

## U.S. DOMESTIC TRUST PROTECTOR / DIRECTED TRUST STATUTES

The following tables include citations of all known domestic statutes concerning trust protectors and directed parties as of the date of publication. We will attempt to update the references and salient language from time to time and known updates will first be made to the website: [www.BespokeProtector.com](http://www.BespokeProtector.com). The following list of statutes and citations is offered for reference use only; it is the drafting attorney's sole responsibility to verify the reference and applicability of any trust protector statute and to structure trust protector provisions consistent with governing law.

There are separate tables for UTC-derived statutes and for the non-UTC derived statutes. If you are aware of additional statutes not included in this list, or if you notice anything incorrect or outdated, please notify us at your earliest convenience so we can provide the most current, accurate information possible.

With thanks,

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## NON-UTC DIRECTED TRUST STATUTES

<b>AK</b>	<p><a href="#">AK Stat § 13.36.370</a>: (d) Subject to the terms of the trust instrument, a trust protector is not liable or accountable as a trustee or fiduciary because of an act or omission of the trust protector taken when performing the function of a trust protector under the trust instrument.</p>
<b>CO</b>	<p><a href="#">C.R.S. §15-16-801</a>: (5) "Non-investment decision" means a fiduciary decision regarding the distribution, administration, or management of any property owned by a trust, other than an investment decision.</p> <p>(8)(a) "Trust advisor" means a person who is:</p> <ul style="list-style-type: none"> <li>(I) Acting in a fiduciary capacity; and</li> <li>(II) Vested under a governing instrument with fiduciary powers to direct a trustee's actual or proposed investment decisions or non-investment decisions.</li> </ul> <p>(b) A person who holds a nonfiduciary power over a trust, including a power of appointment as defined in section 15-2-102, is not subject to the provisions of this part 8, regardless of whether he or she is described as a "trust advisor" within a governing instrument.</p> <p><a href="#">C.R.S. §15-16-802</a>: Excluding the requirement that a trust advisor act in a fiduciary capacity, the provisions of this part 8 are default rules that apply to any trust for which a trust advisor is then acting, and such rules may be expanded, restricted, eliminated, or otherwise altered by the provisions of a governing instrument.</p>
<b>DE</b>	<p><a href="#">12 DE Code § 3313</a>: (a) Where 1 or more persons are given authority by the terms of a governing instrument to direct, consent to or disapprove a fiduciary's actual or proposed investment decisions, distribution decisions or other decision of the fiduciary, such persons shall be considered to be advisers and fiduciaries when exercising such authority provided, however, that the governing instrument may provide that any such adviser (including a protector) shall act in a nonfiduciary capacity.</p>
<b>GA</b>	<p><a href="#">GA Code § 53-12-303</a>: (c) Whenever a trust reserves to the settlor or vests in an advisory or investment committee or in any other person, including a cotrustee, to the exclusion of one or more trustees, the authority to direct the making or retention of any investment, the excluded trustee shall be liable, if at all, only as a ministerial agent and not as trustee for any loss resulting from the making or retention or any investment pursuant to the authorized direction.</p>

ID	<p><a href="#">ID Code § 15-7-501</a>: (4) When trust advisor considered as fiduciary. If one (1) or more trust advisors are given authority by the terms of a governing instrument to direct, consent to, or disapprove a fiduciary's investment decisions, or proposed investment decisions, such trust advisors shall be considered to be fiduciaries when exercising such authority unless the governing instrument provides otherwise.</p>
IL	<p><a href="#">760 ILCS 5/16.3</a>: (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.</p>
IN	<p><a href="#">IC 30-4-3-9</a>: (b) If the terms of the trust give a person a power to direct the trustee in the administration of the trust, except as provided in subsection (a) of this section: (1) If the person holds the power as a fiduciary, the trustee has a duty to refuse to comply with any direction which he knows or should know would constitute a breach of a duty owed by that person as a fiduciary. (2) If the person holds the power solely for his own benefit, the trustee may refuse to comply only if the attempted exercise of the power violates the terms of the trust with respect to that power.</p>
MI*	<p><a href="#">MI Comp L § 700.7809</a>: (a) Except as provided in subsection (2), the trust protector is a fiduciary to the extent of the powers, duties, and discretions granted to him or her under the terms of the trust. (2) The terms of a trust may provide that a trust protector to whom powers of administration described in section 675(4) of the internal revenue code, 26 USC 675, have been granted may exercise those powers in a nonfiduciary capacity. However, the terms of the trust shall not relieve the trust protector from the requirement under subsection (1)(b) that he or she exercise or refrain from exercising any power, duty, or discretion in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.</p>

