



TRUST PROTECTORS: THE GOOD, THE BAD AND THE UGLY

**Stetson 2024 National Conference on Special Needs Planning and
Special Needs Trusts – October 17, 2024**

Listing of Statutes Nationally

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¹ The author gratefully acknowledges the significant contribution made by Lily Chen, a summer associate at Cozen O'Connor, during the summer of 2024. Ms. Chen conducted the enormous research required to assemble and organize the information contained in this outline.

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STATES WITH TRUST PROTECTOR STATUTES

This outline is based upon the ACTEC article titled “Overview of State Directed Trust Statutes” (2019) and updates the information contained therein. At least 38 states have statutes that use the term Trust Protector, Trust Director, Trust Advisor or similar terms in their statutes. These state statutes are categorized below based upon whether the statute reflects an adoption of the Uniform Directed Trust Act (“UDTA”), the Uniform Trust Code (“UTC”), or the state’s own Trust Protector statute. It is conceivable that a state’s own Trust Protector statute is loosely based upon the UDTA or UTC as many state statutes follow an open-architecture plan that allows the trust terms to set the Trust Protector’s powers. However, those states did not include the term UDTA or UTC in their statutes’ names, and the structure of the statute does not directly follow the uniform statutes. Brief notes regarding each state’s statute also is included in this outline.

States Adopting the Uniform Directed Trust Act (UDTA)	States Adopting Uniform Trust Code (UTC) Section 808	State’s Own DT/TP Statute	No State DT/TP Statute
Arkansas	Alabama	Alaska	Louisiana
California	Connecticut	Arizona	New York
Colorado	Massachusetts	Delaware	Rhode Island
Florida	Minnesota	Hawaii	
Georgia	Mississippi	Idaho	
Indiana	Missouri	Illinois	
Kansas	New Jersey	Kentucky	
Maine	North Carolina	Iowa	
Michigan	Ohio	Maryland	
Montana	Oregon	Nevada	
Nebraska	South Carolina	New Hampshire	
New Mexico	Tennessee	North Dakota	
Oklahoma		South Dakota	
Pennsylvania		Wisconsin	
Texas		Wyoming	
Utah			
Vermont			
Virginia			
Washington			
West Virginia			

INTRODUCTION

Although now 6 years beyond its initial date of publication, the ACTEC article titled “Overview of State Directed Trust Statutes” (2019) includes a chart that summarizes directed trust statutes and provides a basic framework for this discussion. Some states have since enacted new UDTA/TP statutes, and in so doing have moved from the UTC approach to the UDTA approach, and some states have enacted statutes for the very first time; thus, I have updated the ACTEC list as it appears above to make it more current.

Directed Trust Statutes (“DTS”) are similar to Trust Protector (“TP”) statutes. DTS allow someone other than the trustee to possess responsibilities and liabilities traditionally associated with the trustee function. Trust Protectors or Trust Advisors commonly have the same or similar powers as Trust Directors, although some states distinguish between Trust Protectors and Trust Advisors. Trust Protectors are typically given more administrative powers, while Trust Advisors are typically given more trustee-like powers, such as investment and distribution powers.

All states adopting the UDTA establish that a Trust Director does not have the duty to monitor, provide advice, communicate or warn the other parties of the trust.

The UDTA was introduced by the National Conference of Commissioners on Uniform State Laws in 2017. The UTC has been around since the early 2000s. The difference between the UDTA and the UTC is addressed in Wayne E. Reames’ article “*Beyond UTC Section 808 and the Uniform Directed Trust Act*,” ACTEC Law Journal, Volume 45, Number 1, Article 12, September 1, 2019:

“The recent updates to the UTC provide some much needed assistance on each of these fronts, with the commissioners’ endorsement of the Uniform Directed Trust Act (UDTA) as a wholesale expansion and replacement of section 808. This act provides a significant structural underpinning to directed trusts, although arguably adding no great advancement to the existing treatments afforded by the bespoke statutes of South Dakota or Alaska. If only by providing a common starting point for further developments and an acknowledgment of section 808’s significant inadequacies, the UDTA represents forward progress. By proposing the term “trust director” for fiduciaries with traditional trustee powers of investment or distribution, the UDTA opens the door for a trifurcation of status, with “directors” as inherent fiduciaries, “advisors” (in the South Dakota family advisor sense) in an inherently nonfiduciary role, and “protectors” occupying a more flexible middle ground based on the powers and authorities granted to them by the instrument.” (page 63).

