

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

_____ Regular Session, 2021

H. B. 22-9

A BILL FOR AN ACT

To regulate trust and fiduciaries; and for other purposes.

BE IT ENACTED BY THE 22ND NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:

1 **Section 1. Findings and Purpose.** The Legislature desires to diversify the
2 Commonwealth of the Northern Mariana Islands (CNMI) economy. One economic
3 arena that the CNMI holds a unique advantage in is the financial industry because
4 the CNMI has greater control of the jurisdiction's overall tax environment than any
5 other state or territory possesses. The Legislature intends to leverage this advantage
6 by promoting new financial industries that will create jobs and investment largely
7 unrelated to tourism.

8 A promising avenue is to create trust laws that attract capital into the CNMI.
9 For instance, South Dakota's total bank asset amount to \$3 trillion despite being a
10 lightly populated state with minimal industry. To encourage similar capital flows

1 into the CNMI, the Legislature intends to become the premier jurisdiction for
2 creating and maintaining trusts in the United States.

3 Later, as the trust industry takes hold, the Legislature further intends for the
4 creation of a task force composed of government officials, trade-industry
5 representatives, and CNMI-licensed attorneys specializing in trust law to both
6 monitor the status of trust laws nationally and propose reforms to place and keep
7 the CNMI at the forefront of the industry.

8 **Section 2. Enactment.** Subject to codification by the Commonwealth Law
9 Revision Commission, the following is hereby enacted and reads as follows:

10 **“Division XX. Trust and Fiduciaries.**

11 **Chapter 1. General Provisions.**

12 **SECTION 101. SHORT TITLE.** This Act may be cited as the
13 Uniform Trust Code.

14 **SECTION 102. SCOPE.** This Code applies to express trusts,
15 charitable or noncharitable, and trusts created pursuant to a statute,
16 judgment, or decree that requires the trust to be administered in the manner
17 of an express trust.

18 **SECTION 103. DEFINITIONS.** In this Code:

19 (1) “Action,” with respect to an act of a trustee, includes a failure to
20 act.

21 (2) “Ascertainable standard” means a standard relating to an

1 individual's health, education, support, or maintenance within the meaning
2 of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of
3 1986, as in effect on [the effective date of this Code amendment, or as later
4 amended.

5 (3) "Beneficiary" means a person that:

6 (A) has a present or future beneficial interest in a trust,
7 vested or contingent; or

8 (B) in a capacity other than that of trustee, holds a power of
9 appointment over trust property.

10 (4) "Charitable trust" means a trust, or portion of a trust, created for
11 a charitable purpose described in Section 405(a).

12 (5) "Conservator" means a person appointed by the court to
13 administer the estate of a minor or adult individual.

14 (6) "Environmental law" means a federal, state, or local law, rule,
15 regulation, or ordinance relating to protection of the environment.

16 (7) "Guardian" means a person appointed by the court, a parent, or
17 a spouse to make decisions regarding the support, care, education, health,
18 and welfare of a minor or adult individual. The term does not include
19 guardian ad litem.

20 (8) "Interests of the beneficiaries" means the beneficial interests
21 provided in the terms of the trust.

1 (9) "Jurisdiction," with respect to a geographic area, includes a State
2 or country.

3 (10) "Person" means an individual, corporation, business trust,
4 estate, trust, partnership, limited liability company, association, joint
5 venture, government; governmental subdivision, agency, or
6 instrumentality; public corporation, or any other legal or commercial entity.

7 (11) "Power of withdrawal" means a presently exercisable general
8 power of appointment other than a power: (A) exercisable by a trustee and
9 limited by an ascertainable standard; or (B) exercisable by another person
10 only upon consent of the trustee or a person holding an adverse interest.

11 (12) "Property" means anything that may be the subject of
12 ownership, whether real or personal, legal or equitable, or any interest
13 therein.

14 (13) "Qualified beneficiary" means a beneficiary who, on the date
15 the beneficiary's qualification is determined:

16 (A) is a distributee or permissible distributee of trust income
17 or principal;

18 (B) would be a distributee or permissible distributee of trust
19 income or principal if the interests of the distributees described in
20 subparagraph (A) terminated on that date without causing the trust
21 to terminate; or

1 (C) would be a distributee or permissible distributee of trust
2 income or principal if the trust terminated on that date.

3 (14) "Revocable," as applied to a trust, means revocable by the
4 settlor without the consent of the trustee or a person holding an adverse
5 interest.

6 (15) "Settlor" means a person, including a testator, who creates, or
7 contributes property to, a trust. If more than one person creates or
8 contributes property to a trust, each person is a settlor of the portion of the
9 trust property attributable to that person's contribution except to the extent
10 another person has the power to revoke or withdraw that portion.

11 (16) "Spendthrift provision" means a term of a trust which restrains
12 both voluntary and involuntary transfer of a beneficiary's interest.

13 (17) "State" means a State of the United States, the District of
14 Columbia, Puerto Rico, the Commonwealth of the Northern Mariana
15 Islands, or any territory or insular possession subject to the jurisdiction of
16 the United States. The term includes an Indian tribe or band recognized by
17 federal law or formally acknowledged by a State.

18 (18) "Terms of a trust" means:

19 (A) Except as otherwise provided in subparagraph (B), the
20 manifestation of the settlor's intent regarding a trust's provisions as:

21 (i) expressed in the trust instrument; or

1 (ii) established by other evidence that would be admissible
2 in a judicial proceeding; or

3 (B) the trust's provisions, as established, determined, or
4 amended by:

5 (i) a trustee or other person in accordance with applicable
6 law; or

7 (ii) a court order; or

8 (iii) a nonjudicial settlement agreement under Section 111.

9 (19) "Trust instrument" means an instrument executed by the settlor
10 that contains terms of the trust, including any amendments thereto.

11 (20) "Trustee" includes an original, additional, and successor
12 trustee, and a cotrustee.

13 **SECTION 104. KNOWLEDGE.**

14 (a) Subject to subsection (b), a person has knowledge of a fact if the
15 person:

16 (1) has actual knowledge of it;

17 (2) has received a notice or notification of it; or

18 (3) from all the facts and circumstances known to the person at the
19 time in question, has reason to know it.

20 (b) An organization that conducts activities through employees has
21 notice or knowledge of a fact involving a trust only from the time the

1 information was received by an employee having responsibility to act for
2 the trust, or would have been brought to the employee's attention if the
3 organization had exercised reasonable diligence. An organization exercises
4 reasonable diligence if it maintains reasonable routines for communicating
5 significant information to the employee having responsibility to act for the
6 trust and there is reasonable compliance with the routines. Reasonable
7 diligence does not require an employee of the organization to communicate
8 information unless the communication is part of the individual's regular
9 duties or the individual knows a matter involving the trust would be
10 materially affected by the information.

11 **SECTION 105. DEFAULT AND MANDATORY RULES.**

12 (a) Except as otherwise provided in the terms of the trust, this Code
13 governs the duties and powers of a trustee, relations among trustees, and the
14 rights and interests of a beneficiary.

15 (b) The terms of a trust prevail over any provision of this Code
16 except:

17 (1) the requirements for creating a trust;

18 (2) the duty of a trustee to act in good faith and in accordance with
19 the terms and purposes of the trust and the interests of the beneficiaries;

20 (3) the requirement that a trust and its terms be for the benefit of its
21 beneficiaries, and that the trust have a purpose that is lawful, not contrary

1 to public policy, and possible to achieve;

2 (4) the power of the court to modify or terminate a trust under
3 Sections 410 through 416;

4 (5) the effect of a spendthrift provision and the rights of certain
5 creditors and assignees to reach a trust as provided in Article 5;

6 (6) the power of the court under Section 702 to require, dispense
7 with, or modify or terminate a bond;

8 (7) the power of the court under Section 708(b) to adjust a trustee's
9 compensation specified in the terms of the trust which is unreasonably low
10 or high;

11 (8) the duty under Section 813(b)(2) and (3) to notify qualified
12 beneficiaries of an irrevocable trust who have attained 25 years of age of
13 the existence of the trust, of the identity of the trustee, and of their right to
14 request trustee's reports;

15 (9) the duty under Section 813(a) to respond to the request of a
16 qualified beneficiary of an irrevocable trust for trustee's reports and other
17 information reasonably related to the administration of a trust;

18 (10) the effect of an exculpatory term under Section 1008;

19 (11) the rights under Sections 1010 through 1013 of a people other
20 than a trustee or beneficiary;

21 (12) periods of limitation for commencing a judicial proceeding; and

1 (13) the power of the court to take such action and exercise such
2 jurisdiction as may be necessary in the interests of justice; and

3 (14) the subject-matter jurisdiction of the court and venue for
4 commencing a proceeding as provided in Sections 203 and 204.

5 **SECTION 106. COMMON LAW OF TRUSTS; PRINCIPLES**
6 **OF EQUITY.** The common law of trusts and principles of equity
7 supplement this Code, except to the extent modified by this Code or another
8 statute of this State.

9 **SECTION 107. GOVERNING LAW.** The meaning and effect of
10 the terms of a trust are determined by:

11 (1) the law of the jurisdiction designated in the terms unless the
12 designation of that jurisdiction's law is contrary to a strong public policy of
13 the jurisdiction having the most significant relationship to the matter at
14 issue; or

15 (2) in the absence of a controlling designation in the terms of the
16 trust, the law of the jurisdiction having the most significant relationship to
17 the matter at issue.

18 **SECTION 108. PRINCIPAL PLACE OF**
19 **ADMINISTRATION.**

20 (a) Without precluding other means for establishing a sufficient
21 connection with the designated jurisdiction, terms of a trust designating the

1 principal place of administration are valid and controlling if:

2 (1) a trustee's principal place of business is located in or a trustee is
3 a resident of the designated jurisdiction; or

4 (2) all or part of the administration occurs in the designated
5 jurisdiction.

6 (b) A trustee is under a continuing duty to administer the trust at a
7 place appropriate to its purposes, its administration, and the interests of the
8 beneficiaries.

9 (c) Without precluding the right of the court to order, approve, or
10 disapprove a transfer, the trustee, in furtherance of the duty prescribed by
11 subsection (b), may transfer the trust's principal place of administration to
12 another State or to a jurisdiction outside of the United States.

13 (d) The trustee shall notify the qualified beneficiaries of a proposed
14 transfer of a trust's principal place of administration not less than 60 days
15 before initiating the transfer. The notice of proposed transfer must include:

16 (1) the name of the jurisdiction to which the principal place of
17 administration is to be transferred;

18 (2) the address and telephone number at the new location at which
19 the trustee can be contacted;

20 (3) an explanation of the reasons for the proposed transfer;

21 (4) the date on which the proposed transfer is anticipated to occur;

1 and

2 (5) the date, not less than 60 days after the giving of the notice, by
3 which the qualified beneficiary must notify the trustee of an objection to the
4 proposed transfer.

5 (e) The authority of a trustee under this section to transfer a trust's
6 principal place of administration terminates if a qualified beneficiary
7 notifies the trustee of an objection to the proposed transfer on or before the
8 date specified in the notice.

9 (f) In connection with a transfer of the trust's principal place of
10 administration, the trustee may transfer some or all of the trust property to
11 a successor trustee designated in the terms of the trust or appointed pursuant
12 to Section 704.

