

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 44.
CHARITABLE AND CURATIVE
INSTITUTIONS.

CHAPTER 16A.
UNIFORM PRUDENT MANAGEMENT OF
INSTITUTIONAL FUNDS.

2001 Edition

DISTRICT OF COLUMBIA OFFICIAL CODE
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TABLE OF CONTENTS

§ 44-1631. Definitions.	
§ 44-1632. Standard of conduct in managing and investing institutional fund.	
§ 44-1633. Appropriation for expenditure or accumulation of endowment fund; rules of construction.	
§ 44-1634. Delegation of management and investment functions.	
§ 44-1635. Release or modification of restrictions on management, investment, or purpose.	
§ 44-1636. Reviewing compliance.	
§ 44-1637. Application to existing institutional funds.	
§ 44-1638. Relation to Electronic Signatures in Global and National Commerce Act.	
§ 44-1639. Uniformity of application and construction.	

CHAPTER 16A. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS.

Refs & Annos

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	2008, Act 2008-276	1-1-2009	Code 1975, §§ 19-3C-1 to 19-3C-10.
Alaska	2010, c. 66	9-8-2010	AS §§ 13.65.010 to 13.65.095.
Arizona	2008, c. 30	9-26-2008	A.R.S. §§ 10-11801 to 10-11806.
Arkansas	2009, Act 262	7-31-2009	A.C.A. §§ 28-69-801 to 28-69-812.
California	2008, c. 715	1-1-2009	West's Ann.Cal.Probate Code, §§ 18501 to 18510.
Colorado	2008, c. 164	9-1-2008	West's C.R.S.A. §§ 15-1-1101 to 15-1-1110.
Connecticut	2007, P.A. No. 07-91	10-1-2007	C.G.S.A. §§ 45a-535 to 45a-535i.
Delaware	2007, c. 159	7-31-2007	12 Del.C. §§ 4701 to 4710.
District of Columbia	D.C. Law 17-69	1-23-2008	D.C. Official Code, 2001 Ed. §§ 44-1631 to 44-1639.
Florida	2011-170	7-1-2012	F.S.A. § 617.2104.
Georgia	2008, c. 423	7-1-2008	O.C.G.A. §§ 44-15-1 to 44-15-8.
Hawaii	2009, c. 135	7-1-2009	HRS §§ 517E-1 to 517E-9.
Idaho	2007, c. 173	7-1-2007	I.C. §§ 33-5001 to 33-5010.
Illinois	2009, P.A. 96-29	6-30-2009	S.H.A. 760 ILCS 51/1 to 51/10.
Indiana	2007, c. 226	7-1-2007	West's A.I.C. 30-2-12-1 to 30-2-12-18.
Iowa	2008, ch. 1066	7-1-2008	I.C.A. §§ 540A.101 to 540A.109.
Kansas	2008, c. 20	7-1-2008	K.S.A. 58-3611 to 58-3620.
Kentucky	2010, c. 34	7-15-2010	KRS 273.600 to 273.645.
Louisiana	2010, No. 168	7-1-2010	LSA-R.S. 9:2337.1 to 9:2337.10.
Maine	2009, c. 450	7-1-2009	13 M.R.S.A. §§ 5100 to 5111.
Maryland	2009, c. 134	4-14-2009	Code, Estates and Trusts, §§ 15-401 to 15-410.
Massachusetts	2009, c. 29	7-2-2009	M.G.L.A. c. 180A, §§ 1 to 9.
Michigan	2009, P.A. 87	9-10-2009	M.C.L.A. §§ 451.921 to 451.931.
Minnesota	2008, c. 188	8-1-2008	M.S.A. §§ 309.73 to 309.77.
Missouri	2009, H.B. No. 239	7-10-2009 [FN*]	V.A.M.S. §§ 402.130 to 402.148.
Montana	2007, c. 421	10-1-2007	M.C.A. 72-30-101 to 72-30-213.
Nebraska	2007, L.B. 136	9-1-2007	R.R.S. 1943, §§ 58-610 to 58-619.
Nevada	2007, c. 55	10-1-2007	NRS 164.640 to 164.680.
New Hampshire	2008, c. 75	7-1-2008	RSA 292-B:1 to 292-B:10.
New Jersey	2009, c. 64	6-10-2009	N.J.S.A. 15:18-25 to 15:18-34.
New Mexico	2009, c. 130	7-1-2009	NMSA 1978, §§ 46-9A-1 to 46-9A-10.
New York	2010, c. 490	9-17-2010	McKinney's N-PCL, §§ 550 to 558.
North Carolina	S.L.2009-8	3-19-2009	G.S. §§ 36E-1 to 36E-11.
North Dakota	2009, c. 589	4-22-2009	NDCC 59-21-01 to 59-21-08.
Ohio	2008, H.B. No. 522	6-1-2009	R.C. §§ 1715.51 to 1715.59.
Oklahoma	2007, c. 91	11-1-2007	60 Okl.St. Ann. §§ 300.11 to 300.20.
Oregon	2007, c. 554	1-1-2008	ORS 128.305 to 128.336.
Rhode Island	2009, chs. 61, 63	6-30-2009	Gen.Laws 1956, §§ 18-12.1-1 to 18-12.1-10.
South Carolina	2008, c. 289	7-1-2008	Code 1976, §§ 34-6-10 to 34-6-100.
South Dakota	2007, c. 283	7-1-2007	SDCL 55-14A-1 to 55-14A-10.
Tennessee	2007, c. 186	7-1-2007	T.C.A. §§ 35-10-201 to 35-10-210.
Texas	2007, c. 834	9-1-2007	V.T.C.A. Property Code, §§ 163.001 to 163.011.
Utah	2007, c. 59	4-30-2007	U.C.A.1953, 51-8-101 to 51-8-604.
Vermont	2009, No. 9	5-5-2009	14 V.S.A. §§ 3411 to 3420.

