CHAPTER 112

FIDUCIARIES

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112.01 Uniform fiduciaries act. (1) DEFINITIONS. In this section unless the context or subject matter otherwise requires:

(a) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

(b) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting, or constructive, personal representative, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, prime contractor or subcontractor who is a trustee under ch. 779, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(c) A thing is done "in good faith" within the meaning of this section, when it is in fact done honestly, whether it be done negligently or not.

(d) "Person" includes a corporation, limited liability company, partnership, or other association or 2 or more persons having a joint or common interest.

(e) "Principal" includes any person to whom a fiduciary as such owes an obligation.

(3) APPLICATION OF PAYMENTS MADE TO FIDUCIARIES. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(5) TRANSFER OF NEGOTIABLE INSTRUMENT BY FIDUCIARY. If any negotiable instrument payable or endorsed to a fiduciary as such is endorsed by the fiduciary, or if any negotiable instrument payable or endorsed to a fiduciary's principal is endorsed by a fiduciary empowered to endorse such instrument on behalf of his or her principal, the endorsee is not bound to inquire whether the fiduciary is committing a breach of the fiduciary's obligation as fiduciary in endorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of the fiduciary's obligation as fiduciary, unless the endorsee takes the instrument with actual knowledge of such breach or with knowledge of such facts that the endorsee's action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of the fiduciary's obligation as fiduciary in transferring the instrument.

(6) CHECK DRAWN BY FIDUCIARY PAYABLE TO 3RD PERSON. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of a fiduciary's principal by a fiduciary empowered to draw such instrument in the name of his or her principal, the payee is not bound to inquire whether the fiduciary is committing a breach of the fiduciary's obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of the fiduciary's obligation as fiduciary unless the payee takes the instrument with actual knowledge of such breach, or with knowledge of such facts that the payee's action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of the fiduciary's obligation as fiduciary in drawing or delivering the instrument.

(7) CHECK DRAWN BY AND PAYABLE TO FIDUCIARY. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of a fiduciary's principal by a fiduciary empowered to draw such instrument in the name of his or her principal, payable to the fiduciary personally, or payable to a 3rd person, and transferred by the 3rd person to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of the fiduciary's obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of the fiduciary's obligation as fiduciary, unless the transferee takes the instrument with actual knowledge of such breach, or with knowledge of such facts that the transferee's action in taking the instrument amounts to bad faith.

(8) DEPOSIT IN NAME OF FIDUCIARY AS SUCH. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of the fiduciary's obligation as fiduciary in drawing the check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank, and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of the fiduciary's obligation as fiduciary in drawing or delivering the check.

(9) DEPOSIT IN NAME OF PRINCIPAL. If a check is drawn upon the account of a fiduciary's principal in a bank by a fiduciary, who is empowered to draw checks upon his or her principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of the fiduciary's obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of the fiduciary's obligation as fiduciary in drawing or delivering the check.

(10) DEPOSIT IN FIDUCIARY'S PERSONAL ACCOUNT. If a fiduciary makes a deposit in a bank to the fiduciary's personal credit of checks drawn by the fiduciary upon an account in his or her own name as fiduciary, or of checks payable to the fiduciary as fiduciary, or of checks drawn by the fiduciary upon an account in the

name of his or her principal if the fiduciary is empowered to draw checks thereon, or of checks payable to his or her principal and endorsed by the fiduciary, if the fiduciary is empowered to endorse such checks, or if the fiduciary otherwise makes a deposit of funds held by the fiduciary as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his or her obligation as fiduciary. The bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary, including checks payable to the bank, without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his or her obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith, and the bank paying the check is not bound to inquire whether the fiduciary is committing thereby a breach of his or her obligation as fiduciary.

(11) DEPOSIT OR SAFE DEPOSIT BOX RENTAL IN NAME OF ESTATE OR TWO OR MORE FIDUCIARIES. When a deposit is made in a bank account or a safe deposit box or storage space rented, in the names of 2 or more persons as trustees or personal representatives, or in the name of an estate having 2 or more personal representatives, and a check is drawn upon the account, or access to the safe deposit box or storage space is sought by any one or more of the fiduciaries authorized by the other fiduciary or fiduciaries to draw checks upon the account, or to enter the safe deposit box or storage space, neither the payee nor the other holder nor the bank is bound to inquire whether it is a breach of trust to authorize the fiduciary or fiduciaries to draw checks upon the account, or to enter the safe deposit box or storage space, and is not liable unless the circumstances are such that the action of the payee or other holder or the bank amounts to bad faith.