13 **SECTION 109. METHODS AND WAIVER OF NOTICE.**

14 (a) Notice to a person under this Code or the sending of a document
15 to a person under this Code must be accomplished in a manner reasonably
16 suitable under the circumstances and likely to result in receipt of the notice
17 or document. Permissible methods of notice or for sending a document
18 include first-class mail, personal delivery, delivery to the person's last
19 known place of residence or place of business, or a properly directed
20 electronic message.

21 (b) Notice otherwise required under this Code or a document

1 otherwise required to be sent under this Code need not be provided to a
2 person whose identity or location is unknown to and not reasonably
3 ascertainable by the trustee.

4 (c) Notice under this Code or the sending of a document under this
5 Code may be waived by the person to be notified or sent the document.

6 (d) Notice of a judicial proceeding must be given as provided in the
7 applicable rules of civil procedure.

8 **SECTION 110. OTHERS TREATED AS QUALIFIED**
9 **BENEFICIARIES.**

10 (a) Whenever notice to qualified beneficiaries of a trust is required
11 under this Code, the trustee must also give notice to any other beneficiary
12 who has sent the trustee a request for notice.

13 (b) A charitable organization expressly designated to receive
14 distributions under the terms of a charitable trust has the rights of a qualified
15 beneficiary under this Code if the charitable organization, on the date the
16 charitable organization's qualification is being determined:

17 (A) is a distributee or permissible distributee of trust income
18 or principal;

19 (B) would be a distributee or permissible distributee of trust
20 income or
21 principal upon the termination of the interests of other distributees or

1 permissible distributees then receiving or eligible to receive distributions;
2 or

3 (C) would be a distributee or permissible distributee of trust
4 income or principal if the trust terminated on that date.

5 (c) A person appointed to enforce a trust created for the care of an
6 animal or another noncharitable purpose as provided in Section 408 or 409
7 has the rights of a qualified beneficiary under this Code.

8 (d) The Attorney General of the Commonwealth has the rights of a
9 qualified beneficiary with respect to a charitable trust having its principal
10 place of administration in the Commonwealth.

11 **SECTION 111. NONJUDICIAL SETTLEMENT**
12 **AGREEMENTS.**

13 (a) For purposes of this section, “interested persons” means persons
14 whose consent would be required in order to achieve a binding settlement
15 were the settlement to be approved by the court.

16 (b) Except as otherwise provided in subsection (c), interested
17 persons may enter into a binding nonjudicial settlement agreement with
18 respect to any matter involving a trust.

19 (c) A nonjudicial settlement agreement is valid only to the extent it
20 does not violate a material purpose of the trust and includes terms and
21 conditions that could be properly approved by the court under this [Code]

1 or other applicable law.

2 (d) Matters that may be resolved by a nonjudicial settlement
3 agreement include:

4 (1) the interpretation or construction of the terms of the trust;

5 (2) the approval of a trustee's report or accounting;

6 (3) direction to a trustee to refrain from performing a
7 particular act or the grant to a trustee of any necessary or desirable
8 power;

9 (4) the resignation or appointment of a trustee and the
10 determination of a trustee's compensation;

11 (5) transfer of a trust's principal place of administration; and

12 (6) liability of a trustee for an action relating to the trust.

13 (e) Any interested person may request the court to approve a
14 nonjudicial settlement agreement, to determine whether the representation
15 as provided in Article 3 was adequate, and to determine whether the
16 agreement contains terms and conditions the court could have properly
17 approved.

18 **SECTION 112. RULES OF CONSTRUCTION.** The rules of
19 construction that apply in this State to the interpretation of and disposition
20 of property by will also apply as appropriate to the interpretation of the
21 terms of a trust and the disposition of the trust property.

1 **SECTION 113. INSURABLE INTEREST OF TRUSTEE.**

2 (a) In this section, "settlor" means a person that executes a trust
3 instrument. The term includes a person for which a fiduciary or agent is
4 acting.

5 (b) A trustee of a trust has an insurable interest in the life of an
6 individual insured under a life insurance policy that is owned by the trustee
7 of the trust acting in a fiduciary capacity or that designates the trust itself as
8 the owner if, on the date the policy is issued:

9 (1) the insured is:

10 (A) a settlor of the trust; or

11 (B) an individual in whom a settlor of the trust has,
12 or would have had if living at the time the policy was issued,
13 an insurable interest; and

14 (2) the life insurance proceeds are primarily for the
15 benefit of one or more trust beneficiaries that have:

16 (A) an insurable interest in the life of the insured; or

17 (B) a substantial interest engendered by love and
18 affection in the continuation of the life of the insured and, if
19 not already included under subparagraph (A), who are:

20 (i) related within the third degree or closer, as
21 measured by the civil law system of determining degrees of

1 relation, either by blood or law, to the insured; or

2 (ii) stepchildren of the insured.

3 **Chapter 2. Judicial Proceedings.**

4 **SECTION 201. ROLE OF COURT IN ADMINISTRATION**
5 **OF TRUST.**

6 (a) The court may intervene in the administration of a trust to the
7 extent its jurisdiction is invoked by an interested person or as provided by
8 law.

9 (b) A trust is not subject to continuing judicial supervision unless
10 ordered by the court.

11 (c) A judicial proceeding involving a trust may relate to any matter
12 involving the trust's administration, including a request for instructions and
13 an action to declare rights.

14 **SECTION 202. JURISDICTION OVER TRUSTEE AND**
15 **BENEFICIARY.**

16 (a) By accepting the trusteeship of a trust having its principal place
17 of administration in this State or by moving the principal place of
18 administration to this State, the trustee submits personally to the jurisdiction
19 of the courts of this State regarding any matter involving the trust.

20 (b) With respect to their interests in the trust, the beneficiaries of a
21 trust having its principal place of administration in this State are subject to

1 the jurisdiction of the courts of this State regarding any matter involving the
2 trust. By accepting a distribution from such a trust, the recipient submits
3 personally to the jurisdiction of the courts of this State regarding any matter
4 involving the trust.

5 (c) This section does not preclude other methods of obtaining
6 jurisdiction over a trustee, beneficiary, or other person receiving property
7 from the trust.

8 **SECTION 203. SUBJECT-MATTER JURISDICTION.**

9 The Superior Court has exclusive jurisdiction of proceedings in this
10 State brought by a trustee or beneficiary concerning the administration of a
11 trust.

12 **SECTION 204. VENUE.**

13 (a) Except as otherwise provided in subsection (b), venue for a
14 judicial proceeding involving a trust is in the Senatorial District in which
15 the trust's principal place of administration is or will be located and, if the
16 trust is created by will and the estate is not yet closed, in the Senatorial
17 District in which the decedent's estate is being administered.

18 (b) If a trust has no trustee, venue for a judicial proceeding for the
19 appointment of a trustee is in a Senatorial District in which a beneficiary
20 resides, in a Senatorial District in which any trust property is located, and if
21 the trust is created by will, in the Senatorial District in which the decedent's

1 estate was or is being administered.

2 **Chapter 3. Representation.**

3 **SECTION 301. REPRESENTATION: BASIC EFFECT.**

4 (a) Notice to a person who may represent and bind another person
5 under this chapter has the same effect as if notice were given directly to the
6 other person.

7 (b) The consent of a person who may represent and bind another
8 person under this chapter is binding on the person represented unless the
9 person represented objects to the representation before the consent would
10 otherwise have become effective.

11 (c) Except as otherwise provided in Sections 411 and 602, a person
12 who under this chapter may represent a settlor who lacks capacity may
13 receive notice and give a binding consent on the settlor's behalf.

14 (d) A settlor may not represent and bind a beneficiary under this
15 chapter with respect to the termination or modification of a trust under
16 Section 411(a).

1 **SECTION 302. REPRESENTATION BY HOLDER OF**
2 **GENERAL TESTAMENTARY POWER OF APPOINTMENT.**

3 To the extent there is no conflict of interest between the holder of a
4 general testamentary power of appointment and the persons represented
5 with respect to the particular question or dispute, the holder may represent
6 and bind persons whose interests, as permissible appointees, takers in
7 default, or otherwise, are subject to the power.

8 **SECTION 303. REPRESENTATION BY FIDUCIARIES AND**
9 **PARENTS.**

10 To the extent there is no conflict of interest between the
11 representative and the person represented or among those being represented
12 with respect to a particular question or dispute:

13 (1) a conservator may represent and bind the estate that the
14 conservator controls;

15 (2) a guardian may represent and bind the ward if a conservator of
16 the ward's estate has not been appointed;

17 (3) an agent having authority to act with respect to the particular
18 question or dispute may represent and bind the principal;

19 (4) a trustee may represent and bind the beneficiaries of the trust;

20 (5) a personal representative of a decedent's estate may represent
21 and bind persons interested in the estate; and

1 (6) a parent may represent and bind the parent's minor or unborn
2 child if a conservator or guardian for the child has not been appointed.

3 **SECTION 304. REPRESENTATION BY PERSON HAVING**
4 **SUBSTANTIALLY IDENTICAL INTEREST.** Unless otherwise
5 represented, a minor, incapacitated, or unborn individual, or a person whose
6 identity or location is unknown and not reasonably ascertainable, may be
7 represented by and bound by another having a substantially identical
8 interest with respect to the particular question or dispute, but only to the
9 extent there is no conflict of interest between the representative and the
10 person represented.

11 **SECTION 305. APPOINTMENT OF REPRESENTATIVE.**

12 (a) If the court determines that an interest is not represented under
13 this chapter, or that the otherwise available representation might be
14 inadequate, the court may appoint a representative to receive notice, give
15 consent, and otherwise represent, bind, and act on behalf of a minor,
16 incapacitated, or unborn individual, or a person whose identity or location
17 is unknown. A representative may be appointed to represent several persons
18 or interests.

19 (b) A representative may act on behalf of the individual represented
20 with respect to any matter arising under this Code, whether or not a judicial
21 proceeding concerning the trust is pending.

1 (c) In making decisions, a representative may consider general
2 benefit accruing to the living members of the individual's family.

3 **Chapter 4. Creation, validity, modification, and termination of**
4 **trust.**

5 **SECTION 401. METHODS OF CREATING TRUST.** A trust
6 may be created by:

7 (1) transfer of property to another person as trustee during the
8 settlor's lifetime or by will or other disposition taking effect upon the
9 settlor's death;

10 (2) declaration by the owner of property that the owner holds
11 identifiable property as trustee; or

12 (3) exercise of a power of appointment in favor of a trustee.

13 **SECTION 402. REQUIREMENTS FOR CREATION.**

14 (a) A trust is created only if:

15 (1) the settlor has capacity to create a trust;

16 (2) the settlor indicates an intention to create the trust;

17 (3) the trust has a definite beneficiary or is:

18 (A) a charitable trust;

19 (B) a trust for the care of an animal, as provided in Section
20 408; or

21 (C) a trust for a noncharitable purpose, as provided in

1 Section 409;

2 (4) the trustee has duties to perform; and

3 (5) the same person is not the sole trustee and sole beneficiary.

4 (b) A beneficiary is definite if the beneficiary can be ascertained
5 now or in the future, subject to any applicable rule against perpetuities.

