

## No. 1992-152

## AN ACT

## SB 1118

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for the jurisdiction of the court regarding testamentary trusts; adding a section providing that documents submitted to the register of wills, except for probate, may be attested to by an affidavit or by a verified statement; broadening the class of property deemed disclaimed when a spouse takes an elective share; avoiding automatic modification of wills and inter vivos conveyances that are made in contemplation of a marriage or divorce; adding a rule of interpretation for wills and conveyances regarding corporate fiduciaries; confirming existing law that a gift to any unfunded trust is valid; adding a chapter relating to contracts concerning succession; authorizing personal representatives to make certain temporary investments; allowing fiduciaries to hold certain securities in book-entry form; further providing for notice to parties in interest; further providing for rights and limitations on rights of claimants; authorizing the guardian of the estate of a minor to distribute certain income without court approval; adding the Pennsylvania Uniform Transfers to Minors Act; authorizing the court to exercise all rights and privileges under certain contracts which provide for payments to an incompetent or others after the incompetent's death; authorizing the court to modify the estate plan of an incompetent to reflect changes in applicable tax laws; further providing for the execution, interpretation, effect, form, implementation and operation of powers of attorney; authorizing the court to allow a shorter period of notice to an absentee; providing that as a matter of law divorce revokes any revocable beneficiary designation made in favor of the former spouse; further providing for the annexation of accounts; further authorizing the court to divide trusts; authorizing a bank or trust company to invest their fiduciary accounts in mutual funds which they service; further authorizing the court to grant declaratory relief with respect to certain interests in real property; and making technical changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 711(2) of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 711. Mandatory exercise of jurisdiction through orphans' court division in general.

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans' court division) and section 713 (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

\* \* \*

(2) Testamentary trusts.—The administration and distribution of the real and personal property of testamentary trusts, *and the reformation and setting aside of any such trusts*, whether created before or after the effective date of this chapter, except any testamentary trust created before the effective date of the Fiduciaries Act of 1917, jurisdiction of which was acquired by the court of common pleas prior to January 1, 1969 unless the

president judge of such court orders the jurisdiction of the trust to be exercised through the orphans' court division.

\* \* \*

Section 2. Title 20 is amended by adding a section to read:

§ 911. *Attestation of certain applications and documents.*

*Except as provided otherwise in section 3154 (relating to affidavit and oath), applications and documents submitted to the register for which attestation is required may be attested either by an affidavit or by a verified statement. In case of the latter alternative, the statement shall set forth that it is subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).*

Section 3. Sections 2204(a)(8) and (9) and 2507(2) and (3) of Title 20 are amended to read:

§ 2204. Disclaimers, releases and charges against elective share.

(a) Disclaimers.—Except as provided in subsections (b) and (c), an election by a spouse to take his elective share shall be deemed a disclaimer of any beneficial interest of the spouse in the following, to the extent that such interest would otherwise be payable to or enjoyed by the spouse after the decedent's death:

\* \* \*

(8) All intangible *or tangible* personal property and all real property owned by the decedent and his spouse by the entirety or jointly with right of survivorship, in the proportion that such property represents contributions by the decedent.

(9) All intangible *or tangible* personal property and all real property given to his spouse by the decedent during his lifetime which, or the proceeds of which, are still owned by his spouse at the time of the decedent's death.

\* \* \*

§ 2507. Modification by circumstances.

Wills shall be modified upon the occurrence of any of the following circumstances, among others:

\* \* \*

(2) Divorce.—If the testator is divorced from the bonds of matrimony after making a will, [all provisions] *any provision* in the will in favor of or relating to his spouse so divorced shall thereby become ineffective for all purposes *unless it appears from the will that the provision was intended to survive the divorce.*

(3) Marriage.—If the testator marries after making a will, the surviving spouse shall receive the share of the estate to which he would have been entitled had the testator died intestate, unless the will shall give him a greater share *or unless it appears from the will that the will was made in contemplation of marriage to the surviving spouse.*

\* \* \*

Section 4. Section 2514 of Title 20 is amended by adding a paragraph to read:

§ 2514. Rules of interpretation.

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

\* \* \*

*(20) Corporate fiduciaries.—Provisions authorizing or restricting investment in the securities or common trust funds of a corporate fiduciary or the exercise of voting rights in its securities shall also apply to the securities or common trust funds of any corporation which is an affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504).*

Section 5. Section 2515 of Title 20 is amended to read:

§ 2515. Devise or bequest to trust.

A devise or bequest in a will may be made to the trustee of a trust **[(including an unfunded life insurance trust, although the settlor has reserved any or all rights of ownership in the insurance contracts) established, in writing], including any unfunded trust, established in writing** by the testator or any other person before, concurrently with or after the execution of the will. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after execution of the will. Unless the will provides otherwise, the property so devised or bequeathed shall not be deemed held under a testamentary trust of the testator but shall become and be a part of the principal of the trust to which it is given to be administered and disposed of in accordance with the provisions of the instrument establishing that trust and any amendment thereof. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest unless the will directs otherwise.

Section 6. Title 20 is amended by adding a chapter to read:

CHAPTER 27  
CONTRACTUAL ARRANGEMENTS RELATING  
TO SUCCESSION

Sec.

2701. Contracts concerning succession.

§ 2701. Contracts concerning succession.

(a) Establishment of contract.—A contract to die intestate or to make or not to revoke a will or testamentary provision or an obligation dischargeable only at or after death can be established in support of a claim against the estate of a decedent only by:

- (1) provisions of a will of the decedent stating material provisions of the contract;
- (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or
- (3) a writing signed by the decedent evidencing the contract.

(b) Joint will or mutual wills.—The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Section 7. Sections 3316, 3321(e) and 3503 of Title 20 are amended to read:

§ 3316. Investment of funds.

Subject to his duty to liquidate the estate for prompt distribution and to the provisions of the will, if any, the personal representative may invest the funds of the estate but shall have no duty to do so. Any such investment, except as the court or the will may otherwise authorize or direct, shall be restricted to obligations of the United States or the United States Treasury, of the Commonwealth, or of any political subdivision of the Commonwealth, and to interest bearing deposits authorized by section 7313 (relating to interest-bearing deposit) and to savings accounts in savings associations authorized in section 7310(b) (relating to savings accounts insured by Federal Savings and Loan Insurance Corporation). *The personal representative may also make temporary investments as authorized by section 7315.1(b) (relating to retention of cash; temporary investments) without regard to any investment restrictions imposed by the will.*

§ 3321. Nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities.

