

**TRUSTEE EXCULPATION WITH RESPECT
TO LIFE INSURANCE**
By: Trent S. Kiziah

Thirteen states have enacted statutes which exculpate a trustee from any losses sustained with respect to life insurance held by the trustee. These charts analyze these thirteen statutes giving particular interest to the duties that the statutes waive, whether notice must be given before exculpation occurs, on whose life the life insurance policy can cover and their effective date provisions. See Trent S. Kiziah, "Statutory Exculpation of Trustees Holding Life Insurance Policies," 47 Real Property, Trust & Estate Law Journal 328 (2012) for more information concerning dates of enactment, legislative history and a critique of the statutes.

PART 1 OF 3

	Statutory Reference	Relieves Investment Duties[1]	Exculpates[2]	Acquisition Limitations[3]	Notice Required	Policies Covered-----						
						Settlor's Life	Settlor's Spouse's Life	Joint Policy	Children	Grandcn	Parents	Others
Alabama	Ala. Code §19-3B-818	No	Yes	see note [4]	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	AZ Rev. Stat. §14-10908	No	Yes	None	No	Yes	Yes	Yes	No	No	No	No
Delaware	Del. Code Ann. tit. 12 §3302(d)	No	Yes	None	Yes	Yes	Yes	Yes	No	No	No	No
Florida	Florida Stat. §736.0902	Yes	Yes	None	Yes	^	^	^	No	No	No	No
North Carolina	N.C. Gen. Stat. §36C-9-903.1	Yes	Yes	None	No*	Yes	?°	Yes	No	No	No	No
North Dakota	N.D. Cent. Code §26.1-33-44	Yes	Yes	see note [5]	No	Yes	Yes	No	Yes	Yes	Yes	No
Ohio	Ohio Stat. §5809.031	Yes	Yes	None	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	20 Pa. C.S.A. §7208	No	Yes	None	No	Yes	Yes	Yes	No	No	No	No
South Carolina (see note [6])	S.C. Code Ann. §62-7-933(J)	Yes	Yes	None	No	Yes	?°	Yes	Yes	No	Yes	No
South Dakota	S.D. Codified Laws Ann. §55-5-17	Yes	Yes	None	No*	Yes	?°	Yes	No	No	No	No

DISCLAIMER ON USE: The reader is cautioned to confirm the information provided in this Survey by independent research and analysis to ensure that it is accurate, complete, and current. The publication and dissemination of this Survey by any means by the American College of Trust and Estate Counsel ("ACTEC") does not constitute the rendering of legal, accounting, or other professional advice. ACTEC disclaims any liability with respect to use of this Survey.

	Statutory Reference	Relieves Investment Duties ^[1]	Exculpates ^[2]	Acquisition Limitations ^[3]	Notice Required	Settlor's Life	Settlor's Spouse's Life	Joint Policy	Children	Grandcn	Parents	Others
Tennessee	Tenn. Code Snn. §35-14-105(c)	Yes	Yes	None	No	Yes	? ^o	Yes	Yes	Yes	Yes	No
Virginia	Va. Code Ann. §26-45.4(G)	Yes	No	see note [7]	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wyoming	Wyoming Stat. §4-10-902(g)	No	Yes	None	Yes	Yes	Yes	Yes	No	No	No	No

*Notice is required if the trust was established before a certain date.

^Florida's statute provides coverage for life insurance on a "qualified person" defined as "a person who is insured or a proposed insured, or the spouse of that person, who has provided the trustee with funds used to acquire or pay premiums with respect to a policy of insurance on the life of that person or the spouse of that person, or on the lives of that person and the spouse of that person."

^oStatute covers life insurance on the "life of the settlor, or the lives of the settlor and the settlor's spouse." A policy solely on the settlor's spouse is not clearly covered.

^[1] A "yes" in this column means the trustee is relieved of investment duties with respect to life insurance held by the trustee.

A "no" means the trustee is not relieved of the investment duties with respect to the life insurance policy. Note: The trustee may have investment duties but exculpated from failure to fulfill those duties. See column "Exculpates".

^[2] A "yes" in this column means the statute expressly exculpates the trustee from any loss arising with respect to life insurance held by the trustee.

^[3] Ten states place no limitations on how the policy is acquired.

^[4] Alabama's statute is limited to policies contributed by the settlor or purchased by the trustee upon settlor's request. Provided the acquisition limitation is met, a policy on any person is permitted.

^[5] North Dakota's statute is limited to policies contributed to the trust by any party, other than the trustee, and policies acquired by the trustee which before the acquisition of the policy, the trustee never owned a policy.

^[6] South Carolina's statute addresses acquisition of the policy. It does not specifically address retention.

^[7] Virginia's statute applies to policies "acquired by gift or pursuant to an express permission or direction in the governing instrument." Provided this acquisition limitation is met, a policy on any person is permitted.

PART 2 OF 3

	DUTIES RELEASED OR EXCULPATED FROM					
	Determine whether policy is or remains a proper investment	Investigate financial strength of life insurance company	Exercise Policy Option	Exercise non-forfeiture provisions	Diversify contract	Inquire into changes in health or financial condition of insured(s)
Alabama	Yes				Yes	
Arizona	Yes	Yes		Yes	Yes	
Delaware	Yes	Yes	Yes		Yes	Yes
Florida	Yes	Yes	Yes		Yes	Yes
North Carolina	Yes		Yes		Yes	
North Dakota	Yes		Yes		Yes	
Ohio	Yes	Yes	Yes		Yes	Yes
Pennsylvania	Yes	Yes		Yes	Yes	
South Carolina	Yes		Yes		Yes	
South Dakota	Yes	Yes	Yes		Yes	Yes
Tennessee	Yes	Yes	Yes		Yes	
Virginia	Yes		Yes		Yes	
Wyoming	Yes	Yes	Yes		Yes	Yes

PART 3 OF 3

	EFFECTIVE DATES			
	Applies to all trusts executed after effective date	Applies to action, or inaction, after effective date	Applies to trusts existing on effective date	Applies to action, or inaction, before effective date
Alabama	Yes	Yes	Yes	No
Arizona	Yes	Yes	Yes	Yes
Delaware	Yes	Yes	Yes*	No
Florida	Yes	Yes	Yes*	No
North Carolina	Yes	Yes	Yes*	No
North Dakota	Yes	Yes	Yes	No
Ohio	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes*	No
Tennessee	Yes	Yes	Yes	No
Virginia	Yes	Yes	Yes	No
Wyoming	Yes	Yes	Yes*	No

A empty box means the statute makes no mention of the duty.