6 (c) A power in a trustee to select a beneficiary from an indefinite
7 class is valid. If the power is not exercised within a reasonable time, the
8 power fails and the property subject to the power passes to the persons who
9 would have taken the property had the power not been conferred.

10 **SECTION 403. TRUSTS CREATED IN OTHER**
11 **JURISDICTIONS.** A trust not created by will is validly created if its
12 creation complies with the law of the jurisdiction in which the trust
13 instrument was executed, or the law of the jurisdiction in which, at the time
14 of creation:

15 (1) the settlor was domiciled, had a place of abode, or was a national;

16 (2) a trustee was domiciled or had a place of business; or

17 (3) any trust property was located.

18 **SECTION 404. TRUST PURPOSES.** A trust may be created only
19 to the extent its purposes are lawful, not contrary to public policy, and
20 possible to achieve. A trust and its terms must be for the benefit of its
21 beneficiaries.

1 **SECTION 405. CHARITABLE PURPOSES;**
2 **ENFORCEMENT.**

3 (a) A charitable trust may be created for the relief of poverty, the
4 advancement of education or religion, the promotion of health,
5 governmental or municipal purposes, or other purposes the achievement of
6 which is beneficial to the community.

7 (b) If the terms of a charitable trust do not indicate a particular
8 charitable purpose or beneficiary, the court may select one or more
9 charitable purposes or beneficiaries. The selection must be consistent with
10 the settlor's intention to the extent it can be ascertained.

11 (c) The settlor of a charitable trust, among others, may maintain a
12 proceeding to enforce the trust.

13 **SECTION 406. CREATION OF TRUST INDUCED BY**
14 **FRAUD, DURESS, OR UNDUE INFLUENCE.** A trust is void to the
15 extent its creation was induced by fraud, duress, or undue influence.

16 **SECTION 407. EVIDENCE OF ORAL TRUST.** Except as
17 required by a statute other than this Code, a trust need not be evidenced by
18 a trust instrument, but the creation of an oral trust and its terms may be
19 established only by clear and convincing evidence.

20 **SECTION 408. TRUST FOR CARE OF ANIMAL.**

21 (a) A trust may be created to provide for the care of an animal alive

1 during the settlor's lifetime. The trust terminates upon the death of the
2 animal or, if the trust was created to provide for the care of more than one
3 animal alive during the settlor's lifetime, upon the death of the last surviving
4 animal.

5 (b) A trust authorized by this section may be enforced by a person
6 appointed in the terms of the trust or, if no person is so appointed, by a
7 person appointed by the court. A person having an interest in the welfare
8 of the animal may request the court to appoint a person to enforce the trust
9 or to remove a person appointed.

10 (c) Property of a trust authorized by this section may be applied
11 only to its intended use, except to the extent the court determines that the
12 value of the trust property exceeds the amount required for the intended use.
13 Except as otherwise provided in the terms of the trust, property not required
14 for the intended use must be distributed to the settlor, if then living,
15 otherwise to the settlor's successors in interest.

16 **SECTION 409. NONCHARITABLE TRUST WITHOUT**
17 **ASCERTAINABLE BENEFICIARY.** Except as otherwise provided in
18 Section 408 or by another statute, the following rules apply:

19 (1) A trust may be created for a noncharitable purpose without a
20 definite or definitely ascertainable beneficiary or for a noncharitable but
21 otherwise valid purpose to be selected by the trustee. The trust may not be

1 enforced for more than 21 years.

2 (2) A trust authorized by this section may be enforced by a person
3 appointed in the terms of the trust or, if no person is so appointed, by a
4 person appointed by the court.

5 (3) Property of a trust authorized by this section may be applied
6 only to its intended use, except to the extent the court determines that the
7 value of the trust property exceeds the amount required for the intended use.
8 Except as otherwise provided in the terms of the trust, property not required
9 for the intended use must be distributed to the settlor, if then living,
10 otherwise to the settlor's successors in interest.

11 **SECTION 410. MODIFICATION OR TERMINATION OF**
12 **TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.**

13 (a) In addition to the methods of termination prescribed by Sections
14 411 through 414, a trust terminates to the extent the trust is revoked or
15 expires pursuant to its terms, no purpose of the trust remains to be achieved,
16 or the purposes of the trust have become unlawful, contrary to public policy,
17 or impossible to achieve.

18 (b) A proceeding to approve or disapprove a proposed modification
19 or termination under Sections 411 through 416, or trust combination or
20 division under Section 417, may be commenced by a trustee or beneficiary,
21 [and a proceeding to approve or disapprove a proposed modification or

1 termination under Section 411 may be commenced by the settlor]. The
2 settlor of a charitable trust may maintain a proceeding to modify the trust
3 under Section 413.

4 **SECTION 411. MODIFICATION OR TERMINATION OF**
5 **NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.**

6 (a) A noncharitable irrevocable trust may be modified or terminated
7 upon consent of the settlor and all beneficiaries, even if the modification or
8 termination is inconsistent with a material purpose of the trust. If, upon
9 petition, the court finds that the settlor and all beneficiaries consent to the
10 modification or termination of a noncharitable irrevocable trust, the court
11 shall approve the modification or termination even if the modification or
12 termination is inconsistent with a material purpose of the trust. A settlor's
13 power to consent to a trust's modification or termination may be exercised
14 by an agent under a power of attorney only to the extent expressly
15 authorized by the power of attorney or the terms of the trust; by the settlor's
16 conservator with the approval of the court supervising the conservatorship
17 if an agent is not so authorized; or by the settlor's guardian with the approval
18 of the court supervising the guardianship if an agent is not so authorized and
19 a conservator has not been appointed. This subsection does not apply to
20 irrevocable trusts created before or to revocable trusts that become
21 irrevocable before the effective date of this Code.

1 (b) A noncharitable irrevocable trust may be terminated upon
2 consent of all of the beneficiaries if the court concludes that continuance of
3 the trust is not necessary to achieve any material purpose of the trust. A
4 noncharitable irrevocable trust may be modified upon consent of all of the
5 beneficiaries if the court concludes that modification is not inconsistent with
6 a material purpose of the trust.

7 (c) A spendthrift provision in the terms of the trust is not presumed
8 to constitute a material purpose of the trust.

9 (d) Upon termination of a trust under subsection (a) or (b), the
10 trustee shall distribute the trust property as agreed by the beneficiaries.

11 (e) If not all of the beneficiaries' consent to a proposed modification
12 or termination of the trust under subsection (a) or (b), the modification or
13 termination may be approved by the court if the court is satisfied that:

14 (1) if all of the beneficiaries had consented, the trust could
15 have been modified or terminated under this section; and

16 (2) the interests of a beneficiary who does not consent will
17 be adequately protected.

18 **SECTION 412. MODIFICATION OR TERMINATION**
19 **BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR**
20 **INABILITY TO ADMINISTER TRUST EFFECTIVELY.**

21 (a) The court may modify the administrative or dispositive terms of

1 a trust or terminate the trust if, because of circumstances not anticipated by
2 the settlor, modification or termination will further the purposes of the trust.
3 To the extent practicable, the modification must be made in accordance with
4 the settlor's probable intention.

5 (b) The court may modify the administrative terms of a trust if
6 continuation of the trust on its existing terms would be impracticable or
7 wasteful or impair the trust's administration.

8 (c) Upon termination of a trust under this section, the trustee shall
9 distribute the trust property in a manner consistent with the purposes of the
10 trust.

11 **SECTION 413. CY PRES.**

12 (a) Except as otherwise provided in subsection (b), if a particular
13 charitable purpose becomes unlawful, impracticable, impossible to achieve,
14 or wasteful:

15 (1) the trust does not fail, in whole or in part;

16 (2) the trust property does not revert to the settlor or the settlor's
17 successors in interest; and

18 (3) the court may apply cy pres to modify or terminate the trust by
19 directing that the trust property be applied or distributed, in whole or in part,
20 in a manner consistent with the settlor's charitable purposes.

21 (b) A provision in the terms of a charitable trust that would result

1 in distribution of the trust property to a noncharitable beneficiary prevails
2 over the power of the court under subsection (a) to apply cy pres to modify
3 or terminate the trust only if, when the provision takes effect:

4 (1) the trust property is to revert to the settlor and the settlor is still
5 living; or

6 (2) fewer than 21 years have elapsed since the date of the trust's
7 creation.

8 **SECTION 414. MODIFICATION OR TERMINATION OF**
9 **UNECONOMIC TRUST.**

10 (a) After notice to the qualified beneficiaries, the trustee of a trust
11 consisting of trust property having a total value less than \$50,000 may
12 terminate the trust if the trustee concludes that the value of the trust property
13 is insufficient to justify the cost of administration.

14 (b) The court may modify or terminate a trust or remove the trustee
15 and appoint a different trustee if it determines that the value of the trust
16 property is insufficient to justify the cost of administration.

17 (c) Upon termination of a trust under this section, the trustee shall
18 distribute the trust property in a manner consistent with the purposes of the
19 trust.

20 (d) This section does not apply to an easement for conservation or
21 preservation.

1 **SECTION 415. REFORMATION TO CORRECT**
2 **MISTAKES.** The court may reform the terms of a trust, even if
3 unambiguous, to conform the terms to the settlor's intention if it is proved
4 by clear and convincing evidence what the settlor's intention was and that
5 the terms of the trust were affected by a mistake of fact or law, whether in
6 expression or inducement.

7 **SECTION 416. MODIFICATION TO ACHIEVE SETTLOR'S**
8 **TAX OBJECTIVES.** To achieve the settlor's tax objectives, the court may
9 modify the terms of a trust in a manner that is not contrary to the settlor's
10 probable intention. The court may provide that the modification has
11 retroactive effect.

12 **SECTION 417. COMBINATION AND DIVISION OF**
13 **TRUSTS.** After notice to the qualified beneficiaries, a trustee may combine
14 two or more trusts into a single trust or divide a trust into two or more
15 separate trusts, if the result does not impair rights of any beneficiary or
16 adversely affect achievement of the purposes of the trust.

17 **Chapter 5. Creditor's claims; spendthrift and discretionary**
18 **trusts.**

19 **SECTION 501. RIGHTS OF BENEFICIARY'S CREDITOR**
20 **OR ASSIGNEE.** To the extent a beneficiary's interest is not subject to a
21 spendthrift provision, the court may authorize a creditor or assignee of the

1 beneficiary to reach the beneficiary's interest by attachment of present or
2 future distributions to or for the benefit of the beneficiary or other means.
3 The court may limit the award to such relief as is appropriate under the
4 circumstances.

5 **SECTION 502. SPENDTHRIFT PROVISION.**

6 (a) A spendthrift provision is valid only if it restrains both voluntary
7 and involuntary transfer of a beneficiary's interest.

8 (b) A term of a trust providing that the interest of a beneficiary is
9 held subject to a "spendthrift trust," or words of similar import, is sufficient
10 to restrain both voluntary and involuntary transfer of the beneficiary's
11 interest.

12 (c) A beneficiary may not transfer an interest in a trust in violation
13 of a valid spendthrift provision and, except as otherwise provided in this
14 chapter, a creditor or assignee of the beneficiary may not reach the interest
15 or a distribution by the trustee before its receipt by the beneficiary.