\* \* \*

(e) Accounting for book-entry securities.—With respect to **[United States Treasury securities and securities of agencies, instrumentalities and establishments of the United States for which]** securities *which are available in book-entry form [are available]* as an alternative to securities in definitive form **[under procedures in effect from time to time pursuant to regulations, rules or operating circulars of the United States Treasury, Federal Reserve banks and other agencies, instrumentalities and establishments of the United States]**, the receipt, holding or transfer of such securities in book-entry form by a bank and trust company, trust company or National bank acting as a sole or joint personal representative, or as an attorney-in-fact for a personal representative, is for all purposes equivalent to the receipt, holding or transfer of such securities in definitive form and no segregation of such book-entry securities shall be required other than by appropriate accounting records to identify the accounts for which such securities are held.

§ 3503. Notice to parties in interest.

The personal representative shall give written notice of the filing of his account and of its call for audit or confirmation **[to every unpaid claimant who has given written notice of his claim to the personal representative or his attorney of record, and]** to every **[other]** person known to the **[accountant]** *personal representative to have or assert* an interest in the estate as beneficiary, heir, **[or]** next of kin *or claimant, unless the interest of such person has been satisfied or unless such person fails to respond to a demand under section 3532(b.1) (relating to at risk of personal representative).*

Section 8. Section 3532(a) and (b)(1) of Title 20 are amended and the section is amended by adding a subsection to read:

§ 3532. At risk of personal representative.

(a) Rights of claimants against personal representatives.—A personal representative, at his own risk and without the filing, audit or confirmation of his account, may distribute real or personal property and such distribution shall be without liability to any claimant against the decedent **[who has not given notice of his claim as provided by this title]**, *unless the claim of such claimant is known to the personal representative* within one year after the first complete advertisement of the grant of letters to such personal representative or thereafter but prior to such distribution.

(b) Rights of claimants against distributed property.—

(1) Personal property.—No claimant shall have any claim against personal property distributed by a personal representative at his own risk pursuant to subsection (a) **[hereof]**, *unless the claim of such claimant [has given notice of his claim to the personal representative as provided by this title] is known to the personal representative* within one year after the first complete advertisement of the grant of letters[, ] or thereafter but prior to such distribution.

\* \* \*

*(b.1) Limitation on rights of claimants.—A personal representative may make written demand by mail or delivery to any person who may have a claim but who has not previously given written notice of his claim to the personal representative. If the personal representative's demand requests the person to give written notice of his claim within 60 days from the mailing or delivery of the demand or within one year from the first complete advertisement of the grant of letters, whichever is later, and the person fails to do so, the person shall not have any rights with respect to such claim under subsection (a) or (b)(1) and shall not have any right on account of such claim to receive notice of the filing of the personal representative's account and of its call for audit or confirmation. The personal representative shall not be liable to any such person or to any beneficiary, heir or next of kin or creditor of the estate for making or failing to make demand under this subsection.*

\* \* \*

Section 9. Sections 3701, 3702(a), (b), (c) and (d), 3703, 3706(c) and 5164 of Title 20 are amended to read:

§ 3701. Power of decedent.

A testator, settlor, donor or possessor of any appropriate power of appointment may direct how the Federal estate tax or the Federal generation-skipping tax due because of his death, including interest and penalties, shall be apportioned or may grant a discretionary power to another so to direct, but any direction regarding apportionment of the Federal generation-skipping tax must expressly refer to that tax. Any such direction shall take precedence over the provisions of this chapter insofar as the direction provides for the payment of the tax or any part thereof from property the disposition of which can be controlled by the instrument containing the direction or delegating the power to another.

§ 3702. Equitable apportionment of Federal estate tax.

(a) General rule.—Subject to the provisions of section 3701 (relating to power of decedent), the Federal estate tax shall be apportioned equitably among all parties interested in property includible in the gross estate for Federal estate tax purposes in proportion to the value of the interest of each party, subject to the rules stated in this section.

(b) Pre-residuary.—

(1) No Federal estate tax shall be apportioned against a beneficiary of any pre-residuary gift made by will. Any Federal estate tax attributable thereto shall be paid entirely from the residue of the estate and charged in the same manner as a general administration expense of the estate, except that when a portion of the residue of the estate is allowable as a deduction for Federal estate tax purposes the tax shall be paid to the extent possible from the portion of the residue which is not so allowable.

(2) No Federal estate tax shall be apportioned against a beneficiary of any pre-residuary gift made by inter vivos trust. Any Federal estate tax attributable thereto shall be paid entirely from the residue of the trust and charged in the same manner as a general administration expense of the trust, except that when a portion of the residue of the trust is allowable as a deduction for Federal estate tax purposes the tax shall be paid to the extent possible from the portion of the residue which is not so allowable.

(c) Deductions.—No Federal estate tax shall be apportioned against an interest allowable as a Federal estate tax marital[, orphan's] or charitable deduction (determined and valued without regard to any Pennsylvania inheritance tax or other state or foreign death taxes apportioned against such interest) except as otherwise provided in subsections (b) and (g).

(d) Credits.—Any Federal estate tax credit for state or foreign death taxes on property includable in the gross estate for Federal estate tax purposes shall inure to the benefit of the parties chargeable with the payment of the state or foreign death taxes in proportion to the amount of the taxes paid by each party, but any credit inuring to the benefit of a party shall not exceed the Federal estate tax apportionable to that party. Any unified credit against Federal estate tax, credit for tax on prior transfers (sometimes called the credit for property previously taxed) or credit for gift taxes paid by the decedent or his estate with respect to gifts made by the decedent before January 1, 1977, shall inure to the benefit of all parties liable to apportionment in proportion to the amount of Federal estate tax apportioned against each party under the other provisions of this chapter. Any Federal estate tax credit for gift taxes paid by the donee of a gift made before January 1, 1977, shall inure to the benefit of the donee.

\* \* \*

§ 3703. Apportionment of Pennsylvania inheritance tax.

