

Colorado Law Related to Fiduciary Responsibilities

Colorado Uniform Prudent Management of Institutional Funds Act

§ 15-1-1103. Standard of conduct in managing and investing institutional fund

- (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.
- (b) In addition to complying with the duty of loyalty imposed by law other than this part 11, each person responsible for managing and investing an institutional fund shall manage and invest the institutional fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- (c) In managing and investing an institutional fund, an institution:
 - (1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and
 - (2) Shall make a reasonable effort to verify facts relevant to the management and investment of the institutional fund.
- (d) An institution may pool two or more institutional funds for purposes of management and investment.
- (e) Except as otherwise provided by a gift instrument, the following rules apply:
 - (1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:
 - (A) General economic conditions;
 - (B) The possible effect of inflation or deflation;
 - (C) The expected tax consequences, if any, of investment decisions or strategies;
 - (D) The role that each investment or course of action plays within the overall investment portfolio of the institutional fund;
 - (E) The expected total return from income and the appreciation of investments;
 - (F) Other resources of the institution;
 - (G) The needs of the institution and the institutional fund to make distributions and to preserve capital; and
 - (H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

- (2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the institutional fund and to the institution.
- (3) Except as otherwise provided by law other than this part 11, an institution may invest in any kind of property or type of investment consistent with this section.
- (4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the institutional fund are better served without diversification.
- (5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this part 11.
- (6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Colorado Nonprofit Corporations

§ 7-128-401. General standards of conduct for directors and officers

- (1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, and each officer with discretionary authority shall discharge the officer's duties under that authority:
 - (a) In good faith;
 - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) In a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.
- (2) In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 - (a) One or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;
 - (b) Legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence;
 - (c) Religious authorities or ministers, priests, rabbis, or other persons whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit

corporation is affiliated, the director or officer believes justify reliance and confidence and who the director or officer believes to be reliable and competent in the matters presented; or

(d) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director or officer is not liable as such to the nonprofit corporation or its members for any action taken or omitted to be taken as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.

(5) A director, regardless of title, shall not be deemed to be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the nonprofit corporation including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

(6) A director or officer of a nonprofit corporation, in the performance of duties in that capacity, shall not have any fiduciary duty to any creditor of the nonprofit corporation arising only from the status as a creditor.

(7) No person shall be liable in contract or tort merely by reason of being a director, officer, or member of a nonprofit corporation that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and the business or activities of which have been continued for nonprofit purposes, with or without knowledge of the suspension, declaration, or dissolution, and the business and activities of which have not been wound up.