16 **SECTION 503. EXCEPTIONS TO SPENDTHRIFT**
17 **PROVISION.**

18 (a) In this section, "child" includes any person for whom an order
19 or judgment for child support has been entered in the Commonwealth or
20 another State.

21 (b) A spendthrift provision is unenforceable against:

1 (1) a beneficiary's child, spouse, or former spouse who has a
2 judgment or court order against the beneficiary for support or maintenance;

3 (2) a judgment creditor who has provided services for the protection
4 of a beneficiary's interest in the trust; and

5 (3) a claim of the Commonwealth or the United States to the extent
6 a statute of the Commonwealth or federal law so provides.

7 (c) A claimant against which a spendthrift provision cannot be
8 enforced may obtain from a court an order attaching present or future
9 distributions to or for the benefit of the beneficiary. The court may limit
10 the award to such relief as is appropriate under the circumstances.

11 **SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF**
12 **STANDARD.**

13 (a) In this section, "child" includes any person for whom an order
14 or judgment for child support has been entered in the Commonwealth or
15 another State.

16 (b) Except as otherwise provided in subsection (c), whether or not
17 a trust contains a spendthrift provision, a creditor of a beneficiary may not
18 compel a distribution that is subject to the trustee's discretion, even if:

19 (1) the discretion is expressed in the form of a standard of
20 distribution; or

21 (2) the trustee has abused the discretion.

1 (c) To the extent a trustee has not complied with a standard of
2 distribution or has abused a discretion:

3 (1) a distribution may be ordered by the court to satisfy a judgment
4 or court order against the beneficiary for support or maintenance of the
5 beneficiary's child, spouse, or former spouse; and

6 (2) the court shall direct the trustee to pay to the child, spouse, or
7 former spouse such amount as is equitable under the circumstances but not
8 more than the amount the trustee would have been required to distribute to
9 or for the benefit of the beneficiary had the trustee complied with the
10 standard or not abused the discretion.

11 (d) This section does not limit the right of a beneficiary to maintain
12 a judicial proceeding against a trustee for an abuse of discretion or failure
13 to comply with a standard for distribution.

14 (e) If the trustee's or cotrustee's discretion to make distributions for
15 the trustee's or cotrustee's own benefit is limited by an ascertainable
16 standard, a creditor may not reach or compel distribution of the beneficial
17 interest except to the extent the interest would be subject to the creditor's
18 claim were the beneficiary not acting as trustee or cotrustee.

19 **SECTION 505. CREDITOR'S CLAIM AGAINST SETTLOR.**

20 (a) Whether or not the terms of a trust contain a spendthrift
21 provision, the following rules apply:

1 (1) During the lifetime of the settlor, the property of a revocable
2 trust is subject to claims of the settlor's creditors.

3 (2) With respect to an irrevocable trust, a creditor or assignee of the
4 settlor may reach the maximum amount that can be distributed to or for the
5 settlor's benefit. If a trust has more than one settlor, the amount the creditor
6 or assignee of a particular settlor may reach may not exceed the settlor's
7 interest in the portion of the trust attributable to that settlor's contribution.

8 (3) After the death of a settlor, and subject to the settlor's right to
9 direct the source from which liabilities will be paid, the property of a trust
10 that was revocable at the settlor's death is subject to claims of the settlor's
11 creditors, costs of administration of the settlor's estate, the expenses of the
12 settlor's funeral and disposal of remains, and statutory allowances to a
13 surviving spouse and children to the extent the settlor's probate estate is
14 inadequate to satisfy those claims, costs, expenses, and allowances.

15 (b) For purposes of this section:

16 (1) during the period the power may be exercised, the holder of a
17 power of withdrawal is treated in the same manner as the settlor of a
18 revocable trust to the extent of the property subject to the power; and

19 (2) upon the lapse, release, or waiver of the power, the holder is
20 treated as the settlor of the trust only to the extent the value of the property
21 affected by the lapse, release, or waiver exceeds the greater of the amount

1 specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of
2 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case
3 as in effect on [the effective date of this Code, or as later amended.

4 **SECTION 506. OVERDUE DISTRIBUTION.**

5 (a) In this section, "mandatory distribution" means a distribution of
6 income or principal which the trustee is required to make to a beneficiary
7 under the terms of the trust, including a distribution upon termination of the
8 trust. The term does not include a distribution subject to the exercise of the
9 trustee's discretion even if (1) the discretion is expressed in the form of a
10 standard of distribution, or (2) the terms of the trust authorizing a
11 distribution couple language of discretion with language of direction.

12 (b) Whether or not a trust contains a spendthrift provision, a creditor
13 or assignee of a beneficiary may reach a mandatory distribution of income
14 or principal, including a distribution upon termination of the trust, if the
15 trustee has not made the distribution to the beneficiary within a reasonable
16 time after the designated distribution date.

17 **SECTION 507. PERSONAL OBLIGATIONS OF TRUSTEE.**

18 Trust property is not subject to personal obligations of the trustee, even if
19 the trustee becomes insolvent or bankrupt.

20 **Chapter 6. Revocable Trusts.**

21 **SECTION 601. CAPACITY OF SETTLOR OF REVOCABLE**

1 **TRUST.** The capacity required to create, amend, revoke, or add property
2 to a revocable trust, or to direct the actions of the trustee of a revocable trust,
3 is the same as that required to make a will.

4 **SECTION 602. REVOCATION OR AMENDMENT OF**
5 **REVOCABLE TRUST.**

6 (a) Unless the terms of a trust expressly provide that the trust is
7 irrevocable, the settlor may revoke or amend the trust. This subsection does
8 not apply to a trust created under an instrument executed before the effective
9 date of this Code.

10 (b) If a revocable trust is created or funded by more than one settlor:

11 (1) to the extent the trust consists of community property, the trust
12 may be revoked by either spouse acting alone but may be amended only by
13 joint action of both spouses;

14 (2) to the extent the trust consists of property other than community
15 property, each settlor may revoke or amend the trust with regard the portion
16 of the trust property attributable to that settlor's contribution; and

17 (3) upon the revocation or amendment of the trust by fewer than all
18 of the settlors, the trustee shall promptly notify the other settlors of the
19 revocation or amendment.

20 (c) The settlor may revoke or amend a revocable trust:

21 (1) by substantial compliance with a method provided in the terms

1 of the trust; or

2 (2) if the terms of the trust do not provide a method or the method
3 provided in the terms is not expressly made exclusive, by:

4 (A) a later will or codicil that expressly refers to the trust or
5 specifically devises property that would otherwise have passed
6 according to the terms of the trust; or

7 (B) any other method manifesting clear and convincing
8 evidence of the settlor's intent.

9 (d) Upon revocation of a revocable trust, the trustee shall deliver
10 the trust property as the settlor directs.

11 (e) A settlor's powers with respect to revocation, amendment, or
12 distribution of trust property may be exercised by an agent under a power
13 of attorney only to the extent expressly authorized by the terms of the trust
14 or the power.

15 (f) A conservator of the settlor or, if no conservator has been
16 appointed, a guardian of the settlor may exercise a settlor's powers with
17 respect to revocation, amendment, or distribution of trust property only with
18 the approval of the court supervising the conservatorship or guardianship.

19 (g) A trustee who does not know that a trust has been revoked or
20 amended is not liable to the settlor or settlor's successors in interest for
21 distributions made and other actions taken on the assumption that the trust

1 had not been amended or revoked.

2 **SECTION 603. SETTLOR'S POWERS; POWERS OF**
3 **WITHDRAWAL.**

4 (a) To the extent a trust is revocable by a settlor, a trustee may follow
5 a direction of the settlor that is contrary to the terms of the trust. To the
6 extent a trust is revocable by a settlor in conjunction with a person other
7 than a trustee or person holding an adverse interest, the trustee may follow
8 a direction from the settlor and the other person holding the power to revoke
9 even if the direction is contrary to the terms of the trust.

10 (b) To the extent a trust is revocable and the settlor has capacity to
11 revoke the trust, rights of the beneficiaries are subject to the control of, and
12 the duties of the trustee are owed exclusively to, the settlor.

13 (c) During the period the power may be exercised, the holder of a
14 power of withdrawal has the rights of a settlor of a revocable trust under
15 this section to the extent of the property subject to the power.

16 **SECTION 604. LIMITATION ON ACTION CONTESTING**
17 **VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST**
18 **PROPERTY.**

19 (a) A person may commence a judicial proceeding to contest the
20 validity of a trust that was revocable at the settlor's death within the earlier
21 of:

1 (1) three years after the settlor's death; or

2 (2) 120 days after the trustee sent the person a copy of the trust
3 instrument and a notice informing the person of the trust's existence, of the
4 trustee's name and address, and of the time allowed for commencing a
5 proceeding.

6 (b) Upon the death of the settlor of a trust that was revocable at the
7 settlor's death, the trustee may proceed to distribute the trust property in
8 accordance with the terms of the trust. The trustee is not subject to liability
9 for doing so unless:

10 (1) the trustee knows of a pending judicial proceeding contesting the
11 validity of the trust; or

12 (2) a potential contestant has notified the trustee of a possible
13 judicial proceeding to contest the trust and a judicial proceeding is
14 commenced within 60 days after the contestant sent the notification.

15 (c) A beneficiary of a trust that is determined to have been invalid
16 is liable to return any distribution received.

17 **Chapter 7. Office of Trustee.**

18 **SECTION 701. ACCEPTING OR DECLINING**
19 **TRUSTEESHIP.**

20 (a) Except as otherwise provided in subsection (c), a person
21 designated as trustee accepts the trusteeship:

1 (1) by substantially complying with a method of acceptance
2 provided in the terms of the trust; or

3 (2) if the terms of the trust do not provide a method or the method
4 provided in the terms is not expressly made exclusive, by accepting delivery
5 of the trust property, exercising powers or performing duties as trustee, or
6 otherwise indicating acceptance of the trusteeship.

7 (b) A person designated as trustee who has not yet accepted the
8 trusteeship may reject the trusteeship. A designated trustee who does not
9 accept the trusteeship within a reasonable time after knowing of the
10 designation is deemed to have rejected the trusteeship.

11 (c) A person designated as trustee, without accepting the
12 trusteeship, may:

13 (1) act to preserve the trust property if, within a reasonable time after
14 acting, the person sends a rejection of the trusteeship to the settlor or, if the
15 settlor is dead or lacks capacity, to a qualified beneficiary; and

16 (2) inspect or investigate trust property to determine potential
17 liability under environmental or other law or for any other purpose.

18 **SECTION 702. TRUSTEE'S BOND.**

19 (a) A trustee shall give bond to secure performance of the trustee's
20 duties only if the court finds that a bond is needed to protect the interests of
21 the beneficiaries or is required by the terms of the trust and the court has not

1 dispensed with the requirement.

2 (b) The court may specify the amount of a bond, its liabilities, and
3 whether sureties are necessary. The court may modify or terminate a bond
4 at any time.

5 (c) A regulated financial-service institution qualified to do trust
6 business in this State need not give bond, even if required by the terms of
7 the trust.

8 **SECTION 703. COTRUSTEES.**

9 (a) Cotrustees who are unable to reach a unanimous decision may
10 act by majority decision.

