

**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