Below is a list of commonly incorporated rules (with the states adopting such rules being identified after each rule is summarized). The rules are categorized into the following categories: Appointment, Powers, Restrictions, Jurisdiction, and Liability. Regarding powers, none of the state statutes suggest that the powers listed represents a complete list, so the listed powers are only examples of possible powers a TP may have.

Appointment

Statutes generally allow for the appointment TPs in the trust instrument itself. When statutes do not explicitly say that the TP's power arises from the trust instrument, the appointment may be implied. Some states for example, Wisconsin and Wyoming, mention that a court order or a settlement agreement may grant TP their powers.

Idaho specifically states that TP means any disinterested third party whose appointment is provided for in the trust instrument, whereas Michigan and Mississippi state that any person may serve as a Trust Advisor or Trust Protector.

Powers

Statutes generally suggest that the TP's list of powers is not exhaustive. States list between 4 powers (Alaska) to 16 powers (Iowa), however the TP can have the non-listed powers if the trust specifically includes those powers. Moreover, statutes often include that TP can exercise, or not exercise, those powers as they see fit. The TP's directions or the use of those powers are binding on all parties of the trust.

1. Remove and appoint trustees.

[Alaska, Arizona, Connecticut (trust directors include TP; TP can also remove and appoint advisors, trust committee members, and other TPs), Michigan]

[Minnesota (TP can also remove and appoint advisors, trust committee members, and other TP), Mississippi (TP can also remove and appoint advisors, trust committee members, and other TP), Missouri, New Hampshire, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

2. Modify or amend the trust to achieve favorable tax status or respond to changes in tax laws.

[Alaska, Arizona, Connecticut, Idaho, Minnesota, Mississippi, Missouri, New Hampshire, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

3. Increase or decrease the interests of any beneficiary.

[Alaska, Arizona, Connecticut, Idaho, Minnesota, Missouri, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

4. Modify the terms of a power of appointment granted by the trust.

[Alaska, Minnesota, Missouri, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

5. Changing the governing law of the trust and modifying the trust for any valid purpose.

[Arizona, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

6. Trust protectors can file petitions to enforce the trust and may request the Attorney General's involvement if fraud or misuse of trust property is suspected. Courts may award costs and attorney's fees to the trust protector from trust property if the petition is necessary to fulfill their duty.

[Connecticut (TP for trust to provide for care of animal)]

7. TP's power and discretions shall be provided by the trust instrument, which may be exercised or not exercised in the "sole and absolute" discretion of the TP and is binding on other persons.

[Idaho, Tennessee, Illinois]

8. Modify the terms of any power of appointment granted by the trust. However, a modification or amendment may not grant a beneficial interest to any individual or class of individuals not specifically provided for under the trust instrument.

[Idaho, Minnesota, New Hampshire]

9. Terminate the trust.

[Idaho, Minnesota, Mississippi, New Hampshire, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

10. Veto or direct trust distributions.

[Idaho, Michigan, Mississippi, New Hampshire, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

11. Change situs or governing law of the trust, or both.

[Idaho, Minnesota, Mississippi (change the principal place of administration of the trust), New Hampshire, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

12. Appoint a successor trust protector.

[Idaho, Minnesota, Mississippi, New Hampshire, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

13. Interpret terms of the trust instrument at the request of the trustee.

[Idaho, Minnesota (review and prove a Trustee's trust reports or accountings) North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

14. Advise the trustee on matters concerning a beneficiary.

[Idaho, Minnesota, Mississippi, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

15. Amend or modify the trust instrument to take advantage of laws governing restraints on alienation, distribution of trust property, or the administration of the trust.

[Idaho, Mississippi, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

16. Provide direction regarding notification of qualified beneficiaries.

[Minnesota, Wisconsin]

Jurisdiction

States adopting the UDTA have a distinct section that requires a TP to submit to the state court's jurisdiction. Regardless, a state trust code will require that a TP/TA/TD or Trustee to be subjected to the state court's jurisdiction in other sections if not contained in the TP section of the trust code.

The Superior Court or a Probate Court shall have jurisdiction over any trust created pursuant to this section.

[Connecticut (TP for trust to provide for care of animal)]

Any TP (or advisors) submits to jurisdiction of this State regarding any matter related to the trust.