11 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees
12 may act for the trust.

13 (c) A cotrustee must participate in the performance of a trustee's
14 function unless the cotrustee is unavailable to perform the function because
15 of absence, illness, disqualification under other law, or other temporary
16 incapacity or the cotrustee has properly delegated the performance of the
17 function to another trustee.

18 (d) If a cotrustee is unavailable to perform duties because of
19 absence, illness, disqualification under other law, or other temporary
20 incapacity, and prompt action is necessary to achieve the purposes of the
21 trust or to avoid injury to the trust property, the remaining cotrustee or a

1 majority of the remaining cotrustees may act for the trust.

2 (e) A trustee may not delegate to a cotrustee the performance of a
3 function the settlor reasonably expected the trustees to perform jointly.
4 Unless a delegation was irrevocable, a trustee may revoke a delegation
5 previously made.

6 (f) Except as otherwise provided in subsection (g), a trustee who
7 does not join in an action of another trustee is not liable for the action.

8 (g) Each trustee shall exercise reasonable care to:

9 (1) prevent a cotrustee from committing a serious breach of trust;
10 and

11 (2) compel a cotrustee to redress a serious breach of trust.

12 (h) A dissenting trustee who joins in an action at the direction of the
13 majority of the trustees and who notified any cotrustee of the dissent at or
14 before the time of the action is not liable for the action unless the action is
15 a serious breach of trust.

16 **SECTION 704. VACANCY IN TRUSTEESHIP;**
17 **APPOINTMENT OF SUCCESSOR.**

18 (a) A vacancy in a trusteeship occurs if:

19 (1) a person designated as trustee rejects the trusteeship;

20 (2) a person designated as trustee cannot be identified or does not
21 exist;

- 1 (3) a trustee resigns;
- 2 (4) a trustee is disqualified or removed;
- 3 (5) a trustee dies; or
- 4 (6) a guardian or conservator is appointed for an individual serving
5 as trustee.
- 6 (b) If one or more cotrustees remain in office, a vacancy in a
7 trusteeship need not be filled. A vacancy in a trusteeship must be filled if
8 the trust has no remaining trustee.
- 9 (c) A vacancy in a trusteeship of a noncharitable trust that is
10 required to be filled must be filled in the following order of priority:
- 11 (1) by a person designated in the terms of the trust to act as successor
12 trustee;
- 13 (2) by a person appointed by unanimous agreement of the qualified
14 beneficiaries; or
- 15 (3) by a person appointed by the court.
- 16 (d) A vacancy in a trusteeship of a charitable trust that is required
17 to be filled must be filled in the following order of priority:
- 18 (1) by a person designated in the terms of the trust to act as successor
19 trustee;
- 20 (2) by a person selected by the charitable organizations
21 expressly designated to receive distributions under the terms of the trust if

1 the Attorney General concurs in the selection; or

2 (3) by a person appointed by the court.

3 (e) Whether or not a vacancy in a trusteeship exists or is required to
4 be filled, the court may appoint an additional trustee or special fiduciary
5 whenever the court considers the appointment necessary for the
6 administration of the trust.

7 **SECTION 705. RESIGNATION OF TRUSTEE.**

8 (a) A trustee may resign:

9 (1) upon at least 30 days' notice to the qualified beneficiaries, the
10 settlor, if living, and all cotrustees; or

11 (2) with the approval of the court.

12 (b) In approving a resignation, the court may issue orders and
13 impose conditions reasonably necessary for the protection of the trust
14 property.

15 (c) Any liability of a resigning trustee or of any sureties on the
16 trustee's bond for acts or omissions of the trustee is not discharged or
17 affected by the trustee's resignation.

18 **SECTION 706. REMOVAL OF TRUSTEE.**

19 (a) The settlor, a cotrustee, or a beneficiary may request the court
20 to remove a trustee, or a trustee may be removed by the court on its own
21 initiative.

- 1 (b) The court may remove a trustee if:
- 2 (1) the trustee has committed a serious breach of trust;
- 3 (2) lack of cooperation among cotrustees substantially impairs the
- 4 administration of the trust;
- 5 (3) because of unfitness, unwillingness, or persistent failure of the
- 6 trustee to administer the trust effectively, the court determines that removal
- 7 of the trustee best serves the interests of the beneficiaries; or
- 8 (4) there has been a substantial change of circumstances or removal
- 9 is requested by all of the qualified beneficiaries, the court finds that removal
- 10 of the trustee best serves the interests of all of the beneficiaries and is not
- 11 inconsistent with a material purpose of the trust, and a suitable cotrustee or
- 12 successor trustee is available.
- 13 (c) Pending a final decision on a request to remove a trustee, or in
- 14 lieu of or in addition to removing a trustee, the court may order such
- 15 appropriate relief under Section 1001(b) as may be necessary to protect the
- 16 trust property or the interests of the beneficiaries.

17 **SECTION 707. DELIVERY OF PROPERTY BY FORMER**

18 **TRUSTEE.**

- 19 (a) Unless a cotrustee remains in office or the court otherwise
- 20 orders, and until the trust property is delivered to a successor trustee or other
- 21 person entitled to it, a trustee who has resigned or been removed has the

1 duties of a trustee and the powers necessary to protect the trust property.

2 (b) A trustee who has resigned or been removed shall proceed
3 expeditiously to deliver the trust property within the trustee's possession to
4 the cotrustee, successor trustee, or other person entitled to it.

5 **SECTION 708. COMPENSATION OF TRUSTEE.**

6 (a) If the terms of a trust do not specify the trustee's compensation,
7 a trustee is entitled to compensation that is reasonable under the
8 circumstances.

9 (b) If the terms of a trust specify the trustee's compensation, the
10 trustee is entitled to be compensated as specified, but the court may allow
11 more or less compensation if:

12 (1) the duties of the trustee are substantially different from those
13 contemplated when the trust was created; or

14 (2) the compensation specified by the terms of the trust would be
15 unreasonably low or high.

16 **SECTION 709. REIMBURSEMENT OF EXPENSES.**

17 (a) A trustee is entitled to be reimbursed out of the trust property,
18 with interest as appropriate, for:

19 (1) expenses that were properly incurred in the administration of the
20 trust; and

21 (2) to the extent necessary to prevent unjust enrichment of the trust,

1 expenses that were not properly incurred in the administration of the trust.

2 (b) An advance by the trustee of money for the protection of the
3 trust gives rise to a lien against trust property to secure reimbursement with
4 reasonable interest.

5 **Chapter 8. Duties and Powers of Trustee.**

6 **SECTION 801. DUTY TO ADMINISTER TRUST.** Upon
7 acceptance of a trusteeship, the trustee shall administer the trust in good
8 faith, in accordance with its terms and purposes and the interests of the
9 beneficiaries, and in accordance with this Code.

10 **SECTION 802. DUTY OF LOYALTY.**

11 (a) A trustee shall administer the trust solely in the interests of the
12 beneficiaries.

13 (b) Subject to the rights of persons dealing with or assisting the
14 trustee as provided in Section 1012, a sale, encumbrance, or other
15 transaction involving the investment or management of trust property
16 entered into by the trustee for the trustee's own personal account or which
17 is otherwise affected by a conflict between the trustee's fiduciary and
18 personal interests is voidable by a beneficiary affected by the transaction
19 unless:

20 (1) the transaction was authorized by the terms of the trust;

21 (2) the transaction was approved by the court;

1 (3) the beneficiary did not commence a judicial proceeding within
2 the time allowed by Section 1005;

3 (4) the beneficiary consented to the trustee's conduct, ratified the
4 transaction, or released the trustee in compliance with Section 1009; or

5 (5) the transaction involves a contract entered into or claim acquired
6 by the trustee before the person became or contemplated becoming trustee.

7 (c) A sale, encumbrance, or other transaction involving the
8 investment or management of trust property is presumed to be affected by
9 a conflict between personal and fiduciary interests if it is entered into by the
10 trustee with:

11 (1) the trustee's spouse;

12 (2) the trustee's descendants, siblings, parents, or their spouses;

13 (3) an agent or attorney of the trustee; or

14 (4) a corporation or other person or enterprise in which the trustee,
15 or a person that owns a significant interest in the trustee, has an interest that
16 might affect the trustee's best judgment.

17 (d) A transaction between a trustee and a beneficiary that does not
18 concern trust property but that occurs during the existence of the trust or
19 while the trustee retains significant influence over the beneficiary and from
20 which the trustee obtains an advantage is voidable by the beneficiary unless
21 the trustee establishes that the transaction was fair to the beneficiary.

1 (e) A transaction not concerning trust property in which the trustee
2 engages in the trustee's individual capacity involves a conflict between
3 personal and fiduciary interests if the transaction concerns an opportunity
4 properly belonging to the trust.

5 (f) An investment by a trustee in securities of an investment
6 company or investment trust to which the trustee, or its affiliate, provides
7 services in a capacity other than as trustee is not presumed to be affected by
8 a conflict between personal and fiduciary interests if the investment
9 otherwise complies with the prudent investor rule of Chapter 9. In addition
10 to its compensation for acting as trustee, the trustee may be compensated by
11 the investment company or investment trust for providing those services out
12 of fees charged to the trust. If the trustee receives compensation from the
13 investment company or investment trust for providing investment advisory
14 or investment management services, the trustee must at least annually notify
15 the persons entitled under Section 813 to receive a copy of the trustee's
16 annual report of the rate and method by which that compensation was
17 determined.

18 (g) In voting shares of stock or in exercising powers of control over
19 similar interests in other forms of enterprise, the trustee shall act in the best
20 interests of the beneficiaries. If the trust is the sole owner of a corporation
21 or other form of enterprise, the trustee shall elect or appoint directors or

1 other managers who will manage the corporation or enterprise in the best
2 interests of the beneficiaries.

3 (h) This section does not preclude the following transactions, if fair
4 to the beneficiaries:

5 (1) an agreement between a trustee and a beneficiary relating to the
6 appointment or compensation of the trustee;

7 (2) payment of reasonable compensation to the trustee;

8 (3) a transaction between a trust and another trust, decedent's estate,
9 or [conservatorship] of which the trustee is a fiduciary or in which a
10 beneficiary has an interest;

11 (4) a deposit of trust money in a regulated financial-service
12 institution operated by the trustee; or

13 (5) an advance by the trustee of money for the protection of the trust.

14 (i) The court may appoint a special fiduciary to make a
15 decision with respect to any proposed transaction that might violate
16 this section if entered into by the trustee.

17 **SECTION 803. IMPARTIALITY.** If a trust has two or more
18 beneficiaries, the trustee shall act impartially in investing, managing, and
19 distributing the trust property, giving due regard to the beneficiaries'
20 respective interests.

21 **SECTION 804. PRUDENT ADMINISTRATION.** A trustee

1 shall administer the trust as a prudent person would, by considering the
2 purposes, terms, distributional requirements, and other circumstances of the
3 trust. In satisfying this standard, the trustee shall exercise reasonable care,
4 skill, and caution.

5 **SECTION 805. COSTS OF ADMINISTRATION.** In
6 administering a trust, the trustee may incur only costs that are reasonable in
7 relation to the trust property, the purposes of the trust, and the skills of the
8 trustee.

