

No. 2006-98

AN ACT

SB 660

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, adding the Uniform Trust Act; abolishing the rule against perpetuities; making conforming amendments; and making a related repeal.

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

Section 1. Sections 723, 724, 725, 751(6) and 908(a) of Title 20 of the Pennsylvania Consolidated Statutes are amended to read:

§ 723. Situs of testamentary trust.

The situs of a testamentary trust shall be in the county where letters were granted to the personal representative, and in the absence of such letters, then in a county where such letters could have been granted, and if no such letters could have been granted, then in a county in which any trustee resides or is located.

§ 724. Situs of inter vivos trust.

(a) When provided for in trust instrument.—If the trust instrument expressly provides for the situs of the inter vivos trust, its situs shall be at the place within or without the Commonwealth which is in accord with such provision.

(b) Not provided for in trust instrument.—If the trust instrument does not expressly provide for the situs of the inter vivos trust, its situs shall be:

(1) Resident settlor.—In the case of an inter vivos trust whose settlor is domiciled in the Commonwealth:

(i) in the settlor's lifetime, either in the county of his principal residence or in the county in which any of the trustees resides or has a place of business; and

(ii) after the settlor's death, either in the county in which letters have been granted to his personal representative, or in a county in which letters could have been granted, or in a county which is the principal place of the trust's administration in which any trustee resides or has a place of business.

(2) Nonresident settlor.—In the case of an inter vivos trust whose settlor:

(i) is not domiciled in the Commonwealth at the time when during his lifetime the first application is made to a court concerning the trust; or

(ii) was not domiciled in the Commonwealth at his death if the first application to a court concerning the trust was made thereafter,

in a county which is the principal place of the trust's administration or in which any trustee resides or has a place of business and if there is no such trustee, then in a county where property of the trust is located.

§ 725. Change of situs; order of court.

A court having jurisdiction of a testamentary or inter vivos trust, on application of a trustee or of any party in interest, after such notice to all parties in interest as it shall direct and aided if necessary by the report of a master, and after such accounting and such provision to insure the proper payment of all taxes to the Commonwealth and any political subdivision thereof as the court shall require, may direct, notwithstanding any of the other provisions of this chapter, that the situs of the trust shall be changed to any other place within or without the Commonwealth if the court shall find the change necessary or desirable for the proper administration of the trust. Upon such change of situs becoming effective by the assumption of jurisdiction by another court, the jurisdiction of the court as to the trust shall cease and thereupon the situs of the trust for all purposes shall be as directed by the court.]

§ 751. Appointment; purpose.

The orphans' court division may appoint:

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(6) Representation of parties in interest.—Persons interested in an estate [or trust] as beneficiary or heir, if minors or otherwise legally incapacitated, and possible unborn or unascertained persons, may be represented in a judicial proceeding by a guardian or trustee ad litem if the court deems necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person who is a minor or otherwise legally incapacitated, unborn or unascertained if there is a living person sui juris having a similar interest or if such person is or would be issue of a living ancestor sui juris and interested in the estate [or trust] whose interest is not adverse to his. If the whereabouts of any beneficiary or heir is unknown or if there is doubt as to his existence, the court shall provide for service of notice and representation in the judicial proceeding as it deems proper.

§ 908. Appeals.

(a) When allowed.—Any party in interest *seeking to challenge the probate of a will or* who is *otherwise* aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to three months.

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

§ 3384.1. Notice after settlor of revocable trust has died.

No later than 30 days after the date on which the trustee of a revocable trust learns that a personal representative has been appointed for the deceased settlor's estate, the trustee shall send to the settlor's personal representative the notice described in section 7780.3(i) (relating to duty to inform and report).

§ 3534.1. Cost of distribution of tangible personal property.

Except as otherwise provided in the will, if any, the personal representative shall pay as an expense of administration the reasonable expenses of storage, insurance, packing and delivery of tangible personal property to a beneficiary.

Section 3. Sections 3543, 3702(h), 6101, 6102, 6104(d), 6106 and 6107 of Title 20 are amended to read:

§ 3543. [Interest or income] Income on distributive shares.

(a) Pecuniary legacy.—A pecuniary legacy bequeathed in trust shall **[bear interest] be entitled to income** at the rate of 5% per annum from the death of the decedent until the payment of the legacy, and when not in trust **[shall bear interest at the rate of 5% per annum]** from one year after the death of the decedent until the payment of the legacy.

(b) Specific legacy or devise.—A specific legatee or devisee shall be entitled to the net income from property given to him accrued from the date of the death of the decedent.

(c) Demonstrative legacy.—A demonstrative legacy shall **[bear interest] be entitled to income** from the death of the decedent until the payment of the legacy at the rate earned by the property out of which it is primarily payable, and to the extent that it is not paid from that source, **[shall bear interest]** at the rate of 5% per annum from one year after the death of the decedent until the payment of the legacy.

(d) Residuary legacy or devise.—All income from real and personal estate earned during the period of administration and not payable to others **pursuant to the governing instrument or this section** shall be distributed pro rata among the income beneficiaries of any trust created out of the residuary estate and the other persons entitled to the residuary estate.

(e) Future date.—A legacy payable at a future date, unless earlier set aside as a separate trust, shall not begin to bear **[interest or]** income until three months after the date fixed for payment or delivery.

(f) Relationship.—**[Interest or income] Income** shall be paid on distributive shares with no distinction because of the relationship of the distributee to the decedent.

(g) Testamentary provisions.—All rules set forth in this section are subject to the provisions of the decedent's will.

§ 3702. Equitable apportionment of Federal estate tax.

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(h) Interest and penalties.—Interest and penalties shall be apportioned in the same manner as the principal amount of the Federal estate tax **unless the**

court finds it inequitable to do so by reason of special circumstances, in which case the court may direct a different apportionment of interest and penalties. To the extent the interest or penalties are apportioned to or are payable out of a residuary estate or a trust, they shall be paid from income or principal in the same manner as the Federal estate tax, subject to a fiduciary's power to adjust under Chapter 81 (relating to principal and income).

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§ 6101. Definitions.

The following words and phrases, when used in this chapter, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

["Charity" or "charitable purposes." Includes but is not limited to the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental or municipal purposes, and other purposes the accomplishment of which is beneficial to the community.]

"Conveyance." An act by which it is intended to create an interest in real or personal property whether the act is intended to have inter vivos or testamentary operation. It shall include an act by which a power of appointment whenever given is exercised.

[§ 6102. Termination of trusts.

(a) Failure of original purpose.—The court having jurisdiction of a trust heretofore or hereafter created, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to one or more beneficiaries provided the court after hearing is satisfied that the original purpose of the conveyer cannot be carried out or is impractical of fulfillment and that the termination, partial termination, or allowance more nearly approximates the intention of the conveyer, and notice is given to all parties in interest or to their duly appointed fiduciaries.

(b) Distribution of terminated trust.—Whenever the court shall decree termination or partial termination of a trust under the provisions of this section, it shall thereupon order such distribution of the principal and undistributed income as it deems proper and as nearly as possible in conformity with the conveyer's intention.

(c) Other powers.—Nothing in this section shall limit any power of the court to terminate or reform a trust under existing law.]

§ 6104. Rule against perpetuities.

