501C.0808 DIRECTED TRUSTS.

Subdivision 1. **Definitions.** (a) The definitions in this section apply to this section.

(b) "Directing party" means one or more persons acting as investment trust advisor, distribution trust advisor, or trust protector as provided in this section.

(c) "Distribution trust advisor" means one or more persons given authority by the governing instrument to exercise the powers specified in subdivision 3.

(d) "Excluded fiduciary" means one or more fiduciaries that by the governing instrument are 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. A person may be an excluded fiduciary even if such person participated in the exercise of (1) a power described in section 501C.0111 relating to nonjudicial settlement agreements, (2) a power described in section 502.851 relating to decanting, (3) a permitted trustee amendment, or (4) a similar power that invokes the provisions of this section with respect to any new or existing trust.

(e) "Fiduciary" means one or more persons expressly given one or more fiduciary duties by the governing instrument or by this section, including but not limited to a trustee.

(f) "Governing instrument" means 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 501C.0111 or 502.851, or other applicable law.

(g) "Investment trust advisor" means one or more persons given authority by the governing instrument to exercise the powers specified in subdivision 2.

(h) "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.

(i) "Trust protector" means one or more persons given one or more of the powers specified in subdivision 4.

Subd. 2. **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. The governing instrument may provide that the investment trust advisor has the authority to direct, consent to, or veto the exercise of all or any portion of the investment powers of the trustee. 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 any one or more advisors, managers, consultants, or counselors, which may be the trustee, and delegate to them any of the powers of the investment trust advisor in accordance with section 501C.0807 and determine their reasonable compensation for investment services; and

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

Subd. 3. **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. The governing instrument may provide that the distribution trust advisor has the authority to direct, consent to, veto, or otherwise exercise all or any portion of the distribution powers and discretions of the trustee. Unless the terms of the governing instrument provide otherwise, the distribution trust advisor has authority to:

(1) direct the trustee with regard to all decisions relating directly or indirectly to discretionary distributions of income or principal to or for one or more beneficiaries; and

(2) direct the trustee to terminate the trust, including determination of how the trustee shall distribute the trust property to be consistent with the purposes of the trust.

Subd. 4. **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 governing 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) change the situs of the trust, the governing law of the trust, or both;

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

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

(8) advise the trustee on matters concerning a beneficiary;

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

(10) provide direction regarding notification of qualified beneficiaries.

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 division at least 60 days before taking any of the actions authorized under clause (2), (3), (4), or (5). The attorney general's charitable trust division may, however, waive this notice requirement.

Subd. 5. **Duty and liability of directing party.** (a) A directing party who is a distribution trust advisor or an investment trust advisor 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, including but not limited to the limitation period for actions against a trustee, the effect of providing a report or account, and the defenses available to a trustee in an action for breach of trust against the trustee. The terms of the governing instrument may vary the duty or liability of an investment trust advisor or a distribution trust advisor, but only to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) A trust protector is not a fiduciary of the trust unless the governing instrument provides otherwise, provided that a trust protector shall be a fiduciary subject to paragraph (a) if the governing instrument grants the trust protector any of the powers of an investment trust advisor under subdivision 2 or a distribution trust advisor under subdivision 3, but only to the extent of the power or powers granted.

Subd. 6. **Duty and liability of excluded fiduciary.** (a) The excluded fiduciary shall act in accordance with the governing instrument and shall take reasonable steps to 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 of 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 the excluded fiduciary acts in accordance with the 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 the 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 the directing party's failure to provide consent after having been requested to do so by the excluded fiduciary; or

(3) if a governing instrument provides that, or if for any other reason, an excluded fiduciary is required to assume the role or responsibilities of a directing party, or if the excluded fiduciary appoints a directing party or successor to 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 its actions in carrying out the roles and responsibilities of the directing party.

(b) Any excluded fiduciary is also relieved from any obligation to review or evaluate any direction from a distribution trust advisor or to perform investment or suitability reviews, inquiries, or investigations or to make recommendations or evaluations with respect to investments to the extent the directing party, custodial account owner, or authorized designee of a custodial account owner had authority to direct the acquisition, disposition, or retention of any such investment. If the excluded fiduciary offers such communication to the directing party or any investment person selected by the investment trust advisor, the action may not be deemed to constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of the advisor's authority or to constitute any duty to do so.

(c) An excluded fiduciary is also relieved of any duty to communicate with, warn, or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or may have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the directing party.

(d) Absent a contrary provision in the governing instrument, the actions of the excluded fiduciary, including any communications with the directing party or others, or carrying out, recording, or reporting actions taken at the directing party's direction pertaining to matters within the scope of authority of the directing party, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument. An administrative action described under this paragraph may not be deemed to constitute an undertaking by the excluded fiduciary to monitor, participate, or otherwise take any fiduciary responsibility for actions within the scope of authority of the directing party.

(e) Any person acting in the role of excluded fiduciary or directing party is an interested person who may petition the district court and invoke its jurisdiction as provided in sections 501C.0201 to 501C.0208 for those matters specified in section 501C.0202, and the provisions of section 501C.0202 shall be construed and applied so that the references in that section to a "trustee" include the excluded fiduciary or directing party, as applicable.

Subd. 7. **Submission to court jurisdiction; effect on directing party.** 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, even if investment advisory agreements or other related agreements provide otherwise.

Subd. 8. **Duty to inform excluded fiduciary and directing parties.** (a) 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. 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 subdivision affects the limitation on the liability of the excluded fiduciary as provided in this section.

(b) Each excluded fiduciary shall keep the directing party or parties reasonably informed regarding the administration of the trust with respect to any specific duty or function performed by the excluded fiduciary to the extent that providing such information to the directing party or parties is reasonably necessary for the directing party to perform its duties. The excluded fiduciary shall provide such information as reasonably requested by a directing party. Neither the performance of nor the failure to perform an excluded fiduciary's duty to inform as provided in this subdivision affects the liability of the directing party as provided in this section.

Subd. 9. **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.

Subd. 9a. **Office of directing party.** Unless the terms of a governing instrument provide otherwise, the rules applicable to a trustee apply to a directing party regarding the following matters:

(1) acceptance under section 501C.0701;

(2) giving of bond to secure performance under section 501C.0702;

(3) when more than one person is acting in the role of a directing party, the provisions applicable to cotrustees under section 501C.0703;

(4) reasonable compensation under section 501C.0708;

(5) resignation under section 501C.0705;

(6) removal under section 501C.0706; and

(7) vacancy and appointment of successor under section 501C.0704.

Subd. 10. **Applicability.** 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 trusts that:

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

(ii) are 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 (A) a court order, or (B) a nonjudicial settlement agreement made in accordance with section 501C.0111, 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.

History: *2015 c 5 art 8 s 6; 2025 c 15 s 10-17*