Virgin Islands	2010, No. 7150	1-1-2011	15 V.I.C. §§ 8-101 to 8-203.
Virginia	2008, c. 184	7-1-2008	Code 1950, §§ 55-268.11 to 55-268.20.
Washington	2009, c. 436	5-11-2009	West's RCWA 24.55.005 to 24.55.900.
West Virginia	2008, c. 105	6-4-2008	Code, 44-6A-1 to 44-6A-10.
Wisconsin	2009, c. 33	8-4-2009	W.S.A. 112.11.
Wyoming	2009, c. 185	3-12-2009	Wyo.Stat.Ann. §§ 17-7-301 to 17-7-307.

[FN*] Date of approval.

§ 44-1631. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.
- (2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term "endowment fund" does not include assets that an institution designates as an endowment fund for its own use.
- (3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.
- (4) "Institution" means:
 - (A) A person, other than an individual, organized and operated exclusively for charitable purposes;
 - (B) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or
 - (C) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.
- (5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term "institutional fund" does not include:
 - (A) Program-related assets;
 - (B) A fund held for an institution by a trustee that is not an institution; or
 - (C) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.
- (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.
- (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Jan. 23, 2008, D.C. Law 17-69, § 2, 54 DCR 11650.)

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is based upon § 2 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Legislative History of Laws

Law 17-69, the "Uniform Prudent Management of Institutional Fund Act of 2007", was introduced in Council and assigned Bill No. 17-145 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on October 23, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 19, 2007, it was assigned Act No. 17-181 and transmitted to both Houses of Congress for its review. D.C. Law 17-69 became effective on January 23, 2008.

§ 44-1632. 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 chapter, each person responsible for managing and investing an institutional fund shall manage and invest the 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 fund.

(d) An institution may pool 2 or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules shall apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, shall 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 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 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 shall 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 fund and to the institution.

(3) Except as otherwise provided by law other than this chapter, 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 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 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 chapter.

(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.

(Jan. 23, 2008, D.C. Law 17-69, § 3, 54 DCR 11650.)

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is based upon § 3 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Legislative History of Laws

For Law 17-69, see notes following § 44-1631.

