

Appendix A

ADMITTED 1. Franklin N. Harbin and Edna F. Harbin created the Franklin N. Harbin and Edna F. Harbin Living Trust (the "Trust") by executing a Declaration of Trust on January 16, 2000 (the "Trust Declaration") which was recorded in Deed Book 606 at page 15.

COMPLAINT - Paragraph 6.  
ANSWER - Paragraph 2.

ADMITTED 2. Franklin N. Harbin conveyed the property located at 313 Lakeshore Drive (the "Property") to the Trust by deed recorded in Deed Book 606 at page 18.

COMPLAINT - Paragraphs 4 and 5.  
ANSWER - Paragraph 2.

ADMITTED 3. Franklin N. Harbin died on June 23, 2000. As of the time of his death, the Trust Declaration had not been amended or revoked, and the Property was still a part of the Trust Estate.

COMPLAINT - Paragraphs 9 and 10.  
ANSWER - Paragraph 2.

ADMITTED 4. On November 30, 2005, Edna F. Harbin, as the remaining Trustee, executed a document purporting to convey the Property to herself for life with remainder to Susan H. Williams (the "Purported Deed"). The Purported Deed was recorded on March 22, 2006 in Deed Book 963 at page 221.

COMPLAINT - Paragraphs 11 and 12.  
ANSWER - Paragraph 2.

DENIED 5. Edna F. Harbin did not have the authority to withdraw property from the Trust, after the date of Franklin N. Harbin's death, because Article 3 only allowed that power to be exercised while both Settlers were living.

COMPLAINT - Paragraph 13.  
ANSWER - Paragraph 2 and Paragraph 9.

Appendix B

South Carolina General Assembly  
108th Session, 1989-1990

Bill 1403

(A521, R634, S1403)

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Uniform Trustees' Powers Act

SECTION 96. Article 7 of Title 62 of the 1976 Code is amended by adding:

"PART 7

Uniform Trustees' Powers Act

Section 62-7-701. Citation. This Part may be cited as the Uniform Trustees' Powers Act.

Section 62-7-702. Definitions. As used in this Part:

(1) trust' means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; trust' does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institutions, or other trust the nature of which does not admit of general trust administration;

(2) prudent man' means a trustee whose exercise of judgment and care complies with the requirements of Section 62-7-302.

Section 62-7-703. Powers of Trustee Conferred by Trust or by Law.

(a) The trustee has all powers conferred upon him by the provisions of this Part unless limited in the trust instrument.

(b) An instrument which is not a trust under Section 62-7-702(1) may incorporate any provision of this Part by reference.

Section 62-7-704. Powers of Trustees Conferred by this Part.

(a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including, but not limited to, the powers specified in subsection (c).

(b) In the exercise of his powers including the powers granted by this Part, a trustee has a duty to act with due regard to his obligation as a fiduciary and is subject to the standards provided in Section 62-7-302, including a duty to give consideration to available tax exemptions, deductions, or credits for tax purposes. Tax' includes, but is not limited to, any federal, state, or local income, gift, estate, inheritance, generation-skipping transfer, or other wealth transfer tax.

(c) A trustee has the power, subject to subsections (a) and (b):

(1) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested;

(2) to receive additions to the assets of the trust;

(3) to continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(4) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, or anyone else, holds an undivided interest;

(5) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(6) to deposit trust funds in a bank, including a bank operated by the trustee;

(7) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(8) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(10) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(11) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) to grant an option involving disposition of a trust asset, or to take an option for the

acquisition of any asset;

(13) to vote a security, in person or by general or limited proxy;

(14) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(16) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(17) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(18) to borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(19) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(20) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(21) to allocate items of income or expense to either trust income or principal, as provided in Part 4 of this article [62-7-401 et seq.] but without regard to how such items are treated for tax purposes;

(22) to pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(23) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(24) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(25) to prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(26) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

Section 62-7-705. Trustee's Office Not Transferable. Unless otherwise provided in the trust instrument, while continuing to act as a trustee, the trustee may not transfer his office to another or delegate the entire administration of the trust to a co-trustee or another. The trustee may resign upon approval of the court.

Section 62-7-706. Power of Court to Permit Deviation or to Approve Transactions Involving Conflict of Interest.

(a) This Part does not affect the power of the court for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this Part.

(b) Subject to the provisions of Section 62-7-603, if the duty of the trustee and his individual interest or his interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization (except as provided in items (1), (4), (6), (18), and (24) of subsection (c) of Section 62-7-704) upon petition of the trustee or any other interested person, unless directed otherwise by the trust. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

Section 62-7-707. Powers Exercisable by Joint Trustees-Liability.

(a) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to any of his co-trustees at or before the time of the joinder.

(b) If two or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(c) Unless directed otherwise by the court or by the trust instrument, a successor trustee appointed by the court or by the trust instrument succeeds to all the powers, duties, and discretionary authority given to the predecessor trustee. Upon reasonable request, a successor trustee is entitled to a statement of the accounts of the trust from a predecessor trustee. A successor trustee may accept the account rendered and shall be under no duty to examine the acts or omissions of the predecessor trustee and shall not be liable for failure to seek redress for any

act or omission of the predecessor trustee. The trustee of a testamentary trust may accept the account rendered by a personal representative and shall be under no duty to examine the acts or omissions of the predecessor personal representative and shall not be liable for failure to seek redress for any act or omission of the predecessor personal representative.

(d) This section does not excuse a co-trustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

Section 62-7-708. Third Persons Protected in Dealing with Trustee. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

Section 62-7-709. Application of Part. Except as specifically provided in the trust, the provisions of this Part apply to any trust established before or after the effective date of this Part and to any trust asset acquired by the trustee before or after the effective date of this Part."

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