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(d) Applicability.—The provisions of this section and of section 6105 (relating to rule against perpetuities; disposition when invalidity occurs) shall apply to all interests [heretofore or hereafter] created *before January 1, 2007*.

§ 6106. Income accumulations; when valid.

(a) General.—[No] *Except as set forth in section 6107.1 (relating to applicability of rule against perpetuities), no* direction or authorization to accumulated income shall be void, except as herein provided.

(b) Void accumulations; exceptions.—[Upon] *Except as set forth in section 6107.1, upon* the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events, any direction or authorization to accumulate income shall be void. This subsection shall not apply to:

(1) Directions or authorizations to accumulate income in a trust for any charitable purpose or purposes.

(2) Directions or authorizations to accumulate income in a bona fide trust inter vivos primarily for the benefit of business employees, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employee-benefit plan.

(c) Time for beginning period.—[The] *Except as set forth in section 6107.1, the* period allowed by the common law rule against perpetuities under subsection (b) of this section shall be measured from the expiration of any time during which one person while living has the unrestricted power to transfer to himself the entire legal and beneficial interest in the property.

§ 6107. Income accumulations; disposition when invalidity occurs.

[Income] *Except as set forth in section 6107.1 (relating to applicability of rule against perpetuities), income* subject to a void direction or authorization to accumulate shall be distributed to the person or proportionately to the persons in whom the right to such income has vested by the terms of the instrument or by operation of law.

Section 3.1. Title 20 is amended by adding a section to read:

§ 6107.1. *Applicability of rule against perpetuities.*

(a) *Traditional rule.—Sections 6104 (relating to rule against perpetuities), 6105 (relating to rule against perpetuities; disposition when invalidity occurs), 6106 (relating to income accumulations; when valid) and 6107 (relating to income accumulations; disposition when invalidity occurs):*

(1) *shall apply to every interest created before January 1, 2007; but*

(2) *shall not apply to any interest created after December 31, 2006.*

(b) *Modern rule.—All of the following apply to every interest created after December 31, 2006:*

(1) *No interest shall be void as a perpetuity.*

(2) *No direction or authorization to accumulated income shall be void as a perpetuity.*

Section 3.2. Sections 6110, 6112 and 6114 of Title 20 are amended to read:

[§ 6110. Administration of charitable interests.

(a) General rule.—Except as otherwise provided by the conveyer, if the charitable purpose for which an interest shall be conveyed outright

or in a testamentary or inter vivos trust shall be or become indefinite or impossible or impractical of fulfillment, or if it shall not have been carried out for want of a trustee or because of the failure of a trustee to designate such purpose, the court may, on application of the trustee or of any interested person or of the Attorney General, after proof of notice to the Attorney General when he is not the petitioner, order an administration or distribution of the interest for a charitable purpose in a manner as nearly as possible to fulfill the intention of the conveyer, whether his charitable intent be general or specific.

(b) **Administrative termination of small charitable trusts.**—A trust held solely for charitable purposes with assets not exceeding \$10,000, whether heretofore or hereafter created, may be terminated by the trustee at its inception or at any time thereafter with the consent of the Attorney General and all charitable organizations which are designated by name in the conveyance as beneficiaries. Upon such termination the assets, subject to the approval of the Attorney General, shall be delivered to the organizations, if any, designated in the trust instrument or, if none, to organizations selected by the trustee, in either case to be held and applied for such general or specific charitable purposes and on such terms as will, in the trustee's discretion, fulfill as nearly as possible the conveyer's intention.

(c) **Judicial termination of charitable trusts.**—If the separate existence of a trust solely for charitable purposes, whether heretofore or hereafter created, results or will result in administrative expense or other burdens unreasonably out of proportion to the charitable benefits, the court may, upon application of the trustee or any interested person and after notice to the Attorney General, terminate the trust, either at its inception or at any time thereafter, and award the assets outright, free of the trust, to the charitable organizations, if any, designated in the conveyance or, if none, to charitable organizations selected by the court, in either case for such purposes and on such terms as the court may direct to fulfill as nearly as possible the conveyer's intentions other than any intent to continue the trust, if the court is satisfied that the charitable organizations will properly use or administer the assets.

§ 6112. Spendthrift trusts.

Income of a trust subject to spendthrift or similar provisions shall nevertheless be liable for the support of anyone whom the income beneficiary shall be under a legal duty to support.]

§ 6114. Rules of interpretation.

[In] (a) **General rule.**—*Except as provided in subsection (b), 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:*

- (1) **Meaning of "heirs" and "next of kin," etc.; time of ascertaining class.**—A conveyance of real or personal property, whether directly or in

trust, to the conveyor's or another designated person's "heirs" or "next of kin" or "relatives" or "family" or to "the persons thereunto entitled under the intestate laws," or to persons described by words of similar import, shall mean those persons, including the spouse, who would take under the intestate laws if such conveyor or other designated person were to die intestate at the time when such class is to be ascertained, a resident of the Commonwealth, and owning the property so conveyed: Provided, That the share of a spouse other than the spouse of the conveyor, shall not include the allowance under the intestate laws. The time when such class is to be ascertained shall be when the conveyance to the class is to take effect in enjoyment.

(2) Time for ascertaining class.—In construing a conveyance to a class other than a class described in paragraph (1) of this section, the class shall be ascertained at the time the conveyance is to take effect in enjoyment, except that the issue then living of any member of the class who is then dead shall take per stirpes the share which their deceased ancestor would have taken if he had then been living.

(3) Meaning of "die without issue" and similar phrases.—In any conveyance of real or personal estate, the words "die without issue," "die without leaving issue," "have no issue," or other words importing either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at his death, and not an indefinite failure of his issue.

(4) Adopted children.—In construing a conveyance to a person or persons described by relationship to the conveyor or to another, any adopted person shall be considered the child of his adopting parent or parents, except that, in construing the conveyance of a conveyor who is not the adopting parent, an adopted person shall not be considered the child of his adopting parent or parents unless the adoption occurred during the adopted person's minority or reflected an earlier parent-child relationship that existed during the child's minority. An adopted person who is considered the child of his adopting parent or parents under this paragraph shall not be considered as continuing to be the child of his natural parents except in construing the conveyance of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person shall also be considered the child of such natural parent.

(5) Persons born out of wedlock.—In construing a conveyance to a person or persons described by relationship to the conveyor or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father if the paternity of the natural father has been determined according to the provisions of section 2107 (relating to persons born out of wedlock).

(6) Inheritance tax.—The inheritance tax imposed by the Inheritance and Estate Tax Act of 1961 upon the conveyance of any estate, income or interest, for a term of years, for life, or for other limited period, shall be paid out of the principal of the property by which the estate, income or interest is supported.

(7) Employee benefits.—Benefits received by a trust under a Federally qualified profit sharing, pension or stock bonus plan shall not be available for the payment of obligations of the decedent or of his estate.

(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).

(b) Exception.—This section does not apply to trusts under Chapter 77 (relating to trusts).

