

TRUSTEE ACT

Chapter T-8

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definition

1 In this Act, "trustee" includes

- (a) an executor, an administrator or a trustee of the estate of a person,

- (b) a trustee whose trust arises by construction or implication of law as well as an express trustee, and
- (c) several joint trustees.

RSA 2000 cT-8 s1;2004 cM-18.1 s22

Investments

Application

2(1) Sections 3 to 8 are subject to a contrary intention expressed in the instrument creating a trust.

(2) Sections 3 to 8 apply to a trust regardless of whether the trust was created before or after this section came into force.

2001 c28 s2;2006 c9 s2

Powers and duties with respect to investment

3(1) A trustee may invest trust funds in any kind of property if the investment is made in accordance with this section.

(2) A trustee must invest trust funds with a view to obtaining a reasonable return while avoiding undue risk, having regard to the circumstances of the trust.

(3) A trustee must review the trust investments at reasonable intervals for the purpose of determining that the investments continue to be appropriate to the circumstances of the trust.

(4) A trustee who has invested trust funds in property may exercise for the benefit of the trust any right or power that a person who was both the legal and beneficial owner of the trust's interest in the property could exercise.

(5) Without restricting the matters that a trustee may consider, in planning the investment of trust funds a trustee must consider the following matters, insofar as they are relevant to the circumstances of the trust:

- (a) the purposes and probable duration of the trust, the total value of the trust's assets and the needs and circumstances of the beneficiaries;
- (b) the duty to act impartially towards beneficiaries and between different classes of beneficiaries;
- (c) the special relationship or value of an asset to the purpose of the trust or to one or more of the beneficiaries;
- (d) the need to maintain the real value of the capital or income of the trust;

- (e) the need to maintain a balance that is appropriate to the circumstances of the trust between
 - (i) risk,
 - (ii) expected total return from income and the appreciation of capital,
 - (iii) liquidity, and
 - (iv) regularity of income;
- (f) the importance of diversifying the investments to an extent that is appropriate to the circumstances of the trust;
- (g) the role of different investments or courses of action in the trust portfolio;
- (h) the costs, such as commissions and fees, of investment decisions or strategies;
- (i) the expected tax consequences of investment decisions or strategies.

2001 c28 s2

Trustee liability

4(1) A trustee is not liable for a loss in connection with the investment of trust funds that arises from a decision or course of action that a trustee exercising reasonable skill and prudence and complying with section 3 could reasonably have made or adopted.

(2) A court assessing the damages payable by a trustee for a loss to the trust arising from the investment of trust funds may take into account the overall performance of the investments.

2001 c28 s2

Delegation of investment authority

5(1) In this section, "agent" includes a stockbroker, investment dealer, investment counsel and any other person to whom investment responsibility is delegated by a trustee.

(2) A trustee may delegate to an agent the degree of authority with respect to the investment of trust funds that a prudent investor might delegate in accordance with ordinary investment practice.

(3) A trustee who delegates authority under subsection (2) shall exercise prudence in

- (a) selecting the agent,

- (b) establishing the terms of the delegated authority, and
- (c) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

(4) A trustee who has delegated authority to an agent under subsection (2) and has complied with subsection (3) and the regulations is not liable for the decisions or actions of that agent.

(5) Where investment authority has been delegated to an agent by a trustee and the trust suffers a loss because of the agent's breach of the terms of the agency contract, damages for the loss may be recovered from the agent in an action

- (a) by the trustee, or
- (b) by a beneficiary of the trust if the trustee fails to commence an action within a reasonable time after acquiring knowledge of the breach.

2001 c28 s2

Purchase of mutual fund units and delegation

6 Investment in a mutual fund or segregated fund or in a similar investment set out in the regulations is not a delegation of investment authority with respect to the investment of trust funds.

2001 c28 s2

Recording of trust status

7(1) A trustee must ensure, so far as it is practicable to do so, that any record evidencing the trustee's ownership of securities also indicates the trust relationship.

(2) Subsection (1) does not apply when the trustee is a trust corporation or the Teachers' Pension Plans Board of Trustees.

2001 c28 s2

Regulations

8 The Minister may make regulations

- (a) determining similar investments for the purpose of section 6;
- (b) respecting the terms of a delegation of authority by a trustee to an agent under section 5.

2001 c28 s2

9 Repealed 2006 c9 s3.