[Connecticut, Idaho, Minnesota, North Dakota, South Dakota, Tennessee, Vermont, Wisconsin, Wyoming.]

Restrictions

TP cannot grant a beneficial interest to individuals or classes not specified in the trust.

[Alaska, Arizona, Missouri] States without this restriction in the statute probably do not allow TP to modify the trust in a way that is not consistent with the intent of the trust.

TP cannot modify the beneficial interest of a governmental unit in certain trusts.

[Alaska, Arizona (SNT), Missouri] States without this restriction in the statute does not allow TP to modify the trust in a way that infringes on government interest.

Liability

Not liable as a trustee or fiduciary, subject to the terms of the trust instrument.

[Alaska, Arizona]

Advisers who direct, consent to, or disapprove fiduciary decisions are considered fiduciaries unless the governing instrument specifies they act in a non-fiduciary capacity.

[Delaware]

If the governing instrument provides that a fiduciary is to follow the direction of an advisor, and the fiduciary follows the direction, they are not liable unless there is willful misconduct.

[Delaware]

“Excluded fiduciary” means any fiduciary excluded from exercising certain powers under the instrument. An excluded fiduciary is not liable for any loss that results from compliance with a trust advisor’s or TP’s direction.

[Idaho, Minnesota (an excluded fiduciary has no duty to monitor, review, inquire, investigate, recommend, evaluate or warn), New Hampshire (an excluded fiduciary has no duty to monitor, review, inquire, investigate, recommend, evaluate or warn), Vermont (an excluded fiduciary has no duty to monitor, review, inquire, investigate, recommend, evaluate or warn)].

A trust instrument can provide TP with some, none, or all of the rights, powers, privileges, benefits immunities or authorities available to the Trustee, and TPs have no greater liability than a Trustee would if the liability is not established in the governing instrument.

[Iowa, Minnesota (lowest level of care cannot be below good faith standard)]

Presumed level is that TP is a fiduciary, but the trust can provide otherwise.

[Missouri, New Hampshire, Vermont]

Few states laws mandate that a TP is a fiduciary: North Carolina, Vermont, Virginia, and Wyoming. North Carolina’s statute requires TP to have fiduciary duty when using certain powers, and does not require fiduciary duty when using other powers.

STATES WITH UTC § 808 “POWER TO DIRECT”

As of 2024, 36 states including DC had adopted the UTC. (<https://www.uniformlaws.org/>). However, based on Westlaw search, only 11 states have identified that they have adopted the UTC’s section 808 Power to Direct. Section 808 Powers to Direct do not specifically use the term “Trust Protectors,” but subsections (b)-(d) ratify the use of a TP and or TA according to UTC’s official comment. This section suggests that TPs or others who have the power to direct are presumed to be fiduciaries.

SUMMARY OF STATE STATUTES

1. **Alabama:** Substantially Similar to UTC § 808. Powers to Direct.

Summary: TP’s the “power to direct” is conferred by the trust’s terms, and those powers include modifying or terminating a trust. TP with the power to direct is presumed to have a fiduciary duty and is liable for any loss that results from breach of a fiduciary duty.

Ala. Code 1975 § 19-3B-808. **§ 19-3B-808. Powers to direct.**

2. **Alaska:** Trust Protectors.

Summary: TP’s power is conferred by the trust’s terms, and those powers include and are not limited to (1) appointing and removing Trustees, (2) modifying the trust to achieve favorable tax status, (3) modifying Beneficiary’s interest, (4) change the trust’s governing law. TP’s modification may not (1) grant beneficiary interest to people who are not the original trust’s beneficiaries, (2) modify the beneficial interest of the government in a SNT. (For states without those restrictions on TP’s power, TP probably does not have the power to modify the beneficial interest of the government). TP does not have a fiduciary duty and is not liable for a breach of fiduciary duty.

Alaska Stat. Ann. § 13.36.370 (West).

3. **Arizona:** Trust Protectors.

Summary: TP's power is conferred by the trust's terms, and those powers include and are not limited to (1) appointing and removing Trustees, (2) modifying the trust to achieve favorable tax status, (3) modifying Beneficiary's interest, (4) change the trusts governing law. TP's modification may not (1) grant beneficiary interest to people who are not the original trust's Beneficiaries, (2) modify the beneficial interest of the government in a SNT. (For states without those restrictions on TP's power, TP probably does not have the power to modify the beneficial interest of the government). TP does not have a fiduciary duty and is not liable for a breach of fiduciary duty.