Section 4. Chapter 71 heading, Subchapter A heading, sections 7101, 7103, 7104 and 7105, Subchapter B heading, sections 7111 and 7112, Subchapter C heading, section 7121, Subchapter D heading, sections 7131, 7132, 7133, 7134, 7135 and 7136, Subchapter E heading, sections 7141, 7142, 7143, 7144 and 7145, Subchapter F heading, sections 7181, 7182, 7183, 7184, 7185, 7186, 7187 and 7188, Subchapter G heading and sections 7191 and 7192 of Title 20 are amended to read:

**[CHAPTER 71
TRUST ESTATES**

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**SUBCHAPTER A
APPOINTMENT OF TRUSTEES**

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§ 7101. To fill vacancy.

The court, after such notice to parties in interest as it shall direct, may appoint a trustee to fill a vacancy in the office of trustee, subject to the provisions, if any, of the trust instrument.

§ 7103. Resident co-trustee.

When no trustee shall be a resident of the Commonwealth, the court, after such notice as it shall direct, may appoint one or more additional trustees resident within the Commonwealth to serve with the nonresident trustee or trustees.

§ 7104. Power of trustee to resign.

(a) Court approval.—Any trustee may resign with court approval.

(b) Without court approval if authorized by governing instrument.—Any trustee may resign without court approval if authorized to resign by the governing instrument.

(c) When individual trustee may resign without court approval and without authorization in governing instrument.—Unless expressly provided to the contrary in the governing instrument, an individual trustee may resign without court approval and without authorization in the governing instrument if:

(1) consented to in writing by all co-trustees, if there are one or more co-trustees; and

(2) consented to in writing by all the sui juris beneficiaries currently eligible to receive income and by all the sui juris beneficiaries who would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the resignation, provided that no such resignation shall be effective unless there is at least one such income beneficiary and at least one such remainderman.

This subsection shall not authorize the sole trustee of a trust to resign unless the governing instrument names a successor trustee or provides a method for appointing a successor trustee, and in either case the resignation shall not be effective until the successor trustee accepts in writing his appointment.

(d) Liability.—The resignation of a trustee shall not by itself relieve the resigning trustee of liability in connection with the administration of the trust.

(e) Definition.—As used in this section, the term “sui juris beneficiary” includes a guardian for an incapacitated beneficiary, an agent acting under a durable power of attorney for an incompetent beneficiary and a court-appointed guardian of a minor’s estate or, if none, the minor’s parents.

§ 7105. Filing resignations and appointments.

A resignation of a trustee, an appointment of a trustee and an acceptance of an appointment of a trustee may be filed with the clerk of the orphans’ court division having jurisdiction over the trust.

SUBCHAPTER B BOND OF TRUSTEES

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§ 7111. Necessity, form and amount.

(a) When required.—Except as hereinafter provided, the court, in its discretion, may require any trustee, whether or not a resident of the Commonwealth, to execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the court considers necessary having regard to the value of the personal estate in the control of the trustee.

(b) When not required.—

(1) When named in or provided for in trust instrument.—No bond shall be required of a trustee, whether or not a resident of the

Commonwealth, who is named in or whose appointment is to be made in a manner specified by the trust instrument, unless such instrument requires a bond or the court, for cause shown, deems it advisable.

(2) **Corporate trustee.**—No bond shall be required of a bank and trust company or trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, unless the court, for cause shown, deems it advisable.

(c) **Condition.**—

(1) **When one trustee.**—The condition of this obligation is, that if the said trustee shall well and truly administer the trust according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) **When two or more trustees.**—The condition of this obligation is, that if the said trustees or any of them shall well and truly administer the trust according to law, this obligation shall be void as to the trustee or trustees who shall so administer the trust; but otherwise, it shall remain in force.

§ 7112. **Requiring or changing amount of bond.**

The court, for cause shown, and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of the existing bond, or require more or less security therefor.

**SUBCHAPTER C
REMOVAL AND DISCHARGE**

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§ 7121. **Grounds and procedure.**

The grounds and the procedure for the removal or discharge of a trustee and his surety and the effect of such removal or discharge shall be the same as are set forth in the following provisions of this title relating to the removal and discharge of a personal representative and his surety:

Section 3182 (relating to grounds for removal).

Section 3183 (relating to procedure for and effect of removal).

Section 3184 (relating to discharge of personal representative and surety).

**SUBCHAPTER D
POWERS, DUTIES AND LIABILITIES**

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§ 7131. **Possession of real and personal property.**

Except as otherwise provided in the trust instrument, the trustee, until it is distributed or sold, shall have the right to and shall take possession of, maintain and administer each real and personal asset of the trust, collect the rents and income from it, and make all reasonable

expenditures necessary to preserve it. He shall also have the right to maintain any action with respect to real or personal property of the trust.

§ 7132. Abandonment of property.

When any property is so burdensome or is so encumbered or is in such condition that it is of no value to the trust, the trustee may abandon it. When such property cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the trustee to transfer or renounce it without consideration if it shall find that this will be for the best interests of the trust.

§ 7133. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a trustee shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or a minor's estate:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representative on contracts).

Section 3332 (relating to inherent powers and duties).

Section 3353 (relating to order of court).

Section 3354 (relating to power given in governing instrument).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

Section 3359 (relating to record of proceedings; county where real estate lies).

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

Section 5147 (relating to proceedings against guardian).

§ 7134. Investments.

Subject only to the provisions of a governing instrument, if any, a trustee may accept, hold, invest in and retain investments as provided by Chapter 72 (relating to prudent investor rule).

§ 7135. Substituted or succeeding trustee.

A substituted or succeeding trustee, except as otherwise provided by the trust instrument, shall have all the powers, duties and liabilities of the original trustee. He shall have the power to recover the assets of the trust from his predecessor in administration or from the fiduciary of such predecessor and, except as otherwise provided by the governing instrument, shall stand in the predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor.

§ 7136. Effect of removal, or of probate of later will or codicil.

No act of administration performed by a testamentary trustee in good faith shall be impeached by the subsequent revocation of the probate of the will from which he derives his authority, or by the subsequent probate of a later will or of a codicil, or by the subsequent dismissal of the trustee: Provided, That regardless of the good or bad faith of the testamentary trustee, no person who deals in good faith with a testamentary trustee shall be prejudiced by the subsequent occurrence of any of these contingencies.

**SUBCHAPTER E
SALES, PLEDGES, MORTGAGES, LEASES, OPTIONS
AND EXCHANGES**

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§ 7141. Power to sell.

Except as otherwise provided by the trust instrument, the trustee, for any purpose of administration or distribution, may sell, at public or private sale, any real or personal property of the trust. When the trustee has been required to give bond, no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

§ 7142. Power to lease.

Except as otherwise provided by the trust instrument, the trustee may lease any real or personal property of the trust for a term not exceeding five years after its execution, unless a longer term is approved by the court.

§ 7143. Title of purchaser.

If the trustee has given such bond, if any, as shall be required in accordance with this title, any sale, pledge, mortgage, or exchange by a trustee, whether pursuant to a decree or to the exercise of a power conferred by the trust instrument or of a power under this title, shall pass the full title of the trust therein, unless otherwise specified. Persons dealing with the trustee shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the trust. Any sale or exchange by a trustee pursuant to a decree under section 3353 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the subsequent dismissal of the trustee nor shall any such sale, mortgage, exchange, or conveyance by a testamentary trustee be prejudiced by the terms of any will or codicil thereafter probated, if the person dealing with the trustee did so in good faith.

§ 7144. Reports for school district trustees.

