

ACT 61

S.B. NO. 563

A Bill for an Act Relating to the Uniform Trustees' Powers Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM TRUSTEES' POWERS ACT**

§ -1 Definitions. As used in this chapter:

“Prudent person” means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which persons of ordinary

prudence, diligence, discretion, and judgment would act in the management of their own affairs.

“Trust” means an express trust created by a trust instrument including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both. “Trust” does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or any other trust the nature of which does not admit of general trust administration.

“Trustee” means an original, added, or successor trustee.

§ -2 Powers of trustee conferred by trust or by law. (a) The trustee has all powers conferred upon the trustee by this chapter unless limited in the trust instrument and except as is otherwise provided by law.

(b) An instrument which is not a trust under this chapter may incorporate any part of this chapter by reference.

§ -3 Powers of trustees conferred by this chapter. (a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent person would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) In the exercise of the trustee’s powers including the powers granted by this chapter, a trustee has a duty to act with due regard to the trustee’s obligation as a fiduciary, including a duty not to exercise any power under this chapter in such a way as to deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes or deprive a donor of a trust asset of a tax exemption, deduction, or credit or operate to impose a tax upon a donor or other person as owner of any portion of the trust. “Tax” includes, but is not limited to, any federal, state, or local income, gift, estate, or inheritance tax.

(c) A trustee has the power, subject to subsections (a) and (b):

- (1) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;
- (2) To receive additions to the assets of the trust;
- (3) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
- (4) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;
- (5) To deposit trust funds in a bank;
- (6) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;
- (7) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

- (8) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;
- (9) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;
- (10) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (11) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;
- (12) To vote a security, in person or by general or limited proxy;
- (13) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (14) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (15) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;
- (16) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;
- (17) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;
- (18) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;
- (19) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;
- (20) To allocate items of income or expense to either trust income or principal, as provided by chapter 557, The Revised Uniform Principal and Income Act, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (21) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;
- (22) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;
- (23) To employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in performance of the trustee's adminis-

trative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

- (24) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of trustee duties; and
- (25) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

§ -4 Trustee's office not transferable. The trustee shall not transfer the trustee's office to another or delegate the entire administration of the trust to a cotrustee or another.

§ -5 Power of court to permit deviation or to approve transactions involving conflict of interest. (a) This chapter does not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on the trustee's power that would otherwise be placed upon the trustee by the trust or by this chapter.

(b) If the duty of the trustee and the trustee's individual interest or the trustee's interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization (except as provided in section -3(c)(1), (4), (6), (18), and (24)) upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

§ -6 Powers exercisable by joint trustees; liability. (a) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which the trustee joins at the direction of the majority of the trustees, if the trustee expressed a dissent in writing to any of the cotrustees at or before the time of the joinder.

(b) If two or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(c) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

§ -7 Third persons protected in dealing with trustee. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

§ -8 Application of chapter. Except as specifically provided in the trust, the provisions of this chapter apply to any trust established after the effective date of this chapter.

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§ -9 Uniformity of interpretation. This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

§ -10 Short title. This chapter may be cited as the “Uniform Trustees’ Powers Act”.

§ -11 Severability. If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application and to this end the provisions of this chapter are severable.”

SECTION 2. This Act shall take effect upon its approval.

(Approved May 1, 1985.)