§ 44-1633. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.

(a)(1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the

uses, benefits, purposes, and duration for which the endowment fund is established.

(2) Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution.

(3) In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (A) The duration and preservation of the endowment fund;
- (B) The purposes of the institution and the endowment fund;
- (C) General economic conditions;
- (D) The possible effect of inflation or deflation;
- (E) The expected total return from income and the appreciation of investments;
- (F) Other resources of the institution; and
- (G) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument shall specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

- (1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

(Jan. 23, 2008, D.C. Law 17-69, § 4, 54 DCR 11650.)

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is based upon § 4 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Legislative History of Laws

For Law 17-69, see notes following § 44-1631.

§ 44-1634. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; 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, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of the District of Columbia, an agent submits to the jurisdiction of the courts of the District of Columbia in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of the District of Columbia other than this chapter.

(Jan. 23, 2008, D.C. Law 17-69, § 5, 54 DCR 11650.)

This section is based upon § 5 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

For Law 17-69, see notes following § 44-1631.

§ 44-1635. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b)(1) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if:

- (A) The restriction has become impracticable or wasteful;
- (B) The restriction impairs the management or investment of the fund; or
- (C) Because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.

(2) The institution shall notify the Attorney General for the District of Columbia of the application, and the Attorney General for the District of Columbia shall be given an opportunity to be heard.

(3) To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

(c)(1) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument.

(2) The institution shall notify the Attorney General for the District of Columbia of the application, and the Attorney General for the District of Columbia shall be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General for the District of Columbia, may release or modify the restriction, in whole or part, if:

- (1) The institutional fund subject to the restriction has a total value of less than \$50,000, subject to adjustment pursuant to subsection (e) of this section;
- (2) More than 20 years have elapsed since the fund was established; and
- (3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(e) The dollar amount specified in subsection (d)(1) of this section shall be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor ("Index"), using 2007 as the base year, as follows:

- (1) The dollar amount shall be adjusted as of January 1st of each year if the cumulative percentage of change in the Index, from the base year or from a later year that was the basis of an adjustment of this amount pursuant to this subsection, rounded to the nearest whole percentage point, is in excess of 10%.
- (2) The amount of any adjustment shall be rounded to the nearest \$5,000.
- (3) The dollar amount shall not be reduced below \$50,000.
- (4) No adjustment to the dollar amount shall occur before January 1, 2009.

(Jan. 23, 2008, D.C. Law 17-69, § 6, 54 DCR 11650.)

This section is based upon § 6 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

For Law 17-69, see notes following § 44-1631.

§ 44-1636. REVIEWING COMPLIANCE.

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken.

(Jan. 23, 2008, D.C. Law 17-69, § 7, 54 DCR 11650.)

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is based upon § 7 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Legislative History of Laws

For Law 17-69, see notes following § 44-1631.

§ 44-1637. APPLICATION TO EXISTING INSTITUTIONAL FUNDS.

This chapter applies to institutional funds existing on or established after January 23, 2008. As applied to institutional funds existing on January 23, 2008, this chapter governs only decisions made or actions taken on or after that date.

(Jan. 23, 2008, D.C. Law 17-69, § 8, 54 DCR 11650.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-69, see notes following § 44-1631.

Uniform Law

This section is based upon § 8 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 44-1638. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7001 *et seq.*), but does not modify, limit, or supersede section 101(a) of that act (15 U.S.C. § 7001(a)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Jan. 23, 2008, D.C. Law 17-69, § 9, 54 DCR 11650.)

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is based upon § 9 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Legislative History of Laws

For Law 17-69, see notes following § 44-1631.

§ 44-1639. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Jan. 23, 2008, D.C. Law 17-69, § 10, 54 DCR 11650.)

HISTORICAL AND STATUTORY NOTES

Uniform Law

This section is based upon § 10 of the Uniform Prudent Management of Institutional Funds Act of 2007. See 7A, Pt. III, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Legislative History of Laws

For Law 17-69, see notes following § 44-1631.