(12) NOT RETROACTIVE. The provisions of this section shall not apply to transactions taking place prior to June 4, 1925.

(13) CASES NOT PROVIDED FOR IN SECTION. In any case not provided for in this section the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

(14) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(15) SHORT TITLE. This section may be cited as the "Uniform Fiduciaries Act".

(16) INCONSISTENT LAWS REPEALED. All acts or parts of acts inconsistent with this section are repealed.

History: 1975 c. 409; 1979 c. 89; 1981 c. 391 s. 210; 1983 a. 189; 1993 a. 112, 492; 1997 a. 253; 2001 a. 102; 2005 a. 253.

Actual knowledge or bad faith is a precondition for liability under sub. (6). Bolger v. Merrill Lynch Ready Assets Trust, 143 Wis. 2d 766, 423 N.W.2d 173 (Ct. App. 1988).

Sub. (10) applies when a person is actually acting as a fiduciary and the bank is aware that it is dealing with a fiduciary. If these facts are not present, the defenses contained in sub. (10) do not apply. Larson v. Kleist Builders, Ltd. 203 Wis. 2d 341, 553 N.W.2d 281 (Ct. App. 1996), 95–2235.

The 6–year limitations period found in s. 893.93 (1) (a) applies to actions under this section. Willowglen Academy–Wisconsin, Inc. v. Connelly Interiors, Inc. 2008 WI App 35, 307 Wis. 2d 776, 746 N.W.2d 570, 07–1178.

Sub. (6) imposes no requirement that a personal creditor who receives a check drawn by a fiduciary know the exact fiduciary relationship. Willowglen Academy–Wisconsin, Inc. v. Connelly Interiors, Inc. 2008 WI App 35, 307 Wis. 2d 776, 746 N.W.2d 570, 07–1178.

Sub. (6) pertains to checks drawn by a fiduciary as such, or in the name of a fiduciary's principal by a fiduciary empowered to draw the instrument in the name of the principal. To "draw" under sub. (6) does not equate solely with the act of personally signing the instrument in question. Here, the fiduciary "drew" checks by using a check machine and a facsimile stamp containing the signatures of the employing company's copresidents. Willowglen Academy–Wisconsin, Inc. v. Connelly Interiors, Inc. 2008 WI App 35, 307 Wis. 2d 776, 746 N.W.2d 570, 07–1178.

Discussing the standard for determining "bad faith" under sub. (9). Koss Corp. v. Park Bank, 2019 WI 7, 385 Wis. 2d 261, 922 N.W.2d 20, 16–0636.

112.02 Suspension of powers of fiduciaries engaged in war service. (1m) In this section, "fiduciary" means a personal representative, guardian, or testamentary trustee.

(2) In this section a fiduciary shall be considered to be engaged in war service in any of the following cases:

(a) If the fiduciary is a member of the military or naval forces of the United States or of any of its allies or if the fiduciary has been accepted for such service and is awaiting induction into such service.

(b) If the fiduciary is engaged in any work abroad in connection with a governmental agency of the United States or in connection with the American Red Cross society or any other body with similar objects.

(c) If the fiduciary is interned in an enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state.

(2m) Whenever a fiduciary is engaged in war service, the fiduciary, or any other person interested in the estate or fund for which the fiduciary is acting, may present a petition to the court having jurisdiction praying for a decree suspending the powers of the fiduciary while the fiduciary is engaged in war service and until the further order of the court. If the suspension of the fiduciary will leave no person acting as fiduciary, or will leave the sole beneficiary of a trust as the only acting trustee of the trust, the petition must pray for the appointment of a successor unless a successor has been named in the will and the named successor is not engaged in war service or is not for other reasons unable or unwilling to act as a fiduciary.