Ariz. Rev. Stat. § 14-10818 (West). (Effective: September 13, 2013).

4. **Arkansas:** Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts. It is probably implied that other states have the jurisdiction requirement for TD or TP as well.

Ark. Code Ann. § 28-76-106 (West) (effective: January 1, 2020).

5. **California:** California Uniform Directed Trust Act, Adopts UDTA.

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts.

California Probate Code Section 16600 et seq. (effective January 1, 2024).

6. **Colorado:** Colorado Uniform Directed Trust Act, Adopts UDTA.

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts. It is probably implied that other states have the jurisdiction requirement for TD or TP as well.

7. **Connecticut:** Adopts UTC with Added Rule about Transferor

Summary: The TP's "power to direct" is conferred by the trust's terms, and those powers include modifying or terminating a trust. TP with the power to direct is presumed to have a fiduciary duty and is liable for any loss that results from breach of a fiduciary duty. Transferor can appoint TP and serve as TP.

Conn. Gen. Stat. Ann. § 45a-487l (West).

8. Delaware: Trust Advisors,

Summary: Delaware's statute uses "Trust Advisors" (TA), which only has the power to direct investment, distribution, or other decisions. Trust instruments can override the rule that TA are presumed to be fiduciaries. TA is only liable for willful misconduct or gross negligence.

Del. Code Ann. tit. 12, § 3313 (West) (effective: July 11, 2018).

9. Florida: Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts. It is probably implied that other states have the jurisdiction requirement for TD or TP as well.

Fla. Stat. Ann. § 736.1401-1416 (West) (effective July 1, 2021).

10. Georgia: Based on UDTA.

Summary: This section is based upon §§ 6, 7 UDTA. UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts. It is probably implied that other states have the jurisdiction requirement for TD or TP as well.

Ga. Code Ann. § 53-12-502 (West) (Effective: January 1, 2021).

11. Hawaii: Directed Trust Statute - Haw. Rev. Stat. § 554D-808 (effective 1/1/2022).

12. Idaho: Based on Uniform Probate Code (UPC).

Summary: TP is an excluded fiduciary, meaning that they do not have a fiduciary duty like Trustees. TA is defined to have a different meaning than TP: TA means a distribution trust advisor or an investment advisor, and TA's discretion is binding on all trust parties. Trust instruments provide TP with powers that they can choose to exercise or not exercise. The statute includes a long, non-exhaustive list of powers TP may have, in addition to the other common TP powers: TP can appoint a successor TP, interpret trust terms requested by Trustee, and advise Trustee on matters concerning a beneficiary.

Idaho Code Ann. § 15-7-501 (West).

13. Illinois: Similar to Idaho's Statute.

Summary: TA is defined to have a different meaning than TP: TA means a distribution trust advisor or an investment advisor. Trust instrument gives TP (or the same position with other similar names) the powers. Those powers are not limited to the 10 listed powers. TP have the sole and absolute discretion to exercise the authorized powers and have a binding effect on other parties of the trust. TP is an excluded fiduciary and is not liable unless there is willful misconduct.

760 Ill. Comp. Stat. Ann. 3/808 (effective: January 1, 2022).

14. Indiana: Indiana Adopts the UDTA.

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts. It is probably implied that other states have the jurisdiction requirement for TD or TP as well.

15. Iowa: Separate Trust Directors and Trust Protectors

Summary: The statute allows the trust instrument to appoint 3 different roles: investment TD, distribution TD, and TP. Investment TD tells Trustee which assets to hold and decides when to buy and sell investments, and Distribution TD manages distributions. The statute also listed 16 powers for TP, and the list is non-exhaustive. Both TD and TP are subject to the state's jurisdiction. Trust instrument may provide TD and TP with powers and immunities of trustee. TD and TP have no duty to communicate with, warn, or apprise any beneficiary or third party. Party challenging TD and TP in an action need to prove by clear and convincing evidence.

Iowa Code Ann. § 633A.4801 (West)
(effective: July 1, 2020).

16. Kansas: Kansas Uniform Directed Trust Act, Adopts UDTA.

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts.

Kan. Stat. Ann. § 58-5006 (West)
(effective: July 1, 2022).

