Article 9.

Uniform Prudent Investor Act.

§ 36C-9-901. Prudent investor rule; applicability.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this Article.

(b) The prudent investor rule is a default rule and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust that govern or direct investments in a manner inconsistent with this Article. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the trust.

(c) The following terms or comparable language in a trust, unless otherwise limited or modified, authorize any investment or strategy permitted under this Article: "Chapter 36A", "investments in accordance with Article 15 of Chapter 36A", "investments in accordance with Article 9 of Chapter 36C", "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule". This Article also applies where a trust contains no investment standard.

(d) This Article does not apply to:

(1) Unless the trust provides otherwise by specific reference to this Article:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts that are created by legislative act;

c. Trusts that are created by or under premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under a Uniform Transfers to Minors Act;

e. Transfers under a Uniform Custodial Trust Act; or

f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) Trusts imposed or required under another Chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other Chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article. (1999-215, s. 1; 2001-267, s. 7; 2005-192, s. 2.)

§ 36C-9-902. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;
(3) The expected tax consequences of investment decisions or strategies;
(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
(5) The expected total return from income and the appreciation of capital;
(6) Other resources of the beneficiaries known to the trustee;
(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this Article. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-903. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-903.1. Duties as to life insurance.

(a) Notwithstanding the provisions of this Article, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options, including investment options, available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply. (2007-106, s. 37.1.)

§ 36C-9-904. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this Chapter. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-905. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-906. Effect on charitable remainder trusts.

Nothing in this Article shall prevent the application of Article 4B of this Chapter to a "charitable remainder trust" as defined in G.S. 36C-4B-3(1). (1999-215, s. 1; 2005-192, s. 2.)

§ 36C-9-907. Short title.

This Article may be cited as the "North Carolina Uniform Prudent Investor Act." (1999-215, s. 1; 2005-192, s. 2.)