9 **SECTION 806. TRUSTEE'S SKILLS.** A trustee who has special
10 skills or expertise, or is named trustee in reliance upon the trustee's
11 representation that the trustee has special skills or expertise, shall use those
12 special skills or expertise.

13 **SECTION 807. DELEGATION BY TRUSTEE.**

14 (a) A trustee may delegate duties and powers that a prudent trustee
15 of comparable skills could properly delegate under the circumstances. The
16 trustee shall exercise reasonable care, skill, and caution in:

17 (1) selecting an agent;

18 (2) establishing the scope and terms of the delegation, consistent
19 with the purposes and terms of the trust; and

20 (3) periodically reviewing the agent's actions in order to monitor the
21 agent's performance and compliance with the terms of the delegation.

1 (b) In performing a delegated function, an agent owes a duty to the
2 trust to exercise reasonable care to comply with the terms of the delegation.

3 (c) A trustee who complies with subsection (a) is not liable to the
4 beneficiaries or to the trust for an action of the agent to whom the function
5 was delegated.

6 (d) By accepting a delegation of powers or duties from the trustee
7 of a trust that is subject to the law of this State, an agent submits to the
8 jurisdiction of the courts of this State.

9 **SECTION 808. [RESERVED]**

10 **SECTION 809. CONTROL AND PROTECTION OF TRUST**
11 **PROPERTY.** A trustee shall take reasonable steps to take control of and
12 protect the trust property.

13 **SECTION 810. RECORDKEEPING AND IDENTIFICATION**
14 **OF TRUST PROPERTY.**

15 (a) A trustee shall keep adequate records of the administration of
16 the trust.

17 (b) A trustee shall keep trust property separate from the trustee's
18 own property.

19 (c) Except as otherwise provided in subsection (d), a trustee shall
20 cause the trust property to be designated so that the interest of the trust, to
21 the extent feasible, appears in records maintained by a party other than a

1 trustee or beneficiary.

2 (d) If the trustee maintains records clearly indicating the respective
3 interests, a trustee may invest as a whole the property of two or more
4 separate trusts.

5 **SECTION 811. ENFORCEMENT AND DEFENSE OF**
6 **CLAIMS.** A trustee shall take reasonable steps to enforce claims of the
7 trust and to defend claims against the trust.

8 **SECTION 812. COLLECTING TRUST PROPERTY.** A
9 trustee shall take reasonable steps to compel a former trustee or other person
10 to deliver trust property to the trustee, and to redress a breach of trust known
11 to the trustee to have been committed by a former trustee.

12 **SECTION 813. DUTY TO INFORM AND REPORT.**

13 (a) A trustee shall keep the qualified beneficiaries of the trust
14 reasonably informed about the administration of the trust and of the material
15 facts necessary for them to protect their interests. Unless unreasonable
16 under the circumstances, a trustee shall promptly respond to a beneficiary's
17 request for information related to the administration of the trust.

18 (b) A trustee:

19 (1) upon request of a beneficiary, shall promptly furnish to the
20 beneficiary a copy of the trust instrument;

21 (2) within 60 days after accepting a trusteeship, shall notify the

1 qualified beneficiaries of the acceptance and of the trustee's name, address,
2 and telephone number;

3 (3) within 60 days after the date the trustee acquires knowledge of
4 the creation of an irrevocable trust, or the date the trustee acquires
5 knowledge that a formerly revocable trust has become irrevocable, whether
6 by the death of the settlor or otherwise, shall notify the qualified
7 beneficiaries of the trust's existence, of the identity of the settlor or settlors,
8 of the right to request a copy of the trust instrument, and of the right to a
9 trustee's report as provided in subsection (c); and

10 (4) shall notify the qualified beneficiaries in advance of any change
11 in the method or rate of the trustee's compensation.

12 (c) A trustee shall send to the distributees or permissible distributees
13 of trust income or principal, and to other qualified or nonqualified
14 beneficiaries who request it, at least annually and at the termination of the
15 trust, a report of the trust property, liabilities, receipts, and disbursements,
16 including the source and amount of the trustee's compensation, a listing of
17 the trust assets and, if feasible, their respective market values. Upon a
18 vacancy in a trusteeship, unless a cotrustee remains in office, a report must
19 be sent to the qualified beneficiaries by the former trustee. A personal
20 representative, conservator, or guardian may send the qualified
21 beneficiaries a report on behalf of a deceased or incapacitated trustee.

1 (d) A beneficiary may waive the right to a trustee's report or other
2 information otherwise required to be furnished under this section. A
3 beneficiary, with respect to future reports and other information, may
4 withdraw a waiver previously given.

5 (e) Subsections (b)(2) and (3) do not apply to a trustee who accepts
6 a trusteeship before the effective date of this Code, to an irrevocable trust
7 created before the effective date of this Code, or to a revocable trust that
8 becomes irrevocable before the effective date of this Code.

9 **SECTION 814. DISCRETIONARY POWERS; TAX**
10 **SAVINGS.**

11 (a) Notwithstanding the breadth of discretion granted to a trustee in
12 the terms of the trust, including the use of such terms as "absolute", "sole",
13 or "uncontrolled", the trustee shall exercise a discretionary power in good
14 faith and in accordance with the terms and purposes of the trust and the
15 interests of the beneficiaries.

16 (b) Subject to subsection (d), and unless the terms of the trust
17 expressly indicate that a rule in this subsection does not apply:

18 (1) a person other than a settlor who is a beneficiary and trustee of a
19 trust that confers on the trustee a power to make discretionary distributions
20 to or for the trustee's personal benefit may exercise the power only in
21 accordance with an ascertainable standard; and

1 (2) a trustee may not exercise a power to make discretionary
2 distributions to satisfy a legal obligation of support that the trustee
3 personally owes another person.

4 (c) A power whose exercise is limited or prohibited by subsection
5 (b) may be exercised by a majority of the remaining trustees whose exercise
6 of the power is not so limited or prohibited. If the power of all trustees is
7 so limited or prohibited, the court may appoint a special fiduciary with
8 authority to exercise the power.

9 (d) Subsection (b) does not apply to:

10 (1) a power held by the settlor's spouse who is the trustee of a trust
11 for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e)
12 of the Internal Revenue Code of 1986, as in effect on [the effective date of
13 this Code, or as later amended, was previously allowed;

14 (2) any trust during any period that the trust may be revoked or
15 amended by its settlor; or

16 (3) a trust if contributions to the trust qualify for the annual
17 exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as
18 in effect on the effective date of this Code, or as later amended.

19 **SECTION 815. GENERAL POWERS OF TRUSTEE.**

20 (a) A trustee, without authorization by the court, may exercise:

21 (1) powers conferred by the terms of the trust; and

1 (2) except as limited by the terms of the trust:

2 (A) all powers over the trust property which an unmarried
3 competent owner has over individually owned property;

4 (B) any other powers appropriate to achieve the proper
5 investment, management, and distribution of the trust property; and

6 (C) any other powers conferred by this Code.

7 (b) The exercise of a power is subject to the fiduciary duties
8 prescribed by this chapter.

9 **SECTION 816. SPECIFIC POWERS OF TRUSTEE.** Without
10 limiting the authority conferred by Section 815, a trustee may:

11 (1) collect trust property and accept or reject additions to the trust
12 property from a settlor or any other person;

13 (2) acquire or sell property, for cash or on credit, at public or private
14 sale;

15 (3) exchange, partition, or otherwise change the character of trust
16 property;

17 (4) deposit trust money in an account in a regulated financial-service
18 institution;

19 (5) borrow money, with or without security, and mortgage or pledge
20 trust property for a period within or extending beyond the duration of the
21 trust;

1 (6) with respect to an interest in a proprietorship, partnership,
2 limited liability company, business trust, corporation, or other form of
3 business or enterprise, continue the business or other enterprise and take
4 any action that may be taken by shareholders, members, or property owners,
5 including merging, dissolving, or otherwise changing the form of business
6 organization or contributing additional capital;

7 (7) with respect to stocks or other securities, exercise the rights of
8 an absolute owner, including the right to:

9 (A) vote, or give proxies to vote, with or without power of
10 substitution, or enter into or continue a voting trust agreement;

11 (B) hold a security in the name of a nominee or in other form without
12 disclosure of the trust so that title may pass by delivery;

13 (C) pay calls, assessments, and other sums chargeable or accruing
14 against the securities, and sell or exercise stock subscription or conversion
15 rights; and

16 (D) deposit the securities with a depository or other regulated
17 financial-service institution;

18 (8) with respect to an interest in real property, construct, or make
19 ordinary or extraordinary repairs to, alterations to, or improvements in,
20 buildings or other structures, demolish improvements, raze existing or erect
21 new party walls or buildings, subdivide or develop land, dedicate land to

1 public use or grant public or private easements, and make or vacate plats
2 and adjust boundaries;

3 (9) enter into a lease for any purpose as lessor or lessee, including a
4 lease or other arrangement for exploration and removal of natural resources,
5 with or without the option to purchase or renew, for a period within or
6 extending beyond the duration of the trust;

7 (10) grant an option involving a sale, lease, or other disposition of
8 trust property or acquire an option for the acquisition of property, including
9 an option exercisable beyond the duration of the trust, and exercise an
10 option so acquired;

11 (11) insure the property of the trust against damage or loss and
12 insure the trustee, the trustee's agents, and beneficiaries against liability
13 arising from the administration of the trust;

14 (12) abandon or decline to administer property of no value or of
15 insufficient value to justify its collection or continued administration;

16 (13) with respect to possible liability for violation of environmental
17 law:

18 (A) inspect or investigate property the trustee holds or has been
19 asked to hold, or property owned or operated by an organization in which
20 the trustee holds or has been asked to hold an interest, for the purpose of
21 determining the application of environmental law with respect to the

1 property;

2 (B) take action to prevent, abate, or otherwise remedy any actual or
3 potential violation of any environmental law affecting property held directly
4 or indirectly by the trustee, whether taken before or after the assertion of a
5 claim or the initiation of governmental enforcement;

6 (C) decline to accept property into trust or disclaim any power with
7 respect to property that is or may be burdened with liability for violation of
8 environmental law;

9 (D) compromise claims against the trust which may be asserted for
10 an alleged violation of environmental law; and

11 (E) pay the expense of any inspection, review, abatement, or
12 remedial action to comply with environmental law;

13 (14) pay or contest any claim, settle a claim by or against the trust,
14 and release, in whole or in part, a claim belonging to the trust;

15 (15) pay taxes, assessments, compensation of the trustee and of
16 employees and agents of the trust, and other expenses incurred in the
17 administration of the trust;

18 (16) exercise elections with respect to federal, state, and local taxes;

19 (17) select a mode of payment under any employee benefit or
20 retirement plan, annuity, or life insurance payable to the trustee, exercise
21 rights thereunder, including exercise of the right to indemnification for

1 expenses and against liabilities, and take appropriate action to collect the
2 proceeds;

3 (18) make loans out of trust property, including loans to a
4 beneficiary on terms and conditions the trustee considers to be fair and
5 reasonable under the circumstances, and the trustee has a lien on future
6 distributions for repayment of those loans;

