

Directed Trusts – SB 50 Sections 70-86

- All new for Kentucky
- Effective date - for trusts existing before SB50 effective date and/or where administration is moved to Kentucky after effective date, only applies to decision/action occurring after the effective date or change, respectively
- Differentiate powers of appointment, trustee or trust director removal powers, settlor power of revocation, power of a beneficiary to affect beneficial interest, trust powers held in a nonfiduciary capacity or where must be to held as such to achieve tax objectives
- Trust directors are subject to the same rules as a trustee would be regarding a Medicaid or SS payback provision; and a charitable interest

Directed Trusts – SB 50 Sections 70-86 (Continued)

- Trust terms may grant powers of direction
- Trust director type powers give rise to the same fiduciary duty and liability that similarly situated trustees would have (but the trust terms may impose additional duty/liability)
- A directed trustee shall take reasonable action to comply with a trust director's exercise/nonexercise of direction power, but shall not comply if doing so would be willful misconduct
- Special provisions apply if the power may be used to release a trustee or another trust director from liability
- Trustee may generally rely on information provided by trust director without liability for breach of trust for doing so

Directed Trusts – SB 50 Sections 70-86 (Continued)

- Unless trust terms provide otherwise, a trustee has no duty to monitor a trust director or inform/advise others of instances in which the trustee may have acted differently than the director — and the same is true of a trust director, with respect to a trustee
- Actions against a trust director for breach of trust share the same limitation period as for a trustee, and the same defenses are available to a director as to a trustee
- Other provisions applicable to trustees also apply to directors, including bond, resignation, compensation, resignation, vacancies, etc.