(3) Where the application is made by a fiduciary engaged in war service notice shall be given to such persons and in such manner as the presiding judge may direct. Where the application is made by any other person interested in the estate or fund and the fiduciary is in the military or naval service of the United States notice shall be given to such fiduciary in such manner as the judge may direct. In every other case where the application is made by a person other than the fiduciary notice thereof shall be given to such persons and in such manner as the judge may direct.

(4) Upon the filing of the petition and the proof of service of the notice prescribed, the court may, notwithstanding any other provision of law, suspend a fiduciary engaged in war service from the exercise of all of the fiduciary's powers and duties while the fiduciary remains engaged in war service and until the further order of the court. The decree may further provide that the remaining fiduciary or, if there is none, the successor named in the will or appointed by the court is possessed of and may exercise all of the powers and duties incidental to the person's office as fiduciary.

(5) (a) When the suspended fiduciary ceases to be engaged in war service the suspended fiduciary may be reinstated if any of the duties of the office remain unexecuted, upon application to the court and upon any notice that the presiding judge of the court directs. Upon reinstatement of the suspended fiduciary, the court shall remove the suspended fiduciary's successor and revoke the successor fiduciary's letters, and make any other order or decree that justice requires.

(b) Removal and revocation of letters under par. (a) shall not bar the successor from again qualifying as a fiduciary in accordance with the provisions of the will or if for any reason the appointment of a successor fiduciary is required subsequently.

History: 1993 a. 492; 2001 a. 102.

112.03 Proxy voting of corporate stock by fiduciaries. Shares of stock in any corporation organized under the laws of the United States, any of the states thereof, any foreign country or any province or other political subdivision thereof held by a fiduciary may be voted by such fiduciary by general or limited proxy, with or without power of substitution, unless such manner of voting is expressly prohibited by the document creating the fiduciary relationship or unless the manner of voting such shares is specifically directed in such document. For the purpose of this section the word "corporation" shall be construed to include investment companies which are common law trusts.

112.07 Holding of securities by fiduciaries and by custodians for fiduciaries. (1) Notwithstanding any other provision of the statutes, any fiduciary, as defined in s. 112.01 (1) (b), who is holding securities in a fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary may deposit or arrange for the deposit of such securities in a clearing corporation as defined in s. 408.102 (1) (e). When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other such securities deposited in that clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank or trust company which deposits securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered institutions, the division of banking and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company in a clearing corporation pursuant to this section for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such a party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section applies to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent or custodian for a fiduciary, acting on December 4, 1975 or who after that date may act, regardless of the date of the agreement, instrument or court order by which appointed and regardless of whether or not the fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of the clearing corporation in which the securities are deposited.

History: 1975 c. 107, 199; 1983 a. 189 s. 329 (24); 1985 a. 237 s. 119; 1995 a. 27; 1997 a. 297.

112.08 Premium on bond allowed as expense. Any fiduciary required to give a suretyship obligation may include as a part of the expense of executing the trust the lawful premium paid a surety corporation for executing the obligation.

History: 1977 c. 339; Stats. 1977 s. 112.07; 1977 c. 447; Stats. 1977 s. 112.08.

Legislative Council Note, 1977: This provision is part of s. 204.11, repealed by this act. It has nothing to do with the law of insurance but deals solely with the proper conduct of fiduciaries. As such it belongs in ch. 112 and is transferred there without change. [Bill 258–S]

112.09 Surety, how discharged. (1) Any surety or the personal representative of any surety upon the bond of any trustee, guardian, receiver, executor, or other fiduciary, may be discharged from liability as provided in this section. On 5 days' notice to the principal in such bond, application may be made to the court where it is filed, or which has jurisdiction of such fiduciary or to any judge of such court for a discharge from liability as surety, and that such principal be required to account.

(2) Notice of such application may be served personally within or without the state. If it shall satisfactorily appear to the court or the judge that personal service cannot be had with due diligence within the state, the notice may be served in such manner as the court or judge shall direct. Pending such application the principal may be restrained from acting, except to preserve the trust estate.