The Pennsylvania inheritance tax shall be apportioned as provided in [the act of June 15, 1961 (P.L.373, No.207), known as the "Inheritance and Estate Tax Act of 1961."] *Article XXI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.*

§ 3706. Enforcement of contribution or exoneration of Federal estate tax.

\* \* \*

(c) Suspending distribution.—Distribution *or delivery* of property to any party, other than a fiduciary charged with a duty to pay the Federal estate tax, shall not be required of any fiduciary until the Federal estate tax apportionable with respect thereto is paid or, if the Federal estate tax has not been determined and apportionment made, until adequate security for payment is furnished to the fiduciary making the distribution *or delivery*.

\* \* \*

§ 5164. Distributions for support and education.

All income received by a guardian of the estate of a minor, *including, subject to the requirements of Federal law relating thereto, all funds received from the Department of Veterans' Affairs, Social Security Administration and other periodic retirement or disability payments under private or government plans*, in the exercise of a reasonable discretion, may be expended in the care, maintenance and education of the minor without the necessity of court approval. The court, for cause shown *and with only such notice as it considers appropriate in the circumstances*, may authorize or direct the payment or application of any or all of the income or principal of the estate of a minor for the care, maintenance or education of the minor, his spouse or children, or for the reasonable funeral expenses of the minor's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the ward for his maintenance or for incidental expenses and may ratify payments made for these purposes.

Section 10. Chapter 53 of Title 20 is repealed and the title is amended by adding a chapter to read:

CHAPTER 53  
PENNSYLVANIA UNIFORM TRANSFERS TO  
MINORS ACT

Sec.

- 5301. Short title of chapter and definitions.
- 5302. Scope and jurisdiction.
- 5303. Nomination of custodian.
- 5304. Transfer by gift or exercise of power of appointment.
- 5305. Transfer authorized by will or trust.
- 5306. Other transfer by fiduciary.
- 5307. Transfer by obligor.
- 5308. Receipt for custodial property.
- 5309. Manner of creating custodial property and effecting transfer.
- 5310. Single custodianship.
- 5311. Validity and effect of transfer.
- 5312. Care of custodial property.
- 5313. Powers of custodian.
- 5314. Use of custodial property.
- 5315. Expenses, compensation and bond of custodian.
- 5316. Exemption of third person from liability.

5317. Liability to third persons.

5318. Renunciation, resignation, death or removal of custodian.

5319. Accounting by and determination of liability of custodian.

5320. Termination of custodianship.

§ 5301. Short title of chapter and definitions.

(a) Short title of chapter.—This chapter shall be known and may be cited as the Pennsylvania Uniform Transfers to Minors Act.

(b) Definitions.—The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Benefit plan.” An employer’s plan for the benefit of an employee or partner.

“Broker.” A person lawfully engaged in the business of effecting transactions in securities or commodities for the person’s own account or for the account of others.

“Custodial property.” Any interest in property transferred to a custodian under this chapter and the income from and proceeds of that interest in property.

“Custodian.” A person so designated under section 5309 (relating to manner of creating custodial property and effecting transfer) or a successor or substitute custodian designated under section 5318 (relating to renunciation, resignation, death or removal of custodian).

“Financial institution.” A bank, trust company, savings institution or credit union chartered and supervised under Federal or state law.

“Legal representative.” An individual’s personal representative or guardian.

“Member of the minor’s family.” The minor’s parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

“Minor.” An individual who has not attained 21 years of age.

“Transfer.” A transaction that creates custodial property under section 5309 (relating to manner of creating custodial property and effecting transfer).

“Transferor.” A person who makes a transfer under this chapter.

“Trust company.” A financial institution, corporation or other legal entity authorized to exercise general trust powers.

§ 5302. Scope and jurisdiction.

(a) Application of chapter.—This chapter applies to a transfer that refers to this chapter in the designation under section 5309(a) (relating to manner of creating custodial property and effecting transfer) by which the transfer is made if, at the time of the transfer, the transferor, the minor or the custodian is a resident of this Commonwealth or the custodial property is located in this Commonwealth. The custodianship created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor



or the custodian or the removal of custodial property from this Commonwealth.

(b) Jurisdiction over custodian.—A person designated as custodian under this chapter is subject to personal jurisdiction in this Commonwealth with respect to any matter relating to the custodianship.

(c) Laws of other states.—A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this Commonwealth if, at the time of the transfer, the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

§ 5303. Nomination of custodian.

(a) General rule.—A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act.” The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, trust or deed or in an instrument exercising a power of appointment or in a writing designating a beneficiary of contractual rights and registered with or delivered to the payor, issuer or other obligor of the contractual rights.

(b) Qualification of custodian.—A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 5309(a) (relating to manner of creating custodial property and effecting transfer).

(c) When effective.—The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 5309. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event, the custodianship becomes effective, and the custodian shall enforce a transfer of the custodial property pursuant to section 5309.

§ 5304. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer).

§ 5305. Transfer authorized by will or trust.

(a) General rule.—A personal representative or trustee may make an irrevocable transfer pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer) to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) **Transfer to custodian.**—If the testator or settlor has nominated a custodian under section 5303 (relating to nomination of custodian) to receive the custodial property, the transfer must be made to that person.

(c) **Designation of custodian.**—If the testator or settlor has not nominated a custodian under section 5303 or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 5309(a).

§ 5306. **Other transfer by fiduciary.**

(a) **Irrevocable transfer by personal representative or trustee.**—Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer) in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) **Irrevocable transfer by guardian.**—Subject to subsection (c), a guardian may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 5309.

(c) **Additional requirements for transfer.**—A transfer under subsection (a) or (b) may be made only if:

- (1) the personal representative, trustee or guardian considers the transfer to be in the best interest of the minor;
- (2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument; and
- (3) the transfer is authorized by the court if it exceeds \$10,000 in value.

§ 5307. **Transfer by obligor.**

(a) **Irrevocable transfer for benefit of minor.**—Subject to subsections (b) and (c), a person not subject to section 5305 (relating to transfer authorized by will or trust) or 5306 (relating to other transfer by fiduciary) who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer).

(b) **Transfer to custodian.**—If a person having the right to do so under section 5303 (relating to nomination of custodian) has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) **Transfer to minor's family or trust company.**—If no custodian has been nominated under section 5303 or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

§ 5308. **Receipt for custodial property.**

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

§ 5309. Manner of creating custodial property and effecting transfer.