7 (19) pledge trust property to guarantee loans made by others to the
8 beneficiary;

9 (20) appoint a trustee to act in another jurisdiction with respect to
10 trust property located in the other jurisdiction, confer upon the appointed
11 trustee all of the powers and duties of the appointing trustee, require that the
12 appointed trustee furnish security, and remove any trustee so appointed;

13 (21) pay an amount distributable to a beneficiary who is under a
14 legal disability or who the trustee reasonably believes is incapacitated, by
15 paying it directly to the beneficiary or applying it for the beneficiary's
16 benefit, or by:

17 (A) paying it to the beneficiary's conservator or, if the beneficiary
18 does not have a conservator, the beneficiary's guardian;

19 (B) paying it to the beneficiary's custodian under any Uniform
20 Transfers to Minors Act or custodial trustee under any Uniform Custodial
21 Trust Act, and, for that purpose, creating a custodianship or custodial trust;

1 (C) if the trustee does not know of a conservator, guardian,
2 custodian, or custodial trustee, paying it to an adult relative or other person
3 having legal or physical care or custody of the beneficiary, to be expended
4 on the beneficiary's behalf; or

5 (D) managing it as a separate fund on the beneficiary's behalf,
6 subject to the beneficiary's continuing right to withdraw the distribution;

7 (22) on distribution of trust property or the division or termination
8 of a trust, make distributions in divided or undivided interests, allocate
9 particular assets in proportionate or disproportionate shares, value the trust
10 property for those purposes, and adjust for resulting differences in
11 valuation;

12 (23) resolve a dispute concerning the interpretation of the trust or its
13 administration by mediation, arbitration, or other procedure for alternative
14 dispute resolution;

15 (24) prosecute or defend an action, claim, or judicial proceeding in
16 any jurisdiction to protect trust property and the trustee in the performance
17 of the trustee's duties;

18 (25) sign and deliver contracts and other instruments that are useful
19 to achieve or facilitate the exercise of the trustee's powers; and

20 (26) on termination of the trust, exercise the powers appropriate to
21 wind up the administration of the trust and distribute the trust property to

1 the persons entitled to it.

2 **SECTION 817. DISTRIBUTION UPON TERMINATION.**

3 (a) Upon termination or partial termination of a trust, the trustee
4 may send to the beneficiaries a proposal for distribution. The right of any
5 beneficiary to object to the proposed distribution terminates if the
6 beneficiary does not notify the trustee of an objection within 30 days after
7 the proposal was sent but only if the proposal informed the beneficiary of
8 the right to object and of the time allowed for objection.

9 (b) Upon the occurrence of an event terminating or partially
10 terminating a trust, the trustee shall proceed expeditiously to distribute the
11 trust property to the persons entitled to it, subject to the right of the trustee
12 to retain a reasonable reserve for the payment of debts, expenses, and taxes.

13 (c) A release by a beneficiary of a trustee from liability for breach
14 of trust is invalid to the extent:

15 (1) it was induced by improper conduct of the trustee; or

16 (2) the beneficiary, at the time of the release, did not know of the
17 beneficiary's rights or of the material facts relating to the breach.

1 **Chapter 9. Uniform Prudent Investor Act.**

2 **Section 901. Prudent Investor Rule.**

3 (a) Except as otherwise provided in subsection (b), a trustee who
4 invests and manages trust assets owes a duty to the beneficiaries of the trust
5 to comply with the prudent investor rule set forth in this Act.

6 (b) The prudent investor rule, a default rule, may be expanded,
7 restricted, eliminated, or otherwise altered by the provisions of a trust. A
8 trustee is not liable to a beneficiary to the extent that the trustee acted in
9 reasonable reliance on the provisions of the trust.

10 **Section 902. Standard of Care; Portfolio Strategy; Risk and**
11 **Return Objectives.**

12 (a) A trustee shall invest and manage trust assets as a prudent
13 investor would, by considering the purposes, terms, distribution
14 requirements, and other circumstances of the trust. In satisfying this
15 standard, the trustee shall exercise reasonable care, skill, and caution.

16 (b) A trustee's investment and management decisions respecting
17 individual assets must be evaluated not in isolation but in the context of the
18 trust portfolio as a whole and as a part of an overall investment strategy
19 having risk and return objectives reasonably suited to the trust.

1 (c) Among circumstances that a trustee shall consider in investing
2 and managing trust assets are such of the following as are relevant to the
3 trust or its beneficiaries:

4 (1) general economic conditions;

5 (2) the possible effect of inflation or deflation;

6 (3) the expected tax consequences of investment decisions or
7 strategies;

8 (4) the role that each investment or course of action plays within the
9 overall trust portfolio, which may include financial assets, interests in
10 closely held enterprises, tangible and intangible personal property, and real
11 property;

12 (5) the expected total return from income and the appreciation of
13 capital;

14 (6) other resources of the beneficiaries;

15 (7) needs for liquidity, regularity of income, and preservation or
16 appreciation of capital; and

17 (8) an asset's special relationship or special value, if any, to the
18 purposes of the trust or to one or more of the beneficiaries.

19 (d) A trustee shall make a reasonable effort to verify facts relevant
20 to the investment and management of trust assets.

1 (e) A trustee may invest in any kind of property or type of
2 investment consistent with the standards of this Act.

3 (f) A trustee who has special skills or expertise, or is named trustee
4 in reliance upon the trustee's representation that the trustee has special skills
5 or expertise, has a duty to use those special skills or expertise.

6 **Section 903. Diversification.** A trustee shall diversify the
7 investments of the trust unless the trustee reasonably determines that,
8 because of special circumstances, the purposes of the trust are better served
9 without diversifying.

10 **Section 904. Duties at Inception of Trusteeship.** Within a
11 reasonable time after accepting a trusteeship or receiving trust assets, a
12 trustee shall review the trust assets and make and implement decisions
13 concerning the retention and disposition of assets, in order to bring the trust
14 portfolio into compliance with the purposes, terms, distribution
15 requirements, and other circumstances of the trust, and with the
16 requirements of this Act.

17 **Section 905. Loyalty.** A trustee shall invest and manage the trust
18 assets solely in the interest of the beneficiaries.

19 **Section 906. Impartiality.** If a trust has two or more beneficiaries,
20 the trustee shall act impartially in investing and managing the trust assets,
21 taking into account any differing interests of the beneficiaries.

1 **Section 907. Investment Costs.** In investing and managing trust
2 assets, a trustee may only incur costs that are appropriate and reasonable in
3 relation to the assets, the purposes of the trust, and the skills of the trustee.

4 **Section 908. Reviewing Compliance.** Compliance with the
5 prudent investor rule is determined in light of the facts and circumstances
6 existing at the time of a trustee's decision or action and not by hindsight.

7 **Section 909. Delegation of Investment and Management**
8 **Functions.**

9 (a) A trustee may delegate investment and management functions
10 that a prudent trustee of comparable skills could properly delegate under the
11 circumstances. The trustee shall exercise reasonable care, skill, and caution
12 in:

13 (1) selecting an agent;

14 (2) establishing the scope and terms of the delegation, consistent
15 with the purposes and terms of the trust; and

16 (3) periodically reviewing the agent's actions in order to monitor the
17 agent's performance and compliance with the terms of the delegation.

18 (b) In performing a delegated function, an agent owes a duty to the
19 trust to exercise reasonable care to comply with the terms of the delegation.

1 (c) A trustee who complies with the requirements of subsection (a)
2 is not liable to the beneficiaries or to the trust for the decisions or actions of
3 the agent to whom the function was delegated.

4 (d) By accepting the delegation of a trust function from the trustee
5 of a trust
6 that is subject to the law of this State, an agent submits to the
7 jurisdiction of the courts
8 of this State.

9 **Section 910. Language Invoking Standard of Act.** The following
10 terms or comparable language in the provisions of a trust, unless otherwise
11 limited or modified, authorizes any investment or strategy permitted under
12 this Act:

13 "investments permissible by law for investment of trust funds,"
14 "legal investments," "authorized investments," "using the judgment and
15 care under the circumstances then prevailing that persons of prudence,
16 discretion, and intelligence exercise in the management of their own affairs,
17 not in regard to speculation but in regard to the permanent disposition of
18 their funds, considering the probable income as well as the probable safety
19 of their capital," "prudent man rule," "prudent trustee rule," "prudent person
20 rule," and "prudent investor rule."

21 **Section 911. Application to Existing Trusts.** This Act

1 applies to trusts existing on and created after its effective date. As
2 applied to trusts existing on its effective date, this Act governs only
3 decisions or actions occurring after that date.

4 **Section 912. Uniformity of Application and Construction.** This
5 Act shall be applied and construed to effectuate its general purpose to make
6 uniform the law with respect to the subject of this Act among the States
7 enacting it.

8 **Chapter 10. Liability of Trustees and Rights of Persons Dealing**
9 **with Trustee.**

10 **SECTION 1001. REMEDIES FOR BREACH OF TRUST.**

11 (a) A violation by a trustee of a duty the trustee owes to a
12 beneficiary is a breach of trust.

13 (b) To remedy a breach of trust that has occurred or may occur, the
14 court may:

15 (1) compel the trustee to perform the trustee's duties;

16 (2) enjoin the trustee from committing a breach of trust;

17 (3) compel the trustee to redress a breach of trust by paying money,
18 restoring property, or other means;

19 (4) order a trustee to account;

20 (5) appoint a special fiduciary to take possession of the trust property
21 and administer the trust;

- 1 (6) suspend the trustee;
- 2 (7) remove the trustee as provided in Section 706;
- 3 (8) reduce or deny compensation to the trustee;
- 4 (9) subject to Section 1012, void an act of the trustee, impose a lien
5 or a constructive trust on trust property, or trace trust property wrongfully
6 disposed of and recover the property or its proceeds; or
- 7 (10) order any other appropriate relief.

8 **SECTION 1002. DAMAGES FOR BREACH OF TRUST.**

9 (a) A trustee who commits a breach of trust is liable to the
10 beneficiaries affected for the greater of:

- 11 (1) the amount required to restore the value of the trust property and
12 trust distributions to what they would have been had the breach not
13 occurred; or
- 14 (2) the profit the trustee made by reason of the breach.

15 (b) Except as otherwise provided in this subsection, if more than
16 one trustee is liable to the beneficiaries for a breach of trust, a trustee is
17 entitled to contribution from the other trustee or trustees. A trustee is not
18 entitled to contribution if the trustee was substantially more at fault than
19 another trustee or if the trustee committed the breach of trust in bad faith or
20 with reckless indifference to the purposes of the trust or the interests of the
21 beneficiaries. A trustee who received a benefit from the breach of trust is

1 not entitled to contribution from another trustee to the extent of the benefit
2 received.

3 **SECTION 1003. DAMAGES IN ABSENCE OF BREACH.**

4 (a) A trustee is accountable to an affected beneficiary for any profit
5 made by the trustee arising from the administration of the trust, even absent
6 a breach of trust.

7 (b) Absent a breach of trust, a trustee is not liable to a beneficiary
8 for a loss or depreciation in the value of trust property or for not having
9 made a profit.

