) the expected total return from income and the appreciation of capital;
  - (f) other resources of the beneficiaries;
  - (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- (4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- (5) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

Enacted by Chapter 89, 2004 General Session

#### **75-7-903 Diversification.**

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Enacted by Chapter 89, 2004 General Session

**75-7-904 Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

Enacted by Chapter 89, 2004 General Session

**75-7-905 Reviewing compliance.**

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. This section does not require a specific outcome in investing.

Enacted by Chapter 89, 2004 General Session

**75-7-906 Investment direction.**

- (1) For purposes of this section, "investment direction" means a direction that is binding on the trustee, except for an investment direction given by a settlor as described in Subsection (2) to do any of the following with respect to an investment:
  - (a) retention;
  - (b) purchase;
  - (c) sale;
  - (d) exchange;
  - (e) tender; or
  - (f) any other transaction affecting ownership in the investment.
- (2)
  - (a) During the time period that a trust is revocable, the trustee may follow any investment direction of the settlor, including an investment direction that:
    - (i) is manifestly contrary to the terms of the trust; or
    - (ii) seriously breaches a fiduciary duty to the beneficiaries.
  - (b) The trustee is not liable for any loss resulting from following an investment direction described in Subsection (2)(a).
- (3) If the terms of a trust authorize a person to give investment direction to the trustee, the person authorized to give investment direction:
  - (a) is presumptively a fiduciary only with respect to an investment direction that the person gives to the trustee;
  - (b) is required to act in good faith with regard to:
    - (i) the purposes of the trust; and
    - (ii) the interests of the beneficiaries; and
  - (c) is liable for any loss that results from breach of the fiduciary duty only with respect to an investment direction that the person gives to the trustee.
- (4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for any loss that results from following an investment direction if:
  - (a) the terms of a trust authorizes a person to give the investment direction to the trustee; and
  - (b) the trustee acts in accordance with the investment direction given by a person described in Subsection (4)(a).

- (5) If the terms of a trust require another person's approval or consent to an investment decision of the trustee:
- (a) the person from whom approval or consent is required:
    - (i) is presumptively a fiduciary;
    - (ii) is required to act in good faith with regard to:
      - (A) the purposes of the trust; and
      - (B) the interests of the beneficiaries; and
    - (iii) is liable for any loss that results from breach of the fiduciary duty; and
  - (b) except in cases of willful misconduct or gross negligence, the trustee is not liable for any loss resulting from any act not taken as a result of the person's failure to respond to a request for approval or consent.

Enacted by Chapter 89, 2004 General Session

**75-7-907 Language invoking standard of chapter.**

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Enacted by Chapter 89, 2004 General Session