(a) Creation of custodial property.—Custodial property is created and a transfer is made whenever:

(1) An uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act”; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b).

(2) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act.”

(3) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act”; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act.”

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act.”

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act.”

(6) A certificate of title issued by a state or the Federal Government which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act”; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(7) An interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) Form.—An instrument in the following form satisfies the requirements of subsection (a)(1)(ii) and (7):

**TRANSFER UNDER THE PENNSYLVANIA  
UNIFORM TRANSFERS TO MINORS ACT**

I, (name of transferor or name and representative capacity if a fiduciary), hereby transfer to (name of custodian), as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:.....  
.....

(Signature)

(name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Pennsylvania Uniform Transfers to Minors Act.

Dated:.....  
.....

(Signature of custodian)

(c) Control of custodial property.—A transferor shall place the custodian in control of the custodial property as soon as practicable.

**§ 5310. Single custodianship.**

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

**§ 5311. Validity and effect of transfer.**

(a) Validity of transfer.—The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(1) failure of the transferor to comply with section 5309(c) (relating to manner of creating custodial property and effecting transfer) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 5309(a); or

(3) death or incapacity of a person nominated under section 5303 (relating to nomination of custodian) or designated under section 5309 as custodian or the disclaimer of the office by that person.

(b) Irrevocability of transfer.—A transfer made pursuant to section 5309 is irrevocable, and the custodial property is indefeasibly vested in the minor,

but the custodian has all the rights, powers, duties and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(c) Incorporation of provisions of this chapter.—By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian and to any third person dealing with a person designated as custodian the respective powers, rights and immunities provided in this chapter.

§ 5312. Care of custodial property.

(a) Duties of custodian.—A custodian shall:

- (1) Take control of custodial property.
- (2) Register or record title to custodial property if appropriate.
- (3) Collect, hold, manage, invest and reinvest custodial property.

(b) Standard of care.—In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) Life insurance and endowment policies.—A custodian may invest in or pay premiums on life insurance or endowment policies on:

- (1) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or
- (2) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian is the irrevocable beneficiary.

(d) Segregation of custodial property.—A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as a custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(e) Records.—A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained 14 years of age.

§ 5313. Powers of custodian.

(a) General rule.—A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(b) Liability for breach of standard of care.—This section does not relieve a custodian from liability for breach of section 5312 (relating to care of custodial property).

§ 5314. Use of custodial property.

(a) Without court order.—A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

- (1) the duty or ability of the custodian personally or of any other person to support the minor; or
- (2) any other income or property of the minor which may be applicable or available for that purpose.

(b) With court order.—On petition of an interested person or the minor if the minor has attained 14 years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) Obligation of support not affected.—A delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§ 5315. Expenses, compensation and bond of custodian.

(a) Expenses.—A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Compensation.—Except for one who is a transferor under section 5304 (relating to transfer by gift or exercise of power of appointment), a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Bond.—Except as provided in section 5318(f) (relating to renunciation, resignation, death or removal of custodian), a custodian need not give a bond.

§ 5316. Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of or the authority under this chapter for any act of the purported custodian;
- (3) the validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

§ 5317. Liability to third persons.

(a) Claim against custodial property.—Any claim based on the following may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable:

(1) A contract entered into by a custodian acting in a custodial capacity.

(2) An obligation arising from the ownership or control of custodial property.

(3) A tort committed during the custodianship.

(b) Limitation on custodian's liability.—A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) Limitation on minor's personal liability.—A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

§ 5318. Renunciation, resignation, death or removal of custodian.

(a) Renunciation.—A person nominated under section 5303 (relating to nomination of custodian) or designated under section 5309 (relating to manner of creating custodial property and effecting transfer) as custodian may decline to serve by delivering a valid disclaimer under Chapter 62 (relating to disclaimers) to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under section 5303, the person who made the nomination may nominate a substitute custodian under section 5303. Otherwise, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer. In either case, the substitute custodian shall be from among the persons eligible to serve as custodian for that kind of property under section 5309(a). The custodian so designated has the rights of a successor custodian.

(b) Designation of trust company or adult as successor custodian.—A custodian at any time may designate a trust company or an adult other than a transferor under section 5304 (relating to transfer by gift or exercise of power of appointment) as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(c) Resignation.—A custodian may resign at any time by delivering written notice to the minor if the minor has attained 14 years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) Ineligibility, death or incapacitation.—If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained 14 years of age, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a guardian of the minor or a trust company. If the minor has not attained 14 years of age or fails to act within 60 days after the ineligibility, death or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

(e) Transfer of custodial property and records to successor custodian.—A custodian who declines to serve under subsection (a) or resigns under subsection (c) or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) Removal for cause.—A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the guardian of the minor or the minor if the minor has attained 14 years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 5304 or to require the custodian to give appropriate bond.

§ 5319. Accounting by and determination of liability of custodian.

(a) Petition.—A minor who has attained 14 years of age, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court for:

(1) an accounting by the custodian or the custodian's legal representative; or

(2) a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 5317 (relating to liability to third persons) to which the minor or the minor's legal representative was a party.

(b) Petition by successor custodian for accounting by predecessor.—A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) Court order to account.—The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.



(d) Court order when custodian removed.—If a custodian is removed under section 5318(f) (relating to removal for cause), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

§ 5320. Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or the minor's estate upon the earlier of:

(1) the minor's attainment of 21 years of age with respect to custodial property transferred under section 5304 (relating to transfer by gift or exercise of power of appointment) or 5305 (relating to transfer authorized by will or trust);

(2) the minor's attainment of majority under the laws of this Commonwealth other than this chapter with respect to custodial property transferred under section 5306 (relating to other transfer by fiduciary) or 5307 (relating to transfer by obligor); or

(3) the minor's death.

Section 11. Section 5536(b) of Title 20 is amended to read:

§ 5536. Distributions of income and principal during incapacity.

\* \* \*

(b) Estate plan.—The court, upon petition and with notice to all parties in interest *and for good cause shown*, shall have the power to substitute its judgment for that of the incapacitated person with respect to the estate and affairs of the incapacitated person for the benefit of the incapacitated person, his family, members of his household, his friends and charities in which he was interested. This power shall include, but is not limited to, the power to:

(1) Make gifts, outright or in trust.