(a) Scope.—This section applies if a school district is a trustee of land in accordance with all of the following:

- (1) The land is held for the benefit of the public.
- (2) The land is not used directly for school purposes.

(b) Requirement.—

- (1) By January 30, the school district shall prepare a report for the prior year concerning the trust.
- (2) The report shall detail all of the following:
 - (i) Revenues generated.
 - (ii) Expenses incurred.
 - (iii) Balance of funds held by the school district as trustee.
 - (iv) A statement regarding the activities taken by the trustee during the prior year to advance the purposes of the trust.
- (3) The report must be certified as correct by the district superintendent.
- (4) The report shall be made public as follows:
 - (i) The report shall be published in 14-point type in a newspaper of general circulation in each county in which the land is located.
 - (ii) The report shall be available during business hours for inspection and copying at the office of the district superintendent. A reasonable fee may be charged for copying.

§ 7145. Jurisdiction.

Notwithstanding 42 Pa.C.S. § 931 (relating to original jurisdiction and venue), jurisdiction over an action involving land referred to in

section 7144 (relating to reports for school district trustees) shall be vested in the court of common pleas in the judicial district where:

- (1) all of the land is located; or
- (2) more than 50% of the land is located.

SUBCHAPTER F
ACCOUNTS, AUDITS, REVIEWS AND DISTRIBUTIONS

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§ 7181. When account filed.

A trustee shall file an account of his administration whenever directed to do so by the court and may file an account at any other time.

§ 7182. Where accounts filed.

All accounts of trustees shall be filed in the office of the clerk.

§ 7183. Notice, audits, reviews, and distribution.

The provisions concerning accounts, audits, reviews, distributions and rights of distributees in trust estates shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3503 (relating to notice to parties in interest).

Section 3504 (relating to representation of parties in interest).

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3532(c) (relating to at risk of personal representative).

Section 3533 (relating to award upon final confirmation of account).

Section 3534 (relating to distribution in kind).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3538 (relating to distributions involving persons born out of wedlock).

Section 3539 (relating to change in law after pattern of distribution established).

Section 3540 (relating to absentee and additional distributees).

Section 3541 (relating to order of abatement).

Section 3544 (relating to liability of personal representative for interest).

Section 3545 (relating to transcripts of balances due by personal representative).

§ 7184. Disposition of income.

Except as otherwise provided by the trust instrument, the trustee with the approval of the court, may pay income distributable to a minor or incompetent beneficiary for whose estate no guardian has been appointed directly to the minor or incompetent, or expend and apply it for his maintenance or education.

§ 7185. Compensation.

(a) When allowed.—The court shall allow such compensation to the trustee as shall in the circumstances be reasonable and just, and may take into account the market value of the trust at the time of the allowance, and calculate such compensation on a graduated percentage.

(b) Allowed out of principal or income.—The fact that a fiduciary's service has not ended or the fact that the trust has not ended or the fact that the trust is perpetual shall not be a bar to the fiduciary's receiving compensation for his services out of the principal of the trust. Whenever it shall appear either during the continuance of a trust or at its end, that a fiduciary has rendered services for which he has not been fully compensated, the court having jurisdiction over his accounts, shall allow him such original or additional compensation out of the trust income or the trust principal or both, as may be necessary to compensate him for the services theretofore rendered by him. The provisions of this section shall apply to ordinary and extraordinary services alike.

(c) Compensation prescribed by will or other instrument.—Where the compensation of a fiduciary is expressly prescribed either by provisions of a will or deed of trust or other instrument under which he is acting or by provisions of an agreement between him and the creator of a trust, nothing in this section shall change in any way the rights of any party in interest or of the fiduciary.

(d) Cemetery lots.—The provisions of this section shall not apply to trusts created by cemetery lot owners as endowments for the endowed care and maintenance of burial or cemetery lots, where the corpus or principal sum involved is or does not exceed \$5,000, in order that the corpus or principal sum for such endowments should remain undiminished.

§ 7186. Failure to present claim at audit.

(a) General rule.—Any person who at the audit of a trustee's account has a claim which arose out of the administration of trust property, or arises out of the distribution of such property upon any interim or final accounting of the trust, and which is not reported to the court as an admitted claim, and who shall fail to present his claim at the call for audit or confirmation, shall be forever barred, against:

- (1) any trust property distributed pursuant to such audit or confirmation;
- (2) any distributee of trust property distributed pursuant to such audit or confirmation; and

(3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), any trust property awarded back upon further trust pursuant to such audit or confirmation.

(b) Liens and charges unimpaired.—Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the trust existing at the time of the audit.

§ 7187. Interest or income on distributive shares.

Except as otherwise provided by the trust instrument or by the provisions of section 3543 (relating to interest or income on distributive shares):

(1) Pecuniary gift.—When a sum of money is directed to be set aside at a specified time as a separate trust, it shall bear interest at the rate of 5% per annum from the date it was to be set aside until it is set aside. When a sum of money is directed to be paid outright, it shall bear interest at the rate of 5% per annum from three months after it became payable until it is paid.

(2) Specific gift.—A donee of a gift of specific real or personal property directed to be distributed from a trust shall be entitled to the net income from property given to him accrued from the date it became distributable to him.

(3) Residuary gift.—All income from real and personal property earned during the administration of a trust and not payable to others shall be distributed pro rata among the income beneficiaries of any continuing trust of a residuary share and other persons entitled to residuary shares of the trust.

§ 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.

SUBCHAPTER G
SEPARATION AND COMBINATION OF TRUSTS

* * *

§ 7191. Separate trusts.

(a) **Without court approval.**—A trustee may, without court approval, divide a trust into separate trusts, allocating to each separate trust either a fractional share of each asset and each liability held by the original trust or assets having an appropriate aggregate fair market value and fairly representing the appreciation or depreciation in the assets of the original trust as a whole. If the division reflects disclaimers or different tax elections, the division shall relate back to the date to which the disclaimer or tax election relates.

(b) **With court approval.**—The court, for cause shown, 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.

(c) **Separate fund.**—A trustee may, without court approval, set aside property in a separate fund prior to actual distribution, after which income earned on the separate fund and appreciation or depreciation of the property set-aside shall belong to the separate fund.

§ 7192. Combination of trusts.

The court, for cause shown, may authorize the combination of separate trusts with substantially similar provisions upon such terms and conditions and with such notice as the court shall direct notwithstanding that the trusts may have been created by separate instruments and by different persons. If necessary to protect possibly different future interests, the assets shall be valued at the time of any such combination and a record made of the proportionate interest of each separate trust in the combined fund.]

Section 5. The definition of “mutual fund” in section 7201 of Title 20 is amended to read:

§ 7201. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Mutual fund.” 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.).

* * *

Section 6. Sections 7314.1 and 7503(b) of Title 20 are amended 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.

§ 7503. Application of chapter.

* * *

(b) Exclusion.—This chapter shall not apply to:

(1) Any trust during the time that the trust is revocable or amendable by its settlor.

(2) A spouse of a decedent or settlor where the spouse is the trustee of a testamentary or inter vivos trust for which a marital deduction has been allowed.

[(3) A trustee who possesses in his individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust.]

(4) A trust under a governing instrument that by specific reference expressly rejects the application of this chapter.

