

By: Villalba

H.B. No. 3190

A BILL TO BE ENTITLED

AN ACT

relating to persons authorized to direct, consent to, or disapprove a trustee's decisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 114, Property Code, is amended by adding Section 114.0031 to read as follows:

Sec. 114.0031. DIRECTED TRUSTS; ADVISORS. (a) In this section:

(1) "Advisor" includes protector.

(2) "Investment decision" means, with respect to any investment, the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of the investment or rights in the investment and, with respect to a nonpublicly traded investment, the valuation of the investment.

(b) For purposes of this section, an advisor with authority with respect to investment decisions is an investment advisor.

(c) A protector has all the power and authority granted to the protector by the trust terms, which may include:

(1) the power to remove and appoint trustees, advisors, trust committee members, and other protectors;

(2) the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and

(3) the power to modify, expand, or restrict the terms

1 of a power of appointment granted to a beneficiary by the trust
2 terms.

3 (d) If the terms of a trust give a person the authority to
4 direct, consent to, or disapprove a trustee's actual or proposed
5 investment decisions, distribution decisions, or other decisions,
6 the person is considered to be an advisor and a fiduciary when
7 exercising that authority except that the trust terms may provide
8 that an advisor acts in a nonfiduciary capacity.

9 (e) A trustee who acts in accordance with the direction of
10 an advisor, as prescribed by the trust terms, is not liable, except
11 in cases of wilful misconduct on the part of the trustee so
12 directed, for any loss resulting directly or indirectly from that
13 act.

14 (f) If the trust terms provide that a trustee must make
15 decisions with the consent of an advisor, the trustee is not liable,
16 except in cases of wilful misconduct or gross negligence on the part
17 of the trustee, for any loss resulting directly or indirectly from
18 any act taken or not taken as a result of the advisor's failure to
19 provide the required consent after having been requested to do so by
20 the trustee.

21 (g) If the trust terms provide that a trustee must act in
22 accordance with the direction of an advisor with respect to
23 investment decisions, distribution decisions, or other decisions
24 of the trustee, the trustee does not, except to the extent the trust
25 terms provide otherwise, have the duty to:

26 (1) monitor the conduct of the advisor;

27 (2) provide advice to the advisor or consult with the

1 advisor; or

2 (3) communicate with or warn or apprise any
3 beneficiary or third party concerning instances in which the
4 trustee would or might have exercised the trustee's own discretion
5 in a manner different from the manner directed by the advisor.

6 (h) Absent clear and convincing evidence to the contrary,
7 the actions of a trustee pertaining to matters within the scope of
8 the advisor's authority, such as confirming that the advisor's
9 directions have been carried out and recording and reporting
10 actions taken at the advisor's direction, are presumed to be
11 administrative actions taken by the trustee solely to allow the
12 trustee to perform those duties assigned to the trustee under the
13 trust terms, and such administrative actions are not considered to
14 constitute an undertaking by the trustee to monitor the advisor or
15 otherwise participate in actions within the scope of the advisor's
16 authority.

17 SECTION 2. Section 114.003, Property Code, is repealed.

18 SECTION 3. (a) Except as specifically provided by a trust
19 term in effect before the effective date of this Act, Section
20 114.0031, Property Code, as added by this Act, applies to a trust
21 created before, on, or after the effective date of this Act with
22 respect to an action taken or not taken on or after September 1,
23 2015, by a trustee or by an advisor described by Section 114.0031,
24 Property Code, as added by this Act.

25 (b) Except as specifically provided by a trust term in
26 effect before the effective date of this Act, the repeal by this Act
27 of Section 114.003, Property Code, applies to a trust created

1 before, on, or after the effective date of this Act with respect to
2 an action taken or not taken on or after September 1, 2015, by a
3 trustee or other person with respect to the trust. An action taken
4 or not taken with respect to a trust before September 1, 2015, is
5 governed by the law that applied to the action taken or not taken
6 immediately before the effective date of this Act, and that law is
7 continued in effect for that purpose.

8 SECTION 4. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2015.