

### **3B:20-11.1 Short title**

1. Sections 1 through 12 of this 1997 amendatory and supplementary act shall be known and may be cited as the "Prudent Investor Act."

L.1997,c.26,s.1.

### **3B:20-11.2 Compliance by fiduciary with prudent investor rule**

2. a. Except as provided in subsection b. of this section, a fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule, as set forth in this act.

b. The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by express provisions of the trust instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on those express provisions. Nothing herein shall affect the jurisdiction of the Superior Court to order or authorize a fiduciary to deviate from the express terms or provisions of a trust instrument for the causes, in the manner, and to the extent otherwise provided by law.

L.1997,c.26,s.2.

### **3B:20-11.3 Investments, management of trust assets by fiduciary**

3. a. A fiduciary 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 fiduciary shall exercise reasonable care, skill, and caution.

b. A fiduciary's investment and management decisions respecting individual assets shall not be evaluated 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. Subject to the standards established in this act, a fiduciary may invest in any kind of property or type of investment. No specific investment or course of action is inherently imprudent.

d. Among the circumstances that the fiduciary shall consider in investing and managing trust assets are those of the following as are relevant to the trust and 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;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

(7) the need for liquidity, for regularity of income, and for 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 as, for example, an interest in a closely-held enterprise, tangible and intangible personalty, or real estate.

e. The fiduciary shall take reasonable steps to verify facts relevant to the investment and management of trust assets and may rely and be fully protected in relying upon statistical, financial, corporate or other information as to a particular investment, and upon ratings or other opinion as to the financial or other status thereof, contained in or offered by any financial, statistical, investment, rating or other publication or service published for the use of and accepted as reliable by investors in like investments or upon a copy of the prospectus prepared and filed with the Securities and Exchange Commission in connection with a new issue.

f. A fiduciary who has special skills or expertise, or is named fiduciary in reliance upon representations of special skills or expertise, has a duty to use those special skills or expertise.

L.1997,c.26,s.3.

### **3B:20-11.4 Diversification of investments**

4. A fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

L.1997,c.26,s.4.

### **3B:20-11.5 Assets to be managed in interest of beneficiaries**

5. A fiduciary shall invest and manage the trust assets solely in the interest of the beneficiaries.

L.1997,c.26,s.5.

### **3B:20-11.6 Impartiality of fiduciary**

6. If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

L.1997,c.26,s.6.

**3B:20-11.7 Review of trust assets**

7. Within six months after accepting trust assets, the fiduciary shall review the trust assets and shall make and implement decisions concerning the retention and disposition of assets received at the inception of the trust, in order to bring the trust portfolio into compliance with the provisions of the trust instrument or with the requirements of this act.

L.1997,c.26,s.7.

**3B:20-11.8 Incurrence of costs by fiduciary**

8. In investing and managing trust assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the fiduciary. A fiduciary who delegates investment and management functions pursuant to section 10 of P.L.1997, c.26 (C.3B:20-11.10) shall control the overall costs of the delegation, including making a reduction in the amount of corpus commissions otherwise allowable to the fiduciary with respect to the trust assets for which investment responsibility has been delegated, which reduction shall take account of the duties and responsibilities retained by the fiduciary with respect to such assets.

L.1997,c.26,s.8.

**3B:20-11.9 Rule expresses standard of conduct**

9. The prudent investor rule expresses a standard of conduct, not outcome. Compliance with the rule is determined in light of the facts and circumstances existing at the time of the fiduciary's decision or action.

L.1997,c.26,s.9.

**3B:20-11.10 Delegation of investment, management functions by fiduciary**

10. a. A fiduciary may delegate investment and management functions that a prudent fiduciary of comparable skills could properly delegate under the circumstances. The fiduciary shall exercise reasonable care, skill, and caution in:

(1) selecting an agent with special investment skills and expertise and of sound financial standing;

(2) establishing the scope and terms of the delegation consistent with the purpose and terms of the trust instrument; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

b. In performing a delegated function, the agent shall owe to the trustee and the beneficiaries the same duties as the fiduciary and shall be held to the same standards as the fiduciary.

c. The fiduciary who complies with the requirements of subsection a. of this section shall not be liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

d. By accepting the delegation of a trust function from the fiduciary of a trust that is subject to the law of New Jersey, the agent submits to the jurisdiction of the courts of New Jersey, even if the delegation agreement provides otherwise.

e. If there are two or more fiduciaries serving, only one of whom has special investment and management skills or expertise or has been named in reliance upon representations of such special skills or expertise, then the fiduciary or fiduciaries not possessed of such special skills or expertise may, pursuant to this section, delegate investment and management functions to the other fiduciary as if such other fiduciary were an agent selected in accordance with this section and subject to the provisions of this section.

f. A fiduciary shall provide reasonable advance written notice on each occasion upon which the fiduciary intends to delegate investment and management functions pursuant to this section, including the identity of the agent, to the beneficiary or beneficiaries eligible to receive income from the trust on the date of the intended delegation. Upon providing such notice, the fiduciary shall be authorized to delegate investment and management functions pursuant to this section.

L.1997,c.26,s.10.

### **3B:20-11.11 Construction of terms**

11. The following terms or comparable language in a trust instrument, unless otherwise limited or modified by that instrument, shall be construed as authorizing any investment or strategy permitted under this act: "investments permissible by law for investment of trust funds," "legal investment," "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."

L.1997,c.26,s.11.

### **3B:20-11.12 Applicability of act**

12. This act shall apply to and govern trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this act governs only actions or omissions occurring after that date.

L.1997,c.26,s.12.