[(5) A trust created under governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would be included in the gross estate of the trustee for Federal estate tax purposes if the trustee had died on March 21, 1999, without having exercised the power under the governing instrument to make discretionary distributions of principal or income to or for the benefit of the trustee, the trustee's estate or the creditors of either.]

Section 7. Section 7504 of Title 20 is amended by adding a subsection to read:

§ 7504. Certain trustee powers not exercisable.

* * *

(c) *Exceptions.—This section shall not apply to:*

(1) A trustee who possesses in his individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust.

(2) A trust created under a governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would have been included in the gross estate of the trustee for Federal estate

tax purposes if the trustee had died on March 21, 1999, without having exercised the power under the governing instrument to make discretionary distributions of principal or income to or for the benefit of the trustee, the trustee's estate or the creditors of either.

Section 8. Section 7506 of Title 20 is amended to read:

§ 7506. Certain powers of beneficiaries not exercisable.

(a) General rule.—No beneficiary of a trust in an individual, trustee or other capacity may appoint *himself or herself as trustee* or remove *a trustee* and appoint *in place of the trustee so removed* a trustee who is related or subordinate to the beneficiary within the meaning of *section 672(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 672(c) [(relating to definitions and rules)]* in each case unless:

(1) the trustee's discretionary power to make distributions to or for the beneficiary is limited by an ascertainable standard relating to the beneficiary's health, education, support or maintenance within the meaning of *sections 2041 and 2514 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 2041 [(relating to powers of appointment)] and 2514 [(relating to powers of appointment)]*;

(2) the trustee's discretionary power may not be exercised to satisfy any of the beneficiary's legal obligations for support or other purposes; and

(3) the trustee's discretionary power may not be exercised to grant to the beneficiary a general power to appoint property of the trust to the beneficiary, the beneficiary's estate or the creditors *[thereof] of either* within the meaning of *section 2041 of the Internal Revenue Code of 1986 (26 U.S.C. § 2041)*.

(b) **[Exception] Exceptions.**—This section shall not apply:

(1) if the appointment of the trustee by the beneficiary may be made only in conjunction with another person having a substantial interest in the property of the trust subject to the power which is adverse to the exercise of the power in favor of the beneficiary within the meaning of *section 2041(b)(1)(C)(ii) of the Internal Revenue Code of 1986 (26 U.S.C. § 2041(b)(1)(C)(ii))* or the appointment is in conformity with a procedure governing appointments approved by the court before December 21, 1998[.];

(2) *to any beneficiary who possesses in an individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust; or*

(3) *to a trust created under a governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would have been included in the gross estate of the beneficiary for Federal estate tax purposes if the beneficiary had died on March 21, 1999.*

Section 9. Title 20 is amended by adding a chapter to read:

CHAPTER 77
TRUSTS

Subchapter

- A. General Provisions
- B. Judicial Proceedings
- C. Representation
- D. Creation, Validity, Modification and Termination of Trust
- E. Creditor's Claims; Spendthrift and Discretionary Trusts
- F. Revocable Trusts
- G. Office of Trustee
- H. Duties and Powers of Trustee
- I. Liability of Trustees and Rights of Persons Dealing with Trustees
- J. Miscellaneous Provisions

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

- 7701. Short title of chapter - UTC 101.
- 7702. Scope of chapter - UTC 102.
- 7703. Definitions - UTC 103.
- 7704. Knowledge - UTC 104.
- 7705. Trust instrument controls; mandatory rules - UTC 105.
- 7706. Common law of trusts; principles of equity - UTC 106.
- 7707. Governing law - UTC 107.
- 7708. Situs of trust.
- 7709. Methods and waiver of notice - UTC 109.
- 7710. Notice; others treated as beneficiaries - UTC 110.
- 7710.1. Nonjudicial settlement agreements - UTC 111.
- 7710.2. Rules of construction - UTC 112.

§ 7701. Short title of chapter - UTC 101.

Subchapters A (relating to general provisions) through I (relating to liability of trustees and rights of persons dealing with trustees) shall be known and may be cited as the Uniform Trust Act.

§ 7702. Scope of chapter - UTC 102.

This chapter applies to express trusts, charitable and noncharitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

§ 7703. Definitions - UTC 103.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Action.” With respect to an act of a trustee, includes a failure to act.

“Beneficiary.” A person that:

(1) has a present or future beneficial interest in a trust, vested or contingent; or

(2) in a capacity other than that of trustee or protector, holds a power of appointment over trust property.

“Charitable trust.” A trust, or portion of a trust, created for a charitable purpose described in section 7735(a) (relating to charitable purposes; enforcement - UTC 405).

“Current beneficiary.” A person 18 years of age or older to or for whom income or principal of a trust must be distributed currently or a person 25 years of age or older to or for whom income or principal of a trust may, in the trustee’s discretion, be distributed currently.

“Guardian.” A person other than a guardian ad litem who is appointed by the court to make decisions regarding the property of an individual.

“Interests of the beneficiaries.” The beneficial interests provided in the trust instrument.

“Jurisdiction.” With reference to a geographic area, a country, state or county.

“Power of withdrawal.” The unrestricted power of a beneficiary, acting as a beneficiary and not as a trustee, to transfer to himself or herself the entire legal and beneficial interest in all or a portion of trust property. However, a power to withdraw the greater of the amount specified in section 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2041(b)(2), 2503(b) or 2514(e)), or any lesser amount determined by reference to one or more of these provisions, may not be treated as a power of withdrawal.

“Property.” Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

“Qualified beneficiary.” Assuming nonexercise of all testamentary powers of appointment, a beneficiary who on the date the beneficiary’s qualification is determined:

(1) is a distributee or permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) terminated on that date; or

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

“Revocable trust.” A trust is revocable to the extent the settlor, immediately before the time as of which the determination is made, had the power, acting without the consent of the trustee or any person holding an interest adverse to revocation, to prevent the transfer of the trust property at the settlor’s death by revocation or amendment of or withdrawal of property from the trust.

“Settlor.” A person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to

a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

"Spendthrift provision." A provision in a trust instrument that restrains both voluntary and involuntary transfer of a beneficiary's interest.

"Trust instrument." A will or other written instrument executed by the settlor that contains trust provisions, including any amendments thereto.

"Trustee." Includes an original, additional and successor trustee and a cotrustee.

§ 7704. Knowledge - UTC 104.

(a) When person has knowledge.—For the purposes of this chapter and subject to subsection (b), a person has knowledge of a fact involving a trust if the person has:

- (1) actual knowledge of it;
- (2) received a notice or notification of it; or
- (3) reason to know it from all the facts and circumstances known to the person at the time in question.

(b) Employees.—For the purposes of this chapter, an organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 7705. Trust instrument controls; mandatory rules - UTC 105.

(a) Trust instrument controls.—Except as provided in subsection (b), the provisions of a trust instrument prevail over any contrary provisions of this chapter.

(b) Mandatory rules.—Notwithstanding a contrary provision in the trust instrument, the following rules apply:

- (1) The requirements for creating a trust set forth in section 7732 (relating to requirements for creation - UTC 402).
- (2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust as set forth in section 7771 (relating to duty to administer trust - UTC 801).
- (3) The requirement in section 7734 (relating to trust purposes - UTC 404) that a trust's purpose be lawful and not contrary to public policy.
- (4) The power of the court to modify or terminate a trust under sections 7740 (relating to termination of trusts; proceedings for

termination or modification of trusts - UTC 410) through 7740.6 (relating to modification to achieve settlor's tax objectives - UTC 416).