17. Kentucky: Directed Trust Statute - Ky. Rev. Stat. § 386B.8-080 (effective 7/15/2014).

18. Louisiana: No DT/TP Statute.

19. Maine: Maine Uniform Directed Trust Act, Adopts UDTA.

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts.

Title 18-B, Chapter 21: MAINE UNIFORM DIRECTED TRUST ACT (effective January 1, 2020).

20. Maryland: Directed Trust Statute – MD Est & Trusts Code §14.5-808 (effective January 1, 2015)

21. Massachusetts: Adopts UTC § 808. Powers to Direct.

Summary: TP's the "power to direct" is conferred by the trust's terms, and those powers include modifying or terminating a trust. TP with the power to direct is presumed to have a fiduciary duty and is liable for any loss that results from breach of a fiduciary duty.

Mass. Gen. Laws Ann. ch. 203E, § 808 (West)
(effective: July 8, 2012).

22. Michigan: Adopts the UDTA

Mich. Comp. Laws - Section 700.7703a (effective: March 29, 2019).

23. Minnesota: Adopts UTC Section 808.

Summary: TP is anyone who exercises the power listed, whether or not the trust instrument labels this person as "TP." The statute listed 12 powers, including veto or direct trust distributions, and provide direction regarding notification of qualified Beneficiaries. Unless the instrument provides otherwise, TP has the same duties as Trustees. Excluded fiduciary cannot be exonerated of a duty to act, but they do not have duty to monitor, review, or warn. TD must submit to the jurisdiction of the state court.

Minn. Stat. Ann. § 501C.0808 (West) (effective: January 1, 2016).

24. Mississippi: Adopts UTC Section 808.

Summary: TP is anyone who exercises the power listed, whether or not the trust instrument labels this person as “TP.” The statute lists 23 powers, powers 16 to 23 are not commonly listed in other statutes. TA or TP has fiduciary duty and must act in good faith.

Miss. Code Ann. § 91-8-1201 (West)
(Effective 7/1/2014).

25. Missouri: Based on UTC Section 808 Power to Direct.

Summary: TP has the power given by the trust instrument, including but not limited to the commonly listed 6 powers. TP is liable for a breach of fiduciary duty if acting in bad faith or reckless indifference.

Mo. Ann. Stat. § 456.8-808 (West)
(effective 8/28/2018).

26. Montana: Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state’s statutes, TD’s powers is granted by the trust’s terms. The trust’s terms may vary TD’s duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts. It is probably implied that other states have the jurisdiction requirement for TD or TP as well.

Montana Code Annotated 2023, TITLE 72. ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS - CHAPTER 40. UNIFORM DIRECTED TRUST ACT (effective October 21, 2024).

27. Nebraska: Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state’s statutes, TD’s powers are granted by the trust’s terms. The trust’s terms may vary TD’s duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts.

Nebraska Revised Statute 30-4301-4319 (effective January 1, 2021).

28. Nevada: Powers of TP.

Summary: TP may exercise the powers provided to TP in the instrument subject to the terms and provisions in the instrument. The statute listed 12 powers, including the power to review and approve a trustee’s reports or accounting. Unless otherwise provided in the trust instrument, the powers of the trust protector shall be considered fiduciary in nature, but the instrument could reduce or relieve TP of a fiduciary duty.

Nev. Rev. Stat. Ann. § 163.5553 (West).

29. New Hampshire: Fiduciary, Duty, Liability

Summary: Except as otherwise provided under the terms of the trust, a trust advisor of a noncharitable trust or trust protector of a noncharitable trust is a fiduciary with respect to each power granted to such trust advisor or trust protector. A trust advisor of a charitable trust or a trust protector of a charitable trust is a fiduciary with respect to each power granted to that trust advisor or trust protector. An excluded fiduciary has no duty to review actions of trustee, TA, or TP.

N.H. Rev. Stat. Ann. § 564-B:12-1202.

30. New Jersey: New Jersey Adopts the UTC - The NJ UTC codifies the use of directed trusts in N.J.S.A. § 3B:31-61 and -62 (effective July 17, 2016).

31. New Mexico: Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts.

New Mexico Statutes Chapter 46, Article 14 (effective January 1, 2019).

32. New York: No Trust Protector Statute – Case Law Recognizes

33. North Carolina: North Carolina Uniform Trust Code, based on UTC.

Summary: The terms of a trust may provide that a power holder (probably a TP, or TA) is a nonfiduciary with respect to the exercise or non-exercise of a power, including the power to achieve the settlor's tax objectives. Unless the terms of a trust provide otherwise, the power to remove and appoint a Trustee or power holder (TP or TA) shall be deemed to be held in a nonfiduciary capacity.