(2) Convey, release or disclaim his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Release or disclaim his powers as trustee, personal representative, custodian for minors, or guardian.

(4) Exercise, release or disclaim his powers as donee of a power of appointment.

(5) Enter into contracts.

(6) Create for the benefit of the incapacitated person or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life.

(7) Exercise options of the incapacitated person to purchase or exchange securities or other property.

(8) Exercise **[his rights to elect options and change beneficiaries under insurance and annuity policies or surrender the policies for their cash value] all rights and privileges under life insurance policies, annuity contracts or other plans or contractual arrangements providing for payments to the incapacitated person or to others after his death.**

(9) Exercise his right to claim or disclaim an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(10) Change the incapacitated person's residence or domicile.

(11) *Modify by means of codicil or trust amendment, as the case may be, the terms of the incapacitated person's will or of any revocable trust created by the incapacitated person, as the court may deem advisable in light of changes in applicable tax laws.*

In the exercise of its judgment for that of the incapacitated person, the court, first being satisfied that assets exist which are not required for the maintenance, support and well-being of the incapacitated person, may adopt a plan of gifts which results in minimizing current or prospective taxes, or which carries out a lifetime giving pattern. The court in exercising its judgment shall consider the testamentary and inter vivos intentions of the incapacitated person insofar as they can be ascertained.

Section 12. Section 5601 of Title 20 is amended to read:

§ 5601. General [provision] provisions.

(a) *General rule.*—In addition to all other powers that may be delegated to an attorney-in-fact, any or all of the powers referred to in section 5602(a) (relating to form of power of attorney) may lawfully be granted in writing and, unless the power of attorney expressly directs to the contrary, shall be construed in accordance with the provisions of this chapter.

(b) *Execution.*—*All powers of attorney shall be signed by the principal in his own handwriting, but, if for any physical reason he is unable to sign his name, the principal may make his mark to which his name shall be subscribed in his presence before or after he makes his mark. The principal shall make his mark in the presence of two witnesses who shall sign their names to the power of attorney in his presence.*

Section 13. Title 20 is amended by adding a section to read:

§ 5601.1. Powers of attorney presumed durable.

*Unless specifically provided otherwise in the power of attorney, all powers of attorney shall be durable as provided in section 5604 (durable powers of attorney).*

Section 14. Section 5602(a) and (b) of Title 20 are amended by adding paragraphs to read:

§ 5602. Form of power of attorney.

(a) Specification of powers.—A principal may, by inclusion of the language quoted in any of the following paragraphs or by inclusion of other language showing a similar intent on the part of the principal, empower his attorney-in-fact to do any or all of the following, each of which is defined in section 5603 (relating to implementation of power of attorney):

\* \* \*

(10) *“To engage in real property transactions.”*

(11) *“To engage in tangible personal property transactions.”*

(12) *“To engage in stock, bond and other securities transactions.”*

(13) *“To engage in commodity and option transactions.”*

- (14) *"To engage in banking and financial transactions."*
- (15) *"To borrow money."*
- (16) *"To enter safe deposit boxes."*
- (17) *"To engage in insurance transactions."*
- (18) *"To engage in retirement plan transactions."*
- (19) *"To handle interests in estates and trusts."*
- (20) *"To pursue claims and litigation."*
- (21) *"To receive government benefits."*
- (22) *"To pursue tax matters."*

(b) Appointment of attorney-in-fact and successor attorney.—A principal may provide for:

\* \* \*

*(1.1) The delegation of one or more powers by the attorney-in-fact to such person or persons as the attorney-in-fact may designate and on terms as the power of attorney may specify.*

\* \* \*

Section 15. Section 5603(a) of Title 20 is amended and the section is amended by adding subsections to read:

§ 5603. Implementation of power of attorney.

(a) Power to make gifts and power to make limited gifts.—

(1) A power "to make gifts" shall mean that the attorney-in-fact may make gifts for and on behalf of the principal to any donees (including the attorney-in-fact) and in such amounts as the attorney-in-fact may decide.

(2) A power "to make limited gifts" shall mean that the attorney-in-fact may make only gifts for or on behalf of the principal which are limited as follows:

(i) The class of permissible donees shall consist solely of the principal's spouse and issue (including the attorney-in-fact if he is a member of such class), or any of them.

(ii) During each calendar year, the gifts made to each donee, pursuant to such power, shall have an aggregate value not in excess of, and shall be made in such manner as to qualify in their entirety for, the principal's annual exclusion from the Federal gift tax permitted under section 2503(b) of the Internal Revenue Code, determined without regard to section 2513(a) thereof (or any successor provision to the code).

(iii) The attorney-in-fact shall be responsible as equity and justice may require to the extent that any gift made pursuant to a power "to make limited gifts" exceeds the limitations imposed by subparagraph (i) or (ii).

(3) A power to make gifts, whether or not limited as aforesaid, shall be construed to empower the attorney-in-fact to make gifts to each donee either outright or in trust; in the case of a gift to a minor, such gifts may be made in trust or in accordance with Chapter 53 (relating to Pennsylvania Uniform [Gifts] Transfers to Minors Act) or section 5155 (relating to order of court). In the case of a gift made in trust, the attorney-in-fact may execute a deed of trust for such purpose, designating one or more persons

(including the attorney-in-fact) as original or successor trustees, or may make additions to an existing trust. In making any gifts, the attorney-in-fact need not treat the donees equally or proportionately and may entirely exclude one or more permissible donees, and the pattern followed on the occasion of any gift or gifts need not be followed on the occasion of any other gift or gifts.

(4) An attorney-in-fact and the donee of a gift shall be responsible as equity and justice may require to the extent that a gift made by the attorney-in-fact is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.

(5) No transfer agent, depository or other third party acting in good faith shall have any responsibility to see to the proper discharge by the attorney-in-fact of his duties hereunder.

