

Arkansas Enacts a Version of the Uniform Directed Trust Act: Relief for "Directed Trustees" Begins in 2020



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Being a trustee means complying with the highest applicable standard of duty under the law—fiduciary duty. A person who stands in a fiduciary relationship over another person cannot act, or fail to act, in a way that harms the beneficial interests of the fiduciary's charge. (This "charge" can be called a ward, beneficiary, or many other things depending on the specific office of the fiduciary.) This article, in dealing with the Uniform Directed Trust Act (the "Uniform Act" or the "Act"), will focus on the fiduciary relationship between trustees, non-trustees, and the beneficiaries of a trust.

In recent years, it has become more common for trusts to grant multiple parties various powers over trust property. Of course there is still a trustee, owing the classic fiduciary duty to the beneficiaries. But now, trusts increasingly provide for non-trustees (often called "trust protectors" or "trust directors") to have power over some aspect of trust administration—such as the trust's investment strategy or the management decisions for a family business owned by the trust. Increasingly too, trust beneficiaries are requesting that non-trustees be given responsibility for some aspect of trust administration, and sometimes they even want to modify the trust to allow for such an approach. This all stands in contrast to the traditional approach of centralizing trust power, with its attendant fiduciary duty, in one trustee.

When these non-trustees exercise their power as non-trustees, to whom do they owe fiduciary duty? Do they owe any fiduciary duty?

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