N.C. Gen. Stat. Ann. § 36C-8A-3 (effective: July 8, 2021).

34. North Dakota: Designation and Powers of TP.

Summary: TP may be designated in the trust instrument. TP's powers may be exercised or not exercised in the sole and absolute discretion of TP and are binding on all other persons. The statute listed 12 powers a TP may have, and the list is not exhaustive.

N.D. Cent. Code Ann. § 59-16.2-05 (West) (effective: August 1, 2017).

35. Ohio: Same as UTC.

Summary: TP's the "power to direct" is conferred by the trust's terms, and those powers include modifying or terminating a trust. TP with the power to direct is presumed to have a fiduciary duty and is liable for any loss that results from breach of a fiduciary duty.

Ohio Rev. Code Ann. § 5808.08 (West).

36. Oklahoma: Oklahoma Adopts the UDTA.

Okla. Stat. Ann. tit. 60, § 1202 (West)(effective November 1, 2024).

37. Oregon: Trust Adviser Statute.

Summary: A trust instrument may appoint a person to act as an adviser for the purpose of directing or approving decisions made by the trustee, including decisions related to distribution of trust assets and to the purchase, sale or exchange of trust investments. The appointment must be made by a provision of the trust that specifically refers to this statute. The appointment may provide for succession of advisers and for a process for the removal of advisers. An adviser shall exercise all authority granted under the trust instrument as a fiduciary unless the trust instrument provides otherwise. A person who agrees to act as an adviser is subject to Oregon law and submits to the jurisdiction of the courts of this state.

If a trust instrument provides that a trustee is to follow the direction of an adviser, and that trustee acts in accordance with the adviser's directions, the trustee is not liable for any loss resulting directly or indirectly from the trustee's decision unless the decision constitutes reckless indifference to the purposes of the trust or the interests of the beneficiaries.

ORS §130.735 – Appointment of Adviser (effective January 1, 2006).

38. Pennsylvania: Pennsylvania Adopts UTDA.

Summary: TP's the "power to direct" is conferred by the trust's terms, and those powers include modifying or terminating a trust. TP with the power to direct is presumed to have a fiduciary duty and is liable for any loss that results from breach of a fiduciary duty.

In July 2024, Pennsylvania Governor Josh Shapiro signed the Pennsylvania Directed Trust Act, Senate Bill 1231 (now part of Act No. 64 of 2024, sponsored by Senator Lisa Baker), into law, making Pennsylvania the 20th state to adopt a directed trust act following the Uniform Directed Trust Act published by the Uniform Law Commission in 2017.

Section 7778. Powers to direct [- UTC 808].

- 1 Direction of settlor.--While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the trust instrument.
- 2 Compliance with power.--If a trust instrument confers 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 a written exercise of the power unless the attempted exercise is manifestly contrary to the trust instrument 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.
- 3 Modification or termination of trust.--A trust instrument may confer upon a trustee or other person a power to modify or terminate the trust.
- 4 Fiduciary relationship.--A person other than a beneficiary who holds a power to direct certain actions of a trustee 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 the holder's fiduciary duty.
- 5 Directed trust.
 - 5.1 "Directed trust." A trust for which the terms of the trust grant a power of direction. Section 7780.12 Definitions.
 - 5.2 "Power of direction" is defined in Section 7780.12 as follows:
 - 5.2.1 A power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee.
 - 5.2.2 The term includes a power over the investment, management or distribution of trust property or other matters of trust administration and, in the case of a trust protector, may include powers to modify the terms of the trust.
 - 5.2.3 A power of direction includes incidental powers that are appropriate and necessary to the exercise or nonexercise of the power of direction. The rules specified in this subchapter govern the exercise of such incidental powers.
 - 5.3 "Trust director" is defined in Section 7780.12 as follows:
 - 5.3.1 A person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee.
 - 5.3.2 A beneficiary or settlor of a trust may serve as a trust director of the trust.
 - 5.4 "Trust protector" is defined in Section 7780.12 as follows:
 - 5.4.1 **A trust director authorized by the terms of a trust to modify one or more terms of the trust.**
 - 5.4.2 The terms of a trust may expressly grant to a trust director powers, alone or together with powers to direct a trustee's actions, to modify the terms of a trust. **In that event, the trust director is a trust protector. Section 7780.17(a).**