\* \* \*

*(i) Power to engage in real property transactions.—A power to “engage in real property transactions” shall mean that the attorney-in-fact may:*

*(1) Acquire or dispose of real property (including the principal’s residence) or any interest therein, including, but not limited to, the power to buy or sell at public or private sale for cash or credit or partly for each; exchange, mortgage, encumber, lease for any period of time; give or acquire options for sales, purchases, exchanges or leases; buy at judicial sale any property on which the principal holds a mortgage.*

*(2) Manage, repair, improve, maintain, restore, alter, build, protect or insure real property; demolish structures or develop real estate or any interest in real estate.*

*(3) Collect rent, sale proceeds and earnings from real estate; pay, contest, protest and compromise real estate taxes and assessments.*

*(4) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part and enforce any mortgage, encumbrance, lien or other claim to real property.*

*(5) Grant easements, dedicate real estate, partition and subdivide real estate and file plans, applications or other documents in connection therewith.*

*(6) In general, exercise all powers with respect to real property that the principal could if present.*

*(j) Power to engage in tangible personal property transactions.—A power to “engage in tangible personal property transactions” shall mean that the attorney-in-fact may:*

*(1) Buy, sell, lease, exchange, collect, possess and take title to tangible personal property.*

*(2) Move, store, ship, restore, maintain, repair, improve, manage, preserve and insure tangible personal property.*

*(3) In general, exercise all powers with respect to tangible personal property that the principal could if present.*

*(k) Power to engage in stock, bond and other securities transactions.—A power to “engage in stock, bond and other securities transactions” shall mean that the attorney-in-fact may:*

*(1) Buy or sell (including short sales) at public or private sale for cash or credit or partly for cash all types of stocks, bonds and securities; exchange, transfer, hypothecate, pledge or otherwise dispose of any stock, bond or other security.*

*(2) Collect dividends, interest and other distributions.*

*(3) Vote in person or by proxy, with or without power of substitution, either discretionary, general or otherwise, at any meeting.*

*(4) Join in any merger, reorganization, voting-trust plan or other concerted action of security holders and make payments in connection therewith.*

*(5) Hold any evidence of the ownership of any stock, bond or other security belonging to the principal in the name of a nominee selected by the attorney-in-fact.*

*(6) Deposit or arrange for the deposit of securities in a clearing corporation as defined in Division 8 of Title 13 (relating to investment securities).*

*(7) Receive, hold or transfer securities in book-entry form.*

*(8) In general, exercise all powers with respect to stocks, bonds and securities that the principal could if present.*

*(l) Power to engage in commodity and option transactions.—A power to “engage in commodity and option transactions” shall mean that the attorney-in-fact may:*

*(1) Buy, sell, exchange, assign, convey, settle and exercise commodities future contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions.*

*(2) Establish or continue option accounts for the principal with any securities of a futures broker.*

*(3) In general, exercise all powers with respect to commodity and option transactions that the principal could if present.*

*(m) Power to engage in banking and financial transactions.—A power to “engage in banking and financial transactions” shall mean that the attorney-in-fact may:*

*(1) Sign checks, drafts, orders, notes, bills of exchange and other instruments (“items”) or otherwise make withdrawals from checking, savings, transaction, deposit, loan or other accounts in the name of the principal and endorse items payable to the principal and receive the proceeds in cash or otherwise.*

*(2) Open and close such accounts in the name of the principal, purchase and redeem savings certificates, certificates of deposit or similar instruments in the name of the principal and execute and deliver receipts for any funds withdrawn or certificates redeemed.*

*(3) Deposit any funds received for the principal in accounts of the principal.*

*(4) Do all acts regarding checking, savings, transaction, deposit, loan or other accounts, savings certificates, certificates of deposit or similar instruments, the same as the principal could do if personally present.*

(5) *Sign any tax information or reporting form required by Federal, State or local taxing authorities, including, but not limited to, any Form W-9 or similar form.*

(6) *In general, transact any business with a banking or financial institution that the principal could if present.*

(n) *Power to borrow money.—A power to “borrow money” shall mean that the attorney-in-fact may borrow money and pledge or mortgage any properties that the principal owns as a security therefor.*

(o) *Power to enter safe deposit boxes.—A power to “enter safe deposit boxes” shall mean that the attorney-in-fact may enter any safe deposit box in the name of the principal; add to or remove the contents of such box, open and close safe deposit boxes in the name of the principal; however, the attorney-in-fact shall not deposit or keep in any safe deposit box of the principal any property in which the attorney-in-fact has a personal interest.*

(p) *Power to engage in insurance transactions.—A power to “engage in insurance transactions” shall mean that the attorney-in-fact may:*

(1) *Purchase, continue, renew, convert or terminate any type of insurance (including, but not limited to, life, accident, health, disability or liability insurance) and pay premiums and collect benefits and proceeds under insurance policies.*

(2) *Exercise nonforfeiture provisions under insurance policies.*

(3) *In general, exercise all powers with respect to insurance that the principal could if present; however, the attorney-in-fact cannot designate himself beneficiary of a life insurance policy unless the attorney-in-fact is the spouse, child, grandchild, parent, brother or sister of the principal.*

(q) *Power to engage in retirement plan transactions.—A power to “engage in retirement plan transactions” shall mean that the attorney-in-fact may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, exercise all powers with respect to retirement plans that the principal could if present.*

(r) *Power to handle interests in estates and trusts.—A power to “handle interests in estates and trusts” shall mean that the attorney-in-fact may receive a bequest, devise, gift or other transfer of real or personal property to the principal in the principal’s own right or as a fiduciary for another and give full receipt and acquittance therefor or a refunding bond therefor; approve accounts of any estate, trust, partnership or other transaction in which the principal may have an interest; and enter into any compromise and release in regard thereto.*

(s) *Power to pursue claims and litigation.—A power to “pursue claims and litigation” shall mean that the attorney-in-fact may:*

(1) *Institute, prosecute, defend, abandon, arbitrate, compromise, settle or otherwise dispose of, and appear for the principal in, any legal proceedings before any tribunal regarding any claim relating to the principal or to any property interest of the principal.*

(2) *Collect and receipt for any claim or settlement proceeds; waive or release rights of the principal; employ and discharge attorneys and others on such terms (including contingent fee arrangements) as the attorney-in-fact deems appropriate.*

(3) *In general, exercise all powers with respect to claims and litigation that the principal could if present.*

(t) *Power to receive government benefits.—A power to “receive government benefits” shall mean that the attorney-in-fact may prepare, sign and file any claim or application for Social Security, unemployment, military service or other government benefits; collect and receipt for all government benefits or assistance; and, in general, exercise all powers with respect to government benefits that the principal could if present.*

(u) *Power to pursue tax matters.—A power to “pursue tax matters” shall mean that the attorney-in-fact may:*