10 **SECTION 1004. ATTORNEY'S FEES AND COSTS.** In a
11 judicial proceeding involving the administration of a trust, the court, as
12 justice and equity may require, may award costs and expenses, including
13 reasonable attorney's fees, to any party, to be paid by another party or from
14 the trust that is the subject of the controversy.

15 **SECTION 1005. LIMITATION OF ACTION AGAINST**
16 **TRUSTEE.**

17 (a) A beneficiary may not commence a proceeding against a trustee
18 for breach of trust more than one year after the date the beneficiary or a
19 representative of the beneficiary was sent a report that adequately disclosed
20 the existence of a potential claim for breach of trust and informed the
21 beneficiary of the time allowed for commencing a proceeding.

1 (b) A report adequately discloses the existence of a potential claim
2 for breach of trust if it provides sufficient information so that the beneficiary
3 or representative knows of the potential claim or should have inquired into
4 its existence.

5 (c) If subsection (a) does not apply, a judicial proceeding by a
6 beneficiary against a trustee for breach of trust must be commenced within
7 five years after the first to occur of:

- 8 (1) the removal, resignation, or death of the trustee;
9 (2) the termination of the beneficiary's interest in the trust; or
10 (3) the termination of the trust.

11 **SECTION 1006. RELIANCE ON TRUST INSTRUMENT.** A
12 trustee who acts in reasonable reliance on the terms of the trust as expressed
13 in the trust instrument is not liable to a beneficiary for a breach of trust to
14 the extent the breach resulted from the reliance.

15 **SECTION 1007. EVENT AFFECTING ADMINISTRATION**
16 **OR DISTRIBUTION.** If the happening of an event, including marriage,
17 divorce, performance of educational requirements, or death, affects the
18 administration or distribution of a trust, a trustee who has exercised
19 reasonable care to ascertain the happening of the event is not liable for a
20 loss resulting from the trustee's lack of knowledge.

21 **SECTION 1008. EXCULPATION OF TRUSTEE.**

1 (a) A term of a trust relieving a trustee of liability for breach of trust
2 is unenforceable to the extent that it:

3 (1) relieves the trustee of liability for breach of trust committed in
4 bad faith or with reckless indifference to the purposes of the trust or the
5 interests of the beneficiaries; or

6 (2) was inserted as the result of an abuse by the trustee of a fiduciary
7 or confidential relationship to the settlor.

8 (b) An exculpatory term drafted or caused to be drafted by the
9 trustee is invalid as an abuse of a fiduciary or confidential relationship
10 unless the trustee proves that the exculpatory term is fair under the
11 circumstances and that its existence and contents were adequately
12 communicated to the settlor.

13 **SECTION 1009. BENEFICIARY'S CONSENT, RELEASE,**
14 **OR RATIFICATION.** A trustee is not liable to a beneficiary for breach
15 of trust if the beneficiary consented to the conduct constituting the breach,
16 released the trustee from liability for the breach, or ratified the transaction
17 constituting the breach, unless:

18 (1) the consent, release, or ratification of the beneficiary was
19 induced by improper conduct of the trustee; or

20 (2) at the time of the consent, release, or ratification, the beneficiary
21 did not know of the beneficiary's rights or of the material facts relating to

1 the breach.

2 **SECTION 1010. LIMITATION ON PERSONAL LIABILITY**
3 **OF TRUSTEE.**

4 (a) Except as otherwise provided in the contract, a trustee is not
5 personally liable on a contract properly entered into in the trustee's fiduciary
6 capacity in the course of administering the trust if the trustee in the contract
7 disclosed the fiduciary capacity.

8 (b) A trustee is personally liable for torts committed in the course
9 of administering a trust, or for obligations arising from ownership or control
10 of trust property, including liability for violation of environmental law, only
11 if the trustee is personally at fault.

12 (c) A claim based on a contract entered into by a trustee in the
13 trustee's fiduciary capacity, on an obligation arising from ownership or
14 control of trust property, or on a tort committed in the course of
15 administering a trust, may be asserted in a judicial proceeding against the
16 trustee in the trustee's fiduciary capacity, whether or not the trustee is
17 personally liable for the claim.

18 **SECTION 1011. INTEREST AS GENERAL PARTNER.**

19 (a) Except as otherwise provided in subsection (c) or unless
20 personal liability is imposed in the contract, a trustee who holds an interest
21 as a general partner in a general or limited partnership is not personally

1 liable on a contract entered into by the partnership after the trust's
2 acquisition of the interest if the fiduciary capacity was disclosed in the
3 contract or in a statement previously filed pursuant to the Uniform
4 Partnership Act.

5 (b) Except as otherwise provided in subsection (c), a trustee who
6 holds an interest as a general partner is not personally liable for torts
7 committed by the partnership or for obligations arising from ownership or
8 control of the interest unless the trustee is personally at fault.

9 (c) The immunity provided by this section does not apply if an
10 interest in the partnership is held by the trustee in a capacity other than that
11 of trustee or is held by the trustee's spouse or one or more of the trustee's
12 descendants, siblings, or parents, or the spouse of any of them.

13 (d) If the trustee of a revocable trust holds an interest as a general
14 partner, the settlor is personally liable for contracts and other obligations of
15 the partnership as if the settlor were a general partner.

16 **SECTION 1012. PROTECTION OF PERSON DEALING**
17 **WITH TRUSTEE.**

18 (a) A person other than a beneficiary who in good faith assists a
19 trustee, or who in good faith and for value deals with a trustee, without
20 knowledge that the trustee is exceeding or improperly exercising the
21 trustee's powers is protected from liability as if the trustee properly

1 exercised the power.

2 (b) A person other than a beneficiary who in good faith deals with
3 a trustee is not required to inquire into the extent of the trustee's powers or
4 the propriety of their exercise.

5 (c) A person who in good faith delivers assets to a trustee need not
6 ensure their proper application.

7 (d) A person other than a beneficiary who in good faith assists a
8 former trustee, or who in good faith and for value deals with a former
9 trustee, without knowledge that the trusteeship has terminated is protected
10 from liability as if the former trustee were still a trustee.

11 (e) Comparable protective provisions of other laws relating to
12 commercial transactions or transfer of securities by fiduciaries prevail over
13 the protection provided by this section.

14 **SECTION 1013. CERTIFICATION OF TRUST.**

15 (a) Instead of furnishing a copy of the trust instrument to a person
16 other than a beneficiary, the trustee may furnish to the person a certification
17 of trust containing the following information:

18 (1) that the trust exists and the date the trust instrument was
19 executed;

20 (2) the identity of the settlor;

21 (3) the identity and address of the currently acting trustee;

1 (4) the powers of the trustee;

2 (5) the revocability or irrevocability of the trust and the identity of
3 any person holding a power to revoke the trust;

4 (6) the authority of cotrustees to sign or otherwise authenticate and
5 whether all or less than all are required in order to exercise powers of the
6 trustee;

7 (7) the trust's taxpayer identification number; and

8 (8) the manner of taking title to trust property.

9 (b) A certification of trust may be signed or otherwise authenticated
10 by any trustee.

11 (c) A certification of trust must state that the trust has not been
12 revoked, modified, or amended in any manner that would cause the
13 representations contained in the certification of trust to be incorrect.

14 (d) A certification of trust need not contain the dispositive terms of
15 a trust.

16 (e) A recipient of a certification of trust may require the trustee to
17 furnish copies of those excerpts from the original trust instrument and later
18 amendments which designate the trustee and confer upon the trustee the
19 power to act in the pending transaction.

20 (f) A person who acts in reliance upon a certification of trust without
21 knowledge that the representations contained therein are incorrect is not

1 liable to any person for so acting and may assume without inquiry the
2 existence of the facts contained in the certification. Knowledge of the terms
3 of the trust may not be inferred solely from the fact that a copy of all or part
4 of the trust instrument is held by the person relying upon the certification.

5 (g) A person who in good faith enters into a transaction in reliance
6 upon a certification of trust may enforce the transaction against the trust
7 property as if the representations contained in the certification were correct.

8 (h) A person making a demand for the trust instrument in addition
9 to a certification of trust or excerpts is liable for damages if the court
10 determines that the person did not act in good faith in demanding the trust
11 instrument.

12 (i) This section does not limit the right of a person to obtain a copy
13 of the trust instrument in a judicial proceeding concerning the trust.

14 **Chapter 11. Miscellaneous Provisions.**

15 **SECTION 1101. UNIFORMITY OF APPLICATION AND**
16 **CONSTRUCTION.** In applying and construing this Uniform Act,
17 consideration must be given to the need to promote uniformity of the law
18 with respect to its subject matter among States that enact it.

19 **SECTION 1102. ELECTRONIC RECORDS AND**
20 **SIGNATURES.** The provisions of this Code governing the legal effect,
21 validity, or enforceability of electronic records or electronic signatures, and

1 of contracts formed or performed with the use of such records or signatures,
2 conform to the requirements of Section 102 of the Electronic Signatures in
3 Global and National Commerce Act (15 U.S.C. § 7002) and supersede,
4 modify, and limit the requirements of the Electronic Signatures in Global
5 and National Commerce Act.

6 **SECTION 1103. APPLICATION TO EXISTING**
7 **RELATIONSHIPS.**

8 (a) Except as otherwise provided in this Code, on the effective date
9 of this Code:

10 (1) this Code applies to all trusts created before, on, or after its
11 effective date;

12 (2) this Code applies to all judicial proceedings concerning trusts
13 commenced on or after its effective date;

14 (3) this Code applies to judicial proceedings concerning trusts
15 commenced before its effective date unless the court finds that application
16 of a particular provision of this Code would substantially interfere with the
17 effective conduct of the judicial proceedings or prejudice the rights of the
18 parties, in which case the particular provision of this Code does not apply
19 and the superseded law applies;

20 (4) any rule of construction or presumption provided in this Code
21 applies to trust instruments executed before the effective date of the Code

1 unless there is a clear indication of a contrary intent in the terms of the trust;
2 and

3 (5) an act done before [the effective date of the Code is not affected
4 by this Code.

5 (b) If a right is acquired, extinguished, or barred upon the expiration
6 of a prescribed period that has commenced to run under any other statute
7 before [the effective date of the Code, that statute continues to apply to the
8 right even if it has been repealed or superseded.”

9 **Section 3. Severability.** If any provisions of this Act or the application of
10 any such provision to any person or circumstance should be held invalid by a court
11 of competent jurisdiction, the remainder of this Act or the application of its
12 provisions to persons or circumstances other than those to which it is held invalid
13 shall not be affected thereby.

14 **Section 4. Savings Clause.** This Act and any repealer contained herein
15 shall not be construed as affecting any existing right acquired under contract or
16 acquired under statutes repealed or under any rule, regulation, or order adopted
17 under the statutes. Repealers contained in this Act shall not affect any proceeding
18 instituted under or pursuant to prior law. The enactment of the Act shall not have
19 the effect of terminating, or in any way modifying, any liability, civil or criminal,
20 which shall already be in existence on the date this Act becomes effective.

1 **Section 5. Effective Date.** This Act shall take effect upon its approval by
2 the Governor, or its becoming law without such approval.

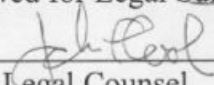
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Reviewed for ^{introduction only} ~~Legal Sufficiency~~ by:


House Legal Counsel