5.5 “Willful misconduct” is defined in Section 7780.12 as follows:

5.5.1 Intentional conduct that is malicious, designed to defraud or unconscionable.

5.5.2 Mere negligence, gross negligence and recklessness do not constitute “willful misconduct.”

Section 7780.14 Exclusions

Section 7780.16 Trust Director for Investments

Section 7780.17 Trust Protector

- 6 Illustrative powers. Among the powers the terms of a trust may grant explicitly to a trust protector are the following:
 - 6.1 To increase, decrease or otherwise modify what is distributable to one or more beneficiaries of the trust.
 - 6.2 To terminate the trust and direct how the trustee shall distribute the trust property to or in further trust for any one or more of the beneficiaries.
 - 6.3 To expand, modify, limit or terminate a power of appointment, and to grant a power of appointment to a beneficiary of the trust on terms as the trust protector specifies.
 - 6.4 The powers described in section 8104 (relating to trustee’s power to adjust) to adjust between income and principal and to convert the trust to a unitrust in accordance with section 8105 (relating to power to convert to unitrust).
 - 6.5 **To convert a trust in whole or in part to a special needs trust, or provide that a special needs trust shall arise or be established at a specific time or upon the occurrence of an event with respect to some or all of the trust’s assets.**
 - 6.6 **To appoint or remove trustees, investment advisors and investment managers, and prescribe a plan of succession for future holders of any of these offices.**
 - 6.7 **To appoint or remove trust directors, specify their powers and modify the powers of a trust director.**
 - 6.8 To appoint one or more successor trust protectors, and prescribe a plan of succession for future holders of that office.
 - 6.9 To renounce, release, limit or modify any power given to a trustee by the terms of the trust or by law.
 - 6.10 To resolve disagreements among trustees.
 - 6.11 To change the trust’s situs or governing law, or both.
 - 6.12 To apply to a court of competent jurisdiction to interpret any terms of the trust or pass upon an action that the trust protector, another trust director or a trustee proposes to take or not take.
 - 6.13 Any other or different power that the settlor expressly grants to the trust protector.”
- 7 Conflicts. If the terms of a trust grant the same power to both a trust protector and a trust director that is not a trust protector and do not provide a different rule, the trust protector shall control the exercise of the power.”
 - 7.1 Section 7780.18 Limitations on Powers of Trust Director
 - 7.2 Section 7780.19 Duty and Liability of Trust Director
 - 7.3 Section 7780.20 Duty and Liability of Directed Trustee
 - 7.4 Section 7780.21 Duty to provide information to Trust Director or Directed Trustee
 - 7.5 Section 7780.22 No Duty to Monitor, Inform or Advise
- 8 Subchapter H.1 of the PA Uniform Trust Act. See, 20 Pa.C.S.A. §§ 7780.11-7780.27 (effective October 13, 2024).

- 39. Rhode Island:** Recognizes TP in Definitions, No TP Statute.

Summary: No TP statute, but recognizes TA and includes TP or any other person who, in addition to a qualified trustee, holds one or more trust powers.

18 R.I. Gen. Laws Ann. § 18-9.2-2 (West)

- 40. South Carolina:** Based on UTC Section 808.

Summary: Note that this statute includes a default way to appoint a successor TP if the serving TP is unwell or unable to serve and the trust document provides for a TP, the Trustee may petition the court having jurisdiction over the trust estate to appoint an individual or a bank or trust company to serve as TP. TP can be a fiduciary or an excluded fiduciary.

S.C. Code § 62-7-1005A (West).

- 41. South Dakota:** TP's Power, Excluded Fiduciary, Jurisdiction.

Summary: Any governing instrument providing for a TA or TP may provide them with some, none, or all of the rights, powers, privileges, benefits, immunities, or authorities available to a trustee under the state law or under the governing instrument. Unless the governing instrument provides otherwise, a TA or TP has no greater liability to any person than would a trustee. The Statute lists 18 powers for TP - the list is not exhaustive.

S.D. Codified Laws § 55-1B-1.1

- 42. Tennessee:** Based on UTC, and Jurisdiction.