(1) *Prepare, sign, verify and file any tax return on behalf of the principal, including, but not limited to, joint returns and declarations of estimated tax; examine and copy all the principal’s tax returns and tax records.*

(2) *Sign an Internal Revenue Service power of attorney form.*

(3) *Represent the principal before any taxing authority; protest and litigate tax assessments; claim, sue for and collect tax refunds; waive rights and sign all documents required to settle, pay and determine tax liabilities; sign waivers extending the period of time for the assessment of taxes or tax deficiencies.*

(4) *In general, exercise all powers with respect to tax matters that the principal could if present.*

(v) *Powers generally.—All powers described in this section shall be exercisable with respect to any matter in which the principal is in any way interested at the giving of the power of attorney or thereafter and whether arising in this Commonwealth or elsewhere.*

Section 16. Section 5604(a) and (b) of Title 20 are amended to read:  
§ 5604. Durable powers of attorney.

(a) *Definition.—A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing [and the writing contains the words “this power of attorney shall not be affected by my subsequent disability or incapacity” or “this power of attorney shall become effective upon my disability or incapacity” or similar words showing the intent of the principal that the]. The authority conferred shall be exercisable notwithstanding the principal’s subsequent disability or incapacity. A principal may provide in the power of attorney that the power shall become effective at a specified future time or upon the occurrence of a specified contingency, including the disability or incapacity of the principal.*

(b) *Durable power of attorney not affected by disability or lapse of time.—All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless*

*the power of attorney states a time of termination, it is valid notwithstanding the lapse of time since its execution.*

\* \* \*

Section 17. Section 5605 of Title 20 is amended by adding a subsection to read:

§ 5605. Power of attorney not revoked until notice.

\* \* \*

*(c) Divorce.—If a principal designates his spouse as his attorney-in-fact and thereafter the principal and his spouse are divorced from the bonds of matrimony, the designation of the spouse as attorney-in-fact shall be deemed revoked as of the time the divorce decree became effective, unless it appears from the power of attorney that the designation was intended to survive the divorce.*

Section 18. Section 5606 of Title 20 is amended to read:

§ 5606. Proof of continuance of [durable or other] powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney[, durable or otherwise,] stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, [or of the principal's] death[,] or, if applicable, disability or incapacity or divorce and that, if applicable, the specified future time or contingency has occurred, is conclusive proof of the nonrevocation or nontermination of the power at that time and conclusive proof that the specified time or contingency has occurred. The attorney-in-fact shall furnish an affidavit to a person relying upon the power of attorney on demand; however, good faith reliance on the power shall protect the person who acts without an affidavit. If the exercise of the power of attorney requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

Section 19. Title 20 is amended by adding a section to read:

§ 5608. Liability.

*(a) Third party liability.—Any person who is given instructions by an attorney-in-fact in accordance with the terms of a power of attorney shall comply with the instructions. Any person who without reasonable cause fails to comply with those instructions shall be subject to civil liability for any damages resulting from noncompliance. Reasonable cause under this subsection shall include, but not be limited to, a good faith report having been made by the third party to the local protective services agency regarding abuse, neglect, exploitation or abandonment pursuant to section 5(a) of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.*

*(b) Third party immunity.—Any person who acts in good faith reliance on a power of attorney shall incur no liability as a result of acting in accordance with the instructions of the attorney-in-fact.*



Section 20. Sections 5704 and 6111.1 of Title 20 are amended to read:  
§ 5704. Notice to absentee.

The court, if satisfied concerning the interest of the petitioner, shall cause to be advertised in a newspaper of general circulation in the county of the absentee's last known residence and in the legal journal, if any, designated by rule of court for publication of legal notices, once a week for four successive weeks *or for such shorter period as the court may deem appropriate*, and to be otherwise advertised as the court according to the circumstances of the case shall deem advisable, the fact of such application, together with notice that on a specified day, which shall be at least two weeks after the last appearance of any such advertisement, the court, or a master appointed by the court for that purpose, will hear evidence concerning the alleged absence, including the circumstances and duration thereof.

§ 6111.1. Modification by divorce.

If the conveyor is divorced from the bonds of matrimony after making a conveyance, **[all provisions] any provision** in the conveyance which **[were] was** revocable by him at the time of his death and which **[were] was** to take effect at or after his death in favor of or relating to his spouse so divorced shall thereby become ineffective for all purposes *unless it appears in the governing instrument that the provision was intended to survive the divorce.*

Section 21. Title 20 is amended by adding a section to read:

§ 6111.2. *Effect of divorce on designation of beneficiaries.*

*If a person domiciled in this Commonwealth at the time of his death is divorced from the bonds of matrimony after designating his spouse as beneficiary of a life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to his spouse, any designation in favor of his former spouse which was revocable by him after the divorce shall become ineffective for all purposes unless it appears from the wording of the designation or from either a court order or a written contract between the person and his spouse that the designation was intended to survive the divorce. Unless restrained by court order, no insurance company, pension or profit-sharing plan trustee or other obligor shall be liable for making payments to a former spouse which would have been proper in the absence of this section. Any former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.*

Section 22. Section 6114 of Title 20 is amended by adding a paragraph to read:

§ 6114. Rules of interpretation.

In the absence of a contrary intent appearing therein, conveyances shall be construed, as to real and personal estate, in accordance with the following rules:

\* \* \*

(8) *Corporate fiduciaries.—Provisions authorizing or restricting investment in the securities or common trust funds of a corporate fiduciary or the exercise of voting rights in its securities shall, also apply to the securities or common trust funds of any corporation which is an affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504).*

Section 23. Sections 7188 and 7191 of Title 20 are amended to read:  
§ 7188. Annexation of account of distributed estate or trust.

A trustee who has received property from a personal representative or from another trustee in distribution of an estate or another trust, may annex a copy of an account of the administration of such estate or other trust to an account filed by the trustee covering the administration of the trust under his management. If notice of the annexation of the account of the estate or other trust is given to the persons required to be notified of the filing of the trustee's account of the principal trust, confirmation of the principal account shall relieve both the trustee of the principal trust and the personal representative or trustee of the distributed estate or other trust of all liability to beneficiaries of the principal trust for transactions shown in the account so annexed to the same extent as if the annexed account had been separately filed and confirmed. *When the fund covered by the annexed account has itself received property from another source under circumstances that would have permitted annexation of an account under this section or under section 3501.2 (relating to annexation of account of terminated trust, guardianship or agency), accounts for both funds may be annexed.*

§ 7191. Separate trusts.

