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**TRUSTS AND FIDUCIARIES
(760 ILCS 5/) Trusts and Trustees Act.**

(760 ILCS 5/1) (from Ch. 17, par. 1651)

Sec. 1. Title. This Act shall be known and may be cited as the Trusts and Trustees Act.
(Source: P.A. 78-625.)

(760 ILCS 5/2) (from Ch. 17, par. 1652)

Sec. 2. Definitions. As used in this Act:

(1) "Trust" means a trust created by will, deed, agreement, declaration or other written instrument;

(2) "Trustee" means the trustee or any successor or added trustee of the trust, whether appointed by or pursuant to the instrument creating the trust, by order of court or otherwise, and includes an individual and a corporation qualified to administer trusts in this State under "An Act to provide for and regulate the administration of trusts by trust companies", approved June 15, 1887, as amended, or under "An Act authorizing foreign corporations, including banks, and national banking associations domiciled in other states, to act in a fiduciary capacity in this State upon certain conditions herein set forth", approved July 13, 1953, as amended.

(Source: P.A. 78-625.)

(760 ILCS 5/3) (from Ch. 17, par. 1653)

Sec. 3. Applicability.

(1) A person establishing a trust may specify in the instrument the rights, powers, duties, limitations and immunities applicable to the trustee, beneficiary and others and those provisions where not otherwise contrary to law shall control, notwithstanding this Act. The provisions of this Act apply to the trust to the extent that they are not inconsistent with the provisions of the instrument.

(2) This Act applies to every trust created by will, deed, agreement, declaration or other instrument, except that the provisions of Sections 4.01 through 4.08, Sections 4.10 through 4.12, and Sections 4.14 through 4.24 apply only to trusts executed on or after October 1, 1973 and, with respect to Section 17, to an order entered on or after that date, and provided further that the provisions of this Act do not apply to any: (a) land trust; (b) voting trust; (c) security instrument such as a trust deed or mortgage; (d) liquidation trust; (e) escrow; (f) instrument under which a nominee, custodian for property or paying or receiving agent is appointed; or (g) a trust created by a deposit arrangement in a banking or savings institution, commonly known as a "Totten

and care under the circumstances then prevailing that men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the 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", and "prudent person rule".

(e) On and after the effective date of this amendatory Act of 1991, this Section applies to all existing and future trusts, but only as to actions or inactions occurring after that effective date.

(Source: P.A. 87-715.)

(760 ILCS 5/5.1) (from Ch. 17, par. 1675.1)

Sec. 5.1. Duty not to delegate.

(a) The trustee has a duty not to delegate to others the performance of any acts involving the exercise of judgment and discretion, except acts constituting investment functions that a prudent investor of comparable skills might delegate under the circumstances. The trustee may delegate those investment functions to an investment agent as provided in subsection (b).

(b) For a trustee to properly delegate investment functions under subsection (a), all of the following requirements apply:

(1) The trustee must exercise reasonable care, skill, and caution in selecting the investment agent, in establishing the scope and specific terms of any delegation, and in periodically reviewing the agent's actions in order to monitor overall performance and compliance with the scope and specific terms of the delegation.

(2) The trustee must conduct an inquiry into the experience, performance history, professional licensing or registration, if any, and financial stability of the investment agent.

(3) The investment agent shall be subject to the jurisdiction of the courts of the State of Illinois.

(4) The investment agent shall be subject to the same standards that are applicable to the trustee.

(5) The investment agent shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if the investment agent were a designated trustee in relation to the exercise or nonexercise of the investment function.

(6) The trustee shall send written notice of its intention to begin delegating investment functions under this Section to the beneficiaries eligible to receive income from the trust on the date of initial delegation at least 30 days before the delegation. This notice shall thereafter, until or unless the beneficiaries eligible to receive income from the trust at the time are notified to the contrary, authorize the trustee to delegate investment functions pursuant to this Section.

(c) If all requirements of subsection (b) are satisfied, the trustee shall not otherwise be responsible for the investment decisions or actions of the investment agent to which the investment functions are delegated.

(d) On and after July 1, 1992, this Section applies to all existing and future trusts, but only as to actions or

inactions occurring after that date.
(Source: P.A. 87-715; 87-895.)

(760 ILCS 5/5.2) (from Ch. 17, par. 1675.2)

Sec. 5.2. Investments in mutual funds. A trustee, including a trustee of a common trust fund, may invest and reinvest the trust estate in interests in any open-end or closed-end management type investment company or unit investment trust registered under the Investment Company Act of 1940 or any investment fund exempt from registration under the Investment Company Act of 1940, any of these investment companies, unit investment trusts, or investment funds being a "mutual fund" for purposes of this Section, or may retain, sell, or exchange those interests, provided that the portfolio of the mutual fund, as an entity, is appropriate under the provisions of this Act. A trustee shall not be prohibited from investing, reinvesting, retaining, or exchanging any interests held by the trust estate in any mutual fund for which the trustee or an affiliate acts as advisor or manager or in any other role solely on the basis that the trustee (or its affiliate) provides services to the mutual fund and receives reasonable remuneration for those services. Neither a trustee nor its affiliate shall be required to reduce or waive its compensation for services provided in connection with the investment, management, and administration of the trust estate because the trustee invests, reinvests, or retains the trust estate in a mutual fund, so long as the total compensation paid by the trust estate as trustee's fees and mutual fund fees, including any advisory or management fees, in connection with the investment of a trust estate in a mutual fund is reasonable; provided, however, that a trustee may receive Rule 12b-1 fees equal to the amount of those fees that would be paid to any other party.

(Source: P.A. 90-297, eff. 8-1-97.)

(760 ILCS 5/5.3)

Sec. 5.3. Total return trusts.

(a) Conversion by trustee. A trustee may convert a trust to a total return trust as described in this Section if all of the following apply:

(1) The trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines that conversion to a total return trust will enable the trustee to better carry out the purposes of the trust and the conversion is in the best interests of the beneficiaries;

(2) conversion to a total return trust means the trustee will invest and manage trust assets seeking a total return without regard to whether that return is from income or appreciation of principal, and will make distributions in accordance with this Section (such a trust is called a "total return trust" in this Section);

(3) the trustee sends a written notice of the trustee's decision to convert the trust to a total return trust, specifying a prospective effective date for the conversion and including a copy of this Section, to the following beneficiaries, determined as of the date the notice is sent and assuming nonexercise of all powers of appointment:

(A) all of the legally competent beneficiaries