Summary: The Statute lists 21 powers for the TP - the list is not exhaustive, including the power to perform a specific duty or function that would normally be required of a Trustee. The exercise of a power by a TA or TP shall be exercised in the sole and absolute discretion of the TA or TP and shall be binding on all other persons. TA and TP subject to court jurisdiction.

Tenn. Code Ann. § 35-15-1201 (West)

- 43. Texas:** Texas adopts UDTA

Summary: Under §114.0031, any person given the power or authority to direct, consent to, or disapprove a trustee's actual or proposed "investment decisions, distribution decisions, or other decisions" is considered to be an advisor to the trust. The statute also makes it expressly clear that the advisor acts in a fiduciary capacity when exercising that authority, unless the terms of the trust agreement provide that the advisor acts in a nonfiduciary capacity.

The new statute also defines the term "advisor" to include someone identified as a trust "protector." Pursuant to §114.0031, a "protector" has all of the powers and authority given to the protector by the terms of the trust agreement, which may include (i) the power to remove and appoint trustees, advisors, committee members, and other protectors; (ii) the power to modify or amend the trust terms to achieve a more favorable tax status or to facilitate efficient trust administration; and (iii) the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary of the trust.

Texas Property Code, Section 114.0031 (effective September 1, 2015).

- 44. Utah:** Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts.

Utah Code Ann. § 75-12-108 (West).

45. Vermont: Adopts the Uniform Directed Trust Act (UDTA).

Summary: This state has adopted UDTA in June 2024, but it also has statutes in Chapter 11, which is similar to UDTA. In Chapter 13 UDTA, the act uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts. It is probably implied that other states have the jurisdiction requirement for TD or TP as well.

14A V.S.A. § 1306.

46. Virginia: Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the jurisdiction of Virginia state courts. (In other states, jurisdiction over the TD/TP/TA can be implied under the general jurisdiction of the state courts to review and interpret trust generally.

Va. Code Ann. § 64.2-779.26 (West)
(effective: July 1, 2020).

47. Washington: Washington Adopts the Uniform Directed Trust Act (UDTA).

Revised Code of Washington, Probate and Trust Law - Chapter 11.98B – Uniform Directed Trust Act

48. West Virginia: Adopts the Uniform Directed Trust Act (UDTA).

Summary: UDTA uses Trust Director (TD) for TP because TD has similar powers and functions as TP. The statute is extensive with multiple sections. Like other state's statutes, TD's powers are granted by the trust's terms. The trust's terms may vary TD's duty or liability to the same extent as Trustees. TD has the same fiduciary duty and liability in the exercise or non-exercise of the power. TD has the same defenses as Trustees when they are being sued for a breach of trust. Moreover, TD has no duty to monitor, inform or advise Trustees. The statute requires TD to submit to the state courts.

W. Va. Code Ann. § 44D-8A-801 (West)
(effective 2020).

49. Wisconsin: Trust Protectors.

Summary: Settlor in a trust instrument, a court order, or non-judicial agreement, may appoint a TP. TP can be referred to using other titles or no titles. The appointing party may specify the legal capacity of TP, if TP is not a fiduciary, the level of duty must not be below good faith. If unspecified in the trust, the statute provides that in exercising powers related to the Trustee (for example interpreting terms, review Trustee's reports, managing distributions, 5 powers were listed), TP should be in fiduciary capacity; and when exercising other rights (such as administrative powers, and modifications of the trust, 10 powers were listed) TP should not be held to act in fiduciary capacity. Similar restrictions apply to TP: they cannot modify government benefits, reduce Beneficiaries' income in certain trusts, or modify any beneficial interest in a manner that would have caused the trust not to qualify for certain tax deductions. TP must submit to the state's jurisdiction.

Wis. Stat. Ann. § 701.0818 (West) (effective March 23, 2024).

50. Wyoming: Directed Trusts.

Summary: TP's powers is established (or modified) in the trust instrument or court order. TP can choose to exercise or not exercise those powers consistent with the best interest of the trust. The statute lists 12 powers, among the other commonly listed powers, it includes subsection (xii) To elect for the trust to become a qualified spendthrift trust under W.S. 4-10-516, a Wyoming specific statute. Unless otherwise provided, excluded fiduciary is not liable for any loss resulting from any action or inaction of TA or TP. When TP or TA is given the fiduciary duties of a Trustee, TP or TA is a fiduciary while the Trustee becomes an excluded fiduciary.

Wyo. Stat. Ann. § 4-10-718 (West).