

TRUSTS, USES, AND POWERS

CHAPTER 583

SENATE BILL NO. 2416
(Senators W. Stenehjem, Maxson)

TRUSTEES' INVESTMENT STANDARD

AN ACT to amend and reenact section 59-02-08 of the North Dakota Century Code, relating to adoption of a "prudent investor" standard for investment of funds by a trustee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-02-08 of the North Dakota Century Code is amended and reenacted as follows:

59-02-08. Investment of trust funds - ~~Failure to invest~~ Prudent investor rule. ~~A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same. If he fails so to do, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful. A trustee is under a duty to the beneficiaries to invest and manage the funds of a trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust. The "prudent investor rule" means that in making investments, the fiduciaries shall exercise the judgment and care, under the circumstances and then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation, but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation, but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust.~~

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 584

SENATE BILL NO. 2420
(Senators Maxson, Holmberg, W. Stenehjem)
(Representatives Porter, Maragos)

TRUSTEES' INVESTMENT POWERS

AN ACT to amend and reenact section 59-04-15 of the North Dakota Century Code, relating to powers and reports of trustees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-04-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

59-04-15. Powers and duties of trustee.

1. Every act of the trustee in contravention of the terms of the trust and statute is absolutely void except where the district or county court having jurisdiction and supervision of the administration of the trust, by order, on notice and hearing as provided in this chapter, authorizes the trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in the manner as best may accomplish the object and purpose of the trust, where it is made to appear to the satisfaction of the court that the order is necessary and for the best interests or benefit of the trust estate or person or persons beneficially interested in the trust estate, or who thereafter may acquire an interest in the trust estate, and where it is further established to the satisfaction of the court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of the instrument will tend to destroy the trust estate or create losses of principal or income.
2. Unless otherwise provided by the terms of the trust or an order in a supervised proceeding, a trustee acting reasonably for the benefit of the beneficiaries may exercise the powers granted to a personal representative under section 30.1-18-15.
3. A trust agreement may grant the powers of section 30.1-18-15, as those powers exist on the date of signing the agreement, to a trustee by a specific reference to section 30.1-18-15 and the powers relating to investment under sections 6-05-15, 6-05-15.1, and 6-05-15.2.

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