The court, for cause shown [and with the consent of all parties in interest, may divide], may authorize the division of a trust into two or more separate trusts upon such terms and conditions and with such notice as the court shall direct.

Section 24. Title 20 is amended by adding a section to read:  
§ 7314.1. *Mutual funds.*

*Notwithstanding that a bank or trust company or an affiliate provides services to the investment company or investment trust, including that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor or manager, and receives reasonable compensation for those services and notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, agent or otherwise may invest and reinvest in the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) if the portfolio of the investment company or investment trust consists substantially of investments not prohibited by the governing instrument. With respect to any funds invested, the basis upon which compensation is calculated, expressed as a percentage of asset value or otherwise, shall be disclosed by prospectus, account statement or otherwise to all persons to whom statements of the account are rendered.*

Section 25. Sections 7315.1(b) and 8301 of Title 20 are amended to read:  
§ 7315.1. Retention of cash; temporary investments.

\* \* \*

(b) Temporary investments.—A fiduciary may make temporary investment of funds which he is entitled to hold uninvested [under subsection (a)] or which he wishes to hold in liquid form in short-term interest-bearing obligations or deposits, or other short-term liquid investments, selected in each case in compliance with the standards of section 7302(b) (relating to autho-

rized investments; in general), but without regard to any investment restrictions imposed by the governing instrument and may make a reasonable charge, in addition to all other compensation to which he is entitled, for services rendered in making the temporary investment.

§ 8301. Powers of court to authorize sale, etc. of real property.

The court of common pleas, operating through its appropriate division, may authorize the sale, mortgage, lease or exchange of real property *or grant declaratory relief with respect to real property*:

(1) Where the legal title is held:

(i) by a person whose spouse is an incapacitated person, or has abandoned him or her for one year, or has been absent in circumstances from which the law would presume his or her decease;

(ii) by a tenant of an estate by entireties, when the other tenant of such estate has been absent in circumstances from which the law would presume his or her decease;

(iii) by corporations of any kind having no capacity to convey, or by any unincorporated association; **[or]**

(iv) by any religious, beneficial, or charitable society or association, incorporated or unincorporated, whose title is subject to forfeiture if real property is held in excess of the amount authorized by law[.]; *or*

(v) *by any religious, beneficial or charitable society or association, incorporated or unincorporated, whose title is subject to reversion, possibility of reverter or right of reentry for condition broken if the real property ceases to be used for a purpose specified in a deed, subject to the following:*

*(A) A petition to declare the real property free from reversion, possibility of reverter or right of reentry shall contain an affidavit of an officer of the religious, beneficial or charitable society or association, stating in detail what reasonable efforts have been made to locate or contact the grantor or the grantor's heirs, successors or assigns to obtain a conveyance of the reversion, possibility of reverter or right of reentry, why the real property should be declared free of the reversion, possibility of reverter or right of reentry, and the use of the funds, if any, to be derived from sale of the real property.*

*(B) The court shall have the power to consider all of the circumstances and to grant such equitable relief as shall be just and proper and impose such restrictions upon the use of the funds to be derived from the sale of real property as the court shall deem to be appropriate to further the religious, beneficial or charitable purpose reflected in the deed containing the reversion, possibility of reverter or right of reentry for condition broken.*

(2) Where the legal title is an estate tail, or is subject to contingent remainders, executory interests, or remainders to a class some or all of whom may not be in being or ascertained at the time of the entry of the decree.

(3) Where the legal title is otherwise inalienable.

Section 26. (a) The addition of 20 Pa.C.S. Ch. 53 (relating to Pennsylvania Uniform Transfers to Minors Act) shall apply to a transfer within the scope of 20 Pa.C.S. § 5302 (relating to scope and jurisdiction) made after the effective date of this act if:

(1) the transfer purports to have been made under the Pennsylvania Uniform Gifts to Minors Act repealed by this act; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Pennsylvania Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of 20 Pa.C.S. Ch. 53 is necessary to validate the transfer.

(b) Any transfer of custodial property now defined in 20 Pa.C.S. § 5301(b) (relating to short title of chapter and definitions) made before the effective date of this act shall be validated notwithstanding that there was no specific authority in the Pennsylvania Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(c) The addition of 20 Pa.C.S. Ch. 53 shall apply to all transfers made before the effective date of this act in a manner and form prescribed in the Pennsylvania Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this act.

Section 27. (a) The addition of 20 Pa.C.S. Ch. 27 (relating to contractual arrangements relating to succession) shall apply to contracts made on or after January 1 of the calendar year following the year of enactment.

(b) The amendment of 20 Pa.C.S. §§ 711 (relating to mandatory exercise of jurisdiction through orphans' court division in general), 2514 (relating to rules of interpretation), 2515 (relating to devise or bequest to trust), 3316 (relating to investment of funds), 5604(b) (relating to durable powers of attorney), 6114 (relating to rules of interpretation), 7314.1 (relating to mutual funds), 7315.1 (relating to retention of cash; temporary investments) and 8301 (relating to powers of court to authorize sale, etc. of real property) shall apply to instruments, trusts and the estates of decedents whether the instrument was executed, the trust was created or the decedent died before, on or after the effective date of this act.

(c) The amendment of 20 Pa.C.S. §§ 5601.1 (relating to powers of attorney presumed durable) and 5605(c) (relating to powers of attorney not revoked until notice) shall apply to powers of attorney executed on or after the effective date of the act.

(d) The amendment of 20 Pa.C.S. §§ 2204 (relating to disclaimers, releases and charges against elective share), 2507 (relating to modification by circumstances), 3503 (relating to notice to parties in interest), 3532 (relating to at risk of personal representative), 6111.1 (relating to modification by divorce) and 6111.2 (relating to effect of divorce on designation of beneficiaries) shall apply to the estates of decedents dying on or after the effective date of this act.

(e) The remaining amendments in this act shall apply beginning with the effective date of this act.

Section 28. This act shall take effect immediately.

APPROVED—The 16th day of December, A. D. 1992.

ROBERT P. CASEY