(3) If at the time appointed the principal shall fail to file a new bond satisfactory to the court or judge, an order shall be made requiring the principal to file a new bond within 5 days. When such new bond shall be filed, the court or judge shall make an order requiring the principal to account for all of the principal's acts to and including the date of the order, and to file such account within a time fixed not exceeding 20 days; and shall discharge the surety making such application from liability for any act or default of the principal subsequent to the date of such order.

(4) If the principal shall fail to file a new bond within the time specified, an order shall be made removing the principal from office, and requiring the principal to file the principal's account within 20 days. If the principal shall fail to file the principal's account as required, the surety may make and file such account; and upon settlement thereof and upon the trust fund or estate being found or made good and paid over or properly secured, credit shall be given for all commissions, costs, disbursements and allowances to which the principal would be entitled were the principal accounting.

(5) The procedure for hearing, settling, and allowing the principal's account shall be according to the practice prescribed by ch. 862 for personal representatives. Upon the trust fund or estate being found or made good and paid over or properly secured, the surety shall be discharged from all liability. Upon demand by the principal, the discharged surety shall return the unearned part of the premium paid for the canceled bond.

(6) Any such fiduciary may institute and conduct proceedings for the discharge of the fiduciary's surety and for the filing of a new bond; and the procedure shall in all respects conform substantially to the practice prescribed by this section in cases where the proceeding is instituted by a surety, and with like effect.

History: 1993 a. 486; 2001 a. 102; 2005 a. 155 s. 39; Stats. 2005 s. 112.09.

112.11 Uniform Prudent Management of Institutional Funds Act. (1) SHORT TITLE. This section may be cited as the "Uniform Prudent Management of Institutional Funds Act."

(2) DEFINITIONS. In this section:

(a) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose, the achievement of which is beneficial to the community.

(b) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. "Endowment fund" does not include assets that an institution designates as an endowment fund for its own use.

(c) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(d) "Institution" means any of the following:

1. A person, other than an individual, organized and operated exclusively for charitable purposes.

2. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose.

3. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(e) "Institutional fund" means a fund held by an institution exclusively for charitable purposes, but does not include any of the following:

1. Program–related assets.

2. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(f) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(g) "Program–related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(3) STANDARD OF CONDUCT IN MANAGING AND INVESTING AN INSTITUTIONAL FUND. (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this section, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

1. May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.

2. Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool 2 or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

1. In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

a. General economic conditions.

b. The possible effect of inflation or deflation.

c. The expected tax consequences, if any, of investment decisions or strategies.

d. The role that each investment or course of action plays within the overall investment portfolio of the fund.

e. The expected total return from income and the appreciation of investments.

f. Other resources of the institution.

g. The needs of the institution and the fund to make distributions and to preserve capital.

h. An asset's special relationship or special value, if any, to the charitable purposes of the institution.

2. Management and investment decisions about an individual asset shall not be made in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

3. Except as otherwise provided by law other than this section, an institution may invest in any kind of property or type of investment consistent with this section.

4. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

5. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this section.

6. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

(4) APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION. (a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor–restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

1. The duration and preservation of the endowment fund.

2. The purposes of the institution and the endowment fund.

3. General economic conditions.

4. The possible effect of inflation or deflation.

5. The expected total return from income and the appreciation of investments.

6. Other resources of the institution.

7. The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under par. (a), a gift instrument shall specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

1. Create an endowment fund of permanent duration, unless other language in the gift instrument limits the duration or purpose of the fund.

2. Do not otherwise limit the authority to appropriate for expenditure or accumulate under par. (a).

(5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS. (a) Subject to any specific limitation set forth in a gift instrument or in law other than this section, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in all of the following:

1. Selecting an agent.

2. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund.

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with par. (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this section.

(6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE. (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if all of the following occur:

1. The institutional fund subject to the restriction has a total value of less than $75,000.

2. More than 20 years have elapsed since the fund was established.

3. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(7) REVIEWING COMPLIANCE. Compliance with this section is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

(8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS. This section applies to institutional funds existing on or established after August 4, 2009. As applied to institutional funds existing on August 4, 2009, this section governs only decisions made or actions taken on or after that date.

(9) RELATION TO FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but does not modify, limit, or supersede section 101 of that act, 15 USC 7001 (a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 USC 7003 (b).

(10) UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this section, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: 2009 a. 33.