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Subchapter E (relating to creditor's claims; spendthrift and discretionary trusts).

(6) The power of the court under section 7762 (relating to trustee's bond - UTC 702).

(7) The power of the court under section 7768(b) (relating to compensation of trustee - UTC 708) to adjust a trustee's compensation specified in the trust instrument.

(8) The duty of a trustee under section 7780.3 (relating to duty to inform and report).

(9) (Reserved).

(10) The effect of an exculpatory term under section 7788 (relating to exculpation of trustee - UTC 1008).

(11) The rights under sections 7790 (relating to limitation on personal liability of trustee - UTC 1010) through 7790.3 (relating to certification of trust - UTC 1013) of a person other than a trustee or beneficiary.

(12) Periods of limitation for commencing a judicial proceeding.

(13) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice.

(14) The subject matter jurisdiction of the court described in Chapter 7 (relating to orphans' court divisions) and venue for commencing a proceeding as provided in section 7714 (relating to venue - UTC 204).

§ 7706. Common law of trusts; principles of equity - UTC 106.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this Commonwealth.

§ 7707. Governing law - UTC 107.

The meaning and effect of the provisions of a trust instrument shall be determined by:

(1) the law of the jurisdiction designated in the trust instrument, but the mandatory rules of section 7705(b) (relating to trust instrument controls; mandatory rules - UTC 105) shall govern if different from the law of the jurisdiction designated in the trust instrument; or

(2) in the absence of an effective designation in the trust instrument, the law of the jurisdiction in which the settlor is domiciled when the trust becomes irrevocable.

§ 7708. Situs of trust.

(a) Specified in trust instrument.—Without precluding other means for establishing a sufficient connection with the designated jurisdiction, provisions of a trust instrument designating the situs of the trust are valid and controlling if:

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

(2) all or part of the trust administration occurs in the designated jurisdiction; or

(3) one or more of the beneficiaries resides in the designated jurisdiction.

(b) Unspecified in trust instrument.—If the trust instrument does not specify a situs:

(1) The situs of a testamentary trust shall be:

(i) in the county where letters were granted to the personal representative;

(ii) if letters under subparagraph (i) have not been granted, in a county where the letters might have been granted; or

(iii) if letters under subparagraph (i) have not been granted and are not subject to being granted, in a county in which any trustee resides or has a place of business.

(2) The situs of an inter vivos trust whose settlor is domiciled in this Commonwealth when the trust becomes irrevocable or, in the case of a revocable trust, when the first application is made to a court concerning the trust shall be:

(i) during the settlor's lifetime, either in the county of the settlor's principal residence or in the county in which any of the trustees resides or has a place of business; and

(ii) after the settlor's death:

(A) in the county in which letters have been granted to the settlor's personal representative;

(B) in a county in which letters might have been granted;

(C) in a county which is the principal place of the trust's administration; or

(D) in a county in which any trustee resides or has a place of business.

(3) The situs of an inter vivos trust whose settlor either is living and not domiciled in this Commonwealth at the time when the first application is made to a court concerning the trust or was not domiciled in this Commonwealth at the settlor's death after which the first application to a court concerning the trust is made thereafter shall be in a county where:

(i) a trustee's principal place of business is located or a trustee is a resident;

(ii) all or part of the trust administration occurs; or

(iii) one or more of the beneficiaries reside.

(c) Transfer.—By complying with subsections (d) and (e), the trustee may transfer the trust's situs to another jurisdiction if either immediately before or immediately after the proposed transfer:

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

(2) all or part of the trust administration occurs in the proposed jurisdiction; or

(3) one or more of the beneficiaries reside in the proposed jurisdiction.

(d) Notice of transfer.—The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's situs at least 60 days before the date as of which the trustee intends to change the situs. The notice of proposed transfer must include the following:

(1) The name of the jurisdiction to which the situs is to be transferred.

(2) The address and telephone number at the new location at which the trustee can be contacted.

(3) The reasons for the proposed transfer.

(4) The date on which the proposed transfer is anticipated to occur.

(5) A statement that if the situs is changed as the trustee proposes, venue will thereafter be in the county of the new situs consistent with section 7714 (relating to venue - UTC 204).

(6) The name and address of the court before which judicial actions involving the trust will be heard after the situs is changed as the trustee proposes.

(7) A statement that the change in situs will occur only if all qualified beneficiaries of the trust consent in writing to the change.

(e) Consent to transfer.—A trustee may transfer a trust's situs under this section without court approval if all the qualified beneficiaries of the trust consent in writing to the change.

(f) Successor trustee.—In connection with a transfer of the trust's situs, the trustee may transfer some or all of the trust property to a successor trustee designated in the trust instrument or appointed pursuant to section 7764 (relating to vacancy in trusteeship; appointment of successor - UTC 704).

(g) Court-directed change in situs.—A court having jurisdiction of a testamentary or inter vivos trust, on application of a trustee or any party in interest, after notice as the court shall direct and aided if necessary by the report of a master and after accounting as the court shall require, may direct, notwithstanding any other provision of this chapter, that the situs of the trust shall be changed to any other place within or without this Commonwealth if the court shall find the change necessary or desirable for the proper administration of the trust.

(h) Claims not discharged.—A change in situs under this section does not discharge any claim against the trustee.

§ 7709. Methods and waiver of notice - UTC 109.

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

(b) Unknown identity or location.—Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need

not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee, but the trustee shall create and maintain indefinitely a written record of the steps the trustee took to identify or locate the person.

(c) Waiver.—Notice under this chapter or the sending of a document under this chapter may be waived in writing by the person to be notified or sent the document.

(d) Notice of judicial proceeding.—Notice of a judicial proceeding must be given as provided in the applicable rules of court.

§ 7710. Notice; others treated as beneficiaries - UTC 110.

(a) Notice.—Whenever notice to qualified or current beneficiaries of a trust is required under this chapter, the trustee must also give notice to any other beneficiary who has sent the trustee a written request for notice.

(b) Enforcement by charitable organization expressly named in instrument.—A charitable organization expressly named in the trust instrument to receive distributions from the trust has the rights of a beneficiary under this chapter.

(c) Enforcement by others.—A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 7738 (relating to trust for care of animal - UTC 408) or 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409) has the rights of a beneficiary under this chapter.

(d) Office of Attorney General.—The Office of Attorney General has the rights of a charitable organization expressly named in the trust instrument to receive distributions from a trust having its situs in this Commonwealth and the right to notice of any proceeding or nonjudicial settlement agreement in which there is a charitable interest or purpose.

§ 7710.1. Nonjudicial settlement agreements - UTC 111.

(a) (Reserved).

(b) General rule.—Except as otherwise provided in subsection (c), all beneficiaries and trustees of a trust may enter into a binding nonjudicial settlement agreement with respect to any matter involving the trust. The rules of Subchapter C (relating to representation) shall apply to a settlement agreement under this section.

(c) Exception.—A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(d) Matters that may be resolved.—Matters that may be resolved by a nonjudicial settlement agreement include the following:

(1) The interpretation or construction of the provisions of a trust instrument.

(2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.