<p>NV</p>	<p><a href="#">NV Rev Stat § 163.5553</a>: 1. A trust protector may exercise the powers provided to the trust protector in the instrument in the best interests of the trust. The powers exercised by a trust protector are at the sole discretion of the trust protector and are binding on all other persons.</p> <p><a href="#">NV Rev Stat § 163.5551</a>: If one or more trust advisers are given authority, by the terms of an instrument, to direct, consent to or disapprove a fiduciary's investment decisions, the investment trust advisers shall be considered fiduciaries when exercising that authority unless the instrument provides otherwise.</p>
<p>RI</p>	<p><a href="#">RI Gen L § 18-9.2-2(9)(iii)</a>: (iii) For the purposes of this chapter, neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in subparagraph (l) of this subsection shall be considered a qualified trustee; however, nothing in this chapter shall preclude a transferor from appointing one or more advisors, including, but not limited to: (A) Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors; and (B) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust. For purposes of this section, the term "advisor" includes a trust "protector" or any other person who, in addition to a qualified trustee, holds one or more trust powers.</p>
<p>SD</p>	<p><a href="#">SD Codified L § 55-1B-6</a>: The powers and discretions of a trust protector are as provided in the governing instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the trust protector and are binding on all other persons.</p>
<p>TX</p>	<p><a href="#">TX Trust Code §114.0031</a>: (e) If the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is considered to be an advisor and a fiduciary when exercising that authority except that the trust terms may provide that an advisor acts in a nonfiduciary capacity.</p>
<p>UT*</p>	<p><a href="#">UT Code § 25-6-14(7)(b)</a>: (References only in passing in DAPT statute): the settlor has the authority under the terms of the trust instrument to appoint nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can direct, consent to, or disapprove distributions</p>

WA	<a href="#">WA Rev Code § 11.100.130</a> : Whenever power or authority to direct or control the acts of a fiduciary or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if he or she were a designated trustee in relation to the exercise or nonexercise of such power or authority.
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\* Michigan and Utah both adopted significant parts of the UTC but neither adopted Section 808 (Powers to Direct). Michigan has a comprehensive trust protector statute; Utah only mentions trust protectors in passing in its domestic asset protection trust statute.

## UTC-DERIVED DIRECTED TRUST STATUTES

Each of the following jurisdictions has substantially enacted Model UTC §808 verbatim. Verify whether your state has also enacted Model UTC §105 (Default and Mandatory Provisions) to determine if the directed party's presumption of fiduciary duty may be waived. The full text of Sections 105 and 88 of the Uniform Trust Code is reproduced below.

### MODEL UTC ORIGINAL LANGUAGE (2014 DRAFT)

#### SECTION 105. DEFAULT AND MANDATORY RULES.

(a) Except as otherwise provided in the terms of the trust, this [Code] governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this [Code] except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) the power of the court to modify or terminate a trust under Sections 410 through 416;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in [Article] 5;
- (6) the power of the court under Section 702 to require, dispense with, or modify or terminate a bond;
- (7) the power of the court under Section 708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
- [(8) the duty under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;]
- [(9) the duty under Section 813(a) to respond to the request of a [qualified] beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;]

- (10) the effect of an exculpatory term under Section 1008;
- (11) the rights under Sections 1010 through 1013 of a person other than a trustee or beneficiary;
- (12) periods of limitation for commencing a judicial proceeding; [and]
- (13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice [; and
- (14) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 203 and 204].

## **SECTION 808. POWERS TO DIRECT**

- (a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.
- (b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.
- (c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.
- (d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

## JURISDICTIONS THAT HAVE ENACTED UTC §808

AL	<a href="#">Ala. Code 19-3B-808</a>
AZ	<a href="#">A.R.S. §14-10808, 14-10818</a>
AR	<a href="#">A.C.A. §28-73-808</a>
DC	<a href="#">DC Code §19-1308.08</a>
FL	<a href="#">Fla. Stat. §736.0808</a>
KS	<a href="#">KS Stat. §58a-808</a>
KY	<a href="#">KY Rev. Stat. (386B) §8.8-080</a>
ME	<a href="#">ME Rev. Stat. 18-B-§808</a>
MD	<a href="#">MD Estates &amp; Trust Code Ann. §14.5-808</a>
MA	<a href="#">ALM GL ch. 203E §808</a>
MS	<a href="#">Miss. Code Ann. §91-8-808, 91-8-1201</a>
MO	<a href="#">MO Rev. Stat. §456.8-808</a>
MT	<a href="#">MT Code §72-38-808</a>
NE	<a href="#">N.R.S. §30-3873</a>
NH	<a href="#">NH Rev. Stat. §564-B:8-808</a>
NM	<a href="#">NM Stat. §46A-8-808</a>
NC	<a href="#">NC Gen. Stat. §36C-8A-1-11</a>
ND	<a href="#">ND Cent. Code §59-16-08</a>
OH	<a href="#">Ohio Rev. Code §5808.08</a>
OR	<a href="#">OR Rev. Stat. §§130.685, 130.735</a>
PA	<a href="#">20 PA Cons. Stat. §7778</a>
SC	<a href="#">SC Code §62-7-808</a>
TN	<a href="#">TN Code §§35-15-808, 35-15-1201-1206</a> (Dedicated trust protector statutes)
VT	<a href="#">14A V.S.A. §808</a>
VA	<a href="#">VA Code §64.2-770</a>
WV	<a href="#">WV Code §44D-8-808</a>
WI	<a href="#">WI Stat. §§701.0808, 701.0818</a> (Dedicated trust protector statute)
WY	<a href="#">WY Stat. §§4-10-808, 4-10-710-718</a> (Dedicated trust protector statutes)