(3) Direction to a trustee to perform or refrain from performing a particular act.

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(5) Transfer of a trust's situs.

(6) Liability or release from liability of a trustee for an action relating to the trust.

(7) The grant to a trustee of any necessary or desirable power.

(8) The exercise or nonexercise of any power by a trustee.

(9) Questions relating to the property or an interest in property held as part of a trust.

(10) An action or proposed action by or against a trust or trustee.

(11) The modification or termination of a trust.

(12) An investment decision, policy, plan or program of a trustee.

(13) Any other matter concerning the administration of a trust.

(e) Request of court.—Any beneficiary or trustee of a trust may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in Subchapter C was adequate or whether the agreement contains terms and conditions the court could have properly approved.

§ 7710.2. Rules of construction - UTC 112.

The rules of construction that apply in this Commonwealth to the provisions of testamentary trusts also apply as appropriate to the provisions of inter vivos trusts.

SUBCHAPTER B JUDICIAL PROCEEDINGS

Sec.

7711. Role of court in administration of trust - UTC 201.

7712. Jurisdiction over trustee and beneficiary - UTC 202.

7713. (Reserved).

7714. Venue - UTC 204.

§ 7711. Role of court in administration of trust - UTC 201.

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

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

(c) Scope of proceeding.—A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for declaratory judgment.

§ 7712. Jurisdiction over trustee and beneficiary - UTC 202.

(a) Personal jurisdiction over trustee.—By accepting the trusteeship of a trust having its situs in this Commonwealth or by moving the situs to this

Commonwealth, the trustee submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

(b) Personal jurisdiction over beneficiary.—With respect to their interests in the trust, the beneficiaries of a trust having its situs in this Commonwealth are subject to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust. By not releasing or disclaiming the beneficiary's beneficial interest in the trust, a beneficiary of a trust having its situs in this Commonwealth submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

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

§ 7713. (Reserved).

§ 7714. Venue - UTC 204.

(a) General rule.—Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this Commonwealth in which the trust's situs is located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) Exceptions.—

(1) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in:

(i) any county in which a beneficiary resides;

(ii) any county in which trust property is located; or

(iii) if the trust is created by will, the county in which the decedent's estate was or is being administered.

(2) The venue of proceedings that are pending on the effective date of this section shall not be disturbed.

SUBCHAPTER C REPRESENTATION

Sec.

7721. Scope; definition of trust matter.

7722. Representation of parties in interest in general.

7723. Representatives and persons represented.

7724. Appointment of representative.

7725. Notice of representation.

7726. Representation ineffective if person objects.

§ 7721. Scope; definition of trust matter.

(a) Scope.—This subchapter shall apply to this entire chapter unless the context clearly specifies the contrary.

(b) Definition.—As used in this subchapter, the term "trust matter" includes a judicial proceeding and a nonjudicial settlement, agreement or act pertaining to any matter listed in section 7710.1(d) (relating to nonjudicial settlement agreements - UTC 111).

§ 7722. Representation of parties in interest in general.

(a) Judicial proceeding.—In a judicial proceeding involving a trust matter, an order or decree of the court that binds the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 (relating to representatives and persons represented) if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 (relating to notice of representation) and they act in good faith.

(b) Nonjudicial resolution.—In a nonjudicial resolution of a trust matter, notice to, the consent or approval of or the waiver or release by the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 and they act in good faith.

(c) Permissible consideration.—In making decisions, a representative may consider general benefit accruing to the living members of the family of the person represented.

§ 7723. Representatives and persons represented.

The following rules except as set forth in paragraph (7) apply to the extent there is no conflict of interest with respect to the matter at issue between the representative and the person or persons represented that might affect the impartiality of the representative and, if two or more persons are being represented, to the extent there is no conflict of interest with respect to the matter at issue between or among the persons represented that might affect the impartiality of the representative:

(1) A plenary guardian represents the person whose estate the guardian supervises, and a limited guardian represents the person whose estate the guardian supervises within the scope of authority prescribed by the court order that defines the guardian's authority.

(2) An agent under a general power of attorney represents the agent's principal, and an agent under a limited power of attorney represents the principal within the scope of the agent's authority under the power of attorney.

(3) Where property or an interest in property is vested in a class of persons, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained.

(4) Where property or an interest in property will pass to a class of persons upon the occurrence of a future event, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained. The class members entitled to represent other class members or potential class members are the persons who would take the property or interest in property if the future event had occurred immediately before the commencement of the judicial proceeding relating to the property or interest in property or immediately before the effective date of the nonjudicial resolution of the matter.

(5) Where property or an interest in property will pass to a person, class of persons or both upon the occurrence of a future event, but the property or interest in property will pass to another person, class of persons or both upon the occurrence of an additional future event, the person, class of persons or both who would take upon the occurrence of the first event represents the person, class of persons or both who would take upon the occurrence of the additional event, provided their interests are identical or substantially similar for purposes of the particular trust matter. If a class of persons would take upon the occurrence of the first event, paragraph (4) applies to representation between or among the class.

(6) A person represents all minors or unborn individuals and persons whose identity or location is unknown and not reasonably ascertainable, to the extent such persons are not otherwise represented, if the interests of the person and the person represented are substantially identical with respect to the particular question or dispute involved.

(7) Whether or not there is a conflict of interest described in this section, the sole holder or all coholders of a presently exercisable or testamentary power of appointment represent all potential appointees and all takers in default of exercise of the power of appointment if the holder may appoint to:

(i) the holder's estate, the holder's creditors or the creditors of the holder's estate; or

(ii) anyone other than the holder's estate, the holder's creditors and the creditors of the holder's estate.

(8) The sole holder or all coholders of a presently exercisable or testamentary power of appointment not described in paragraph (7) represent all potential appointees and all takers in default of exercise of the power who are also potential appointees.

(9) Except as provided in paragraph (1), a person represents the person's minor and unborn descendants.

§ 7724. Appointment of representative.

Notwithstanding any other provision of this subchapter, if in any judicial proceeding involving a trust matter the court determines that the representation provided by section 7723 (relating to representatives and persons represented) is or might be inadequate, the court may appoint a guardian ad litem or trustee ad litem to represent the inadequately represented person, class of persons or both.

§ 7725. Notice of representation.

A person representing another must be given written notice by the trustee that the person is representing the other person. The person to whom the notice is given may decline the representation by a writing that is given to the trustee no later than 60 days after receipt of the trustee's notice.

§ 7726. Representation ineffective if person objects.

Notwithstanding the provisions of this subchapter, a person may not represent another who is sui juris and files a written objection to representation with the trustee.

SUBCHAPTER D
CREATION, VALIDITY, MODIFICATION
AND TERMINATION OF TRUST

Sec.

7731. Creation of trust - UTC 401.

7732. Requirements for creation - UTC 402.

7733. Written trusts created in other jurisdictions - UTC 403.

7734. Trust purposes - UTC 404.

7735. Charitable purposes; enforcement - UTC 405.

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7739. Noncharitable trust without ascertainable beneficiary - UTC 409.

7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.

7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.

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7740.6. Modification to achieve settlor's tax objectives - UTC 416.

7740.7. Division of trusts.

7740.8. Combination of trusts.

§ 7731. Creation of trust - UTC 401.

A trust may be created by:

(1) transfer of property under a written instrument to another person as trustee during the settlor's lifetime or by will or other written disposition taking effect upon the settlor's death;

(2) written declaration, signed by or on behalf and at the direction of the owner of property as required by section 7732 (relating to requirements for creation - UTC 402), that the owner holds identifiable property as trustee; or

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

§ 7732. Requirements for creation - UTC 402.

(a) Requirements.—A trust is created only if:

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

(2) the settlor signs a writing that indicates an intention to create the trust and contains provisions of the trust;

- (3) the trust has a definite beneficiary or is:
 - (i) a charitable trust;
 - (ii) a trust for the care of an animal, as provided in section 7738 (relating to trust for care of animal - UTC 408); or
 - (iii) a trust for a noncharitable purpose, as provided in section 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409);
- (4) the trustee has duties to perform; and
- (5) the same person is not the sole trustee and sole beneficiary of the trust.

(b) (Reserved).

(b.1) Signature by mark or another.—A trust instrument other than a will may be signed by mark or by a person other than the settlor on behalf of and at the direction of the settlor in the same manner as a power of attorney under Chapter 56 (relating to powers of attorney).

(c) Power to select beneficiary from indefinite class.—A power in a trustee to select a beneficiary from an indefinite class is valid. If the power with respect to a noncharitable trust is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Definition.—As used in this section, the term “definite beneficiary” means a beneficiary that can be ascertained now or in the future, subject to any applicable rule against perpetuities.

§ 7733. Written trusts created in other jurisdictions - UTC 403.

A written trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a residence or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

§ 7734. Trust purposes - UTC 404.

A trust may be created only to the extent its purposes are lawful and not contrary to public policy.

§ 7735. Charitable purposes; enforcement - UTC 405.

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

(b) Selection by court.—If the provisions of a charitable trust instrument do not indicate or authorize the trustee to select a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor’s intention to the extent it can be ascertained.

(c) Proceeding to enforce trust.—A proceeding to enforce a charitable trust may be brought by the settlor during the settlor's lifetime or at any time by the Attorney General, a charitable organization expressly named in the trust instrument to receive distributions from the trust or any other person who has standing to do so.

§ 7736. Creation of trust induced by fraud, duress or undue influence - UTC 406.

A trust or an amendment to a trust is voidable to the extent its creation was induced by fraud, duress or undue influence.

§ 7737. Oral trusts unenforceable.

Oral trusts are unenforceable in this Commonwealth.

§ 7738. Trust for care of animal - UTC 408.

(a) Creation and termination.—A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

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

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

§ 7739. Noncharitable trust without ascertainable beneficiary - UTC 409.

Except as otherwise provided in section 7738 (relating to trust for care of animal - UTC 408) or by another statute:

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

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

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

§ 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.

(a) Termination.—A trust terminates to the extent it is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful or contrary to public policy. In addition, a trust may be terminated by the methods prescribed by sections 7740.1 (relating to modification or termination of noncharitable irrevocable trust by consent - UTC 411) through 7740.4 (relating to modification or termination of noncharitable trust - UTC 414).

(b) Proceedings for termination or modification.—The settlor, the trustee or a beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under sections 7740.1 through 7740.6 (relating to modification to achieve settlor's tax objectives - UTC 416), the division of a trust under section 7740.7 (relating to division of trusts) or the combination of trusts under section 7740.8 (relating to combination of trusts). The settlor of a charitable trust may commence a proceeding to modify the trust under section 7740.3 (relating to charitable trusts - UTC 413).

§ 7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.

(a) Consent by settlor and beneficiaries.—A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by a guardian, an agent under the settlor's general power of attorney or an agent under the settlor's limited power of attorney that specifically authorizes that action. Notwithstanding Subchapter C (relating to representation), the settlor may not represent a beneficiary in the modification or termination of a trust under this subsection.

(b) Consent by beneficiaries with court approval.—A noncharitable irrevocable trust may be modified upon the consent of all the beneficiaries only if the court concludes that the modification is not inconsistent with a material purpose of the trust. A noncharitable irrevocable trust may be terminated upon consent of all the beneficiaries only if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

(b.1) Spendthrift provision.—A spendthrift provision in a trust instrument is presumed to constitute a material purpose of the trust.

(c) Distribution upon termination.—Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.

(d) Consent by some beneficiaries with court approval.—If not all the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court only if the court is satisfied that:

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

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

§ 7740.2. Modification or termination of noncharitable irrevocable trust by court - UTC 412.

(a) Unanticipated circumstances.—The court may modify the administrative or dispositive provisions of a noncharitable irrevocable trust, make an allowance from the principal of the trust or terminate the trust if, because of circumstances that apparently were not anticipated by the settlor, modification, allowance or termination will further the purposes of the trust. To the extent practicable, the modification or allowance shall approximate the settlor's probable intention.

(b) Inability to administer effectively.—The court may modify the administrative provisions of a noncharitable irrevocable trust if adherence to the existing provisions would be impracticable or wasteful or impair the trust's administration.

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

§ 7740.3. Charitable trusts - UTC 413.

(a) General rule.—Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable or wasteful:

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

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

(3) the court shall apply cy pres to fulfill as nearly as possible the settlor's charitable intention, whether it be general or specific.

(b) Exception.—A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres.

(c) Administrative deviation.—A court may modify an administrative provision of a charitable trust to the extent necessary to preserve the trust.

(d) Administrative termination of small charitable trusts.—A trust solely for charitable purposes having assets of less than \$100,000 may be terminated at its inception or at any time thereafter by the trustee with the consent of the Attorney General and all charitable organizations that are designated as beneficiaries by name in the trust instrument. Upon termination, the assets, subject to the approval of the Attorney General, shall be delivered to the organizations, if any, designated in the trust instrument or, if none, to organizations selected by the trustee, in either case to be held and applied for the general or specific charitable purposes and on the terms that will, in the trustee's discretion, fulfill as nearly as possible the settlor's intention.

(e) **Judicial termination of charitable trusts.**—If the separate existence of a trust, whenever created, solely for charitable purposes results or will result in administrative expense or other burdens unreasonably out of proportion to the charitable benefits, the court may, upon application of the trustee or any interested person and after notice to the Attorney General, terminate the trust, either at its inception or at any time thereafter, and award the assets outright, free of the trust, to the charitable organizations, if any, designated in the trust instrument or, if none, to charitable organizations selected by the court, in either case for the purposes and on the terms that the court may direct to fulfill as nearly as possible the settlor's intentions other than any intent to continue the trust, if the court is satisfied that the charitable organizations will properly use or administer the assets.

§ 7740.4. **Modification or termination of noncharitable trust - UTC 414.**

(a) **Trustee's authority.**—A trustee of a noncharitable trust may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration, the trustee has given written notice to the qualified beneficiaries at least 60 days before the proposed termination and no qualified beneficiary provides the trustee with a written objection to the proposed termination on or before the date specified in the notice.

(b) **Court authority.**—The court may modify or terminate a noncharitable trust, or remove the trustee and appoint a different trustee, if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) **Distribution of trust property.**—Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

§ 7740.5. **Reformation to correct mistakes - UTC 415.**

The court may reform a trust instrument, even if unambiguous, to conform to the settlor's probable intention if it is proved by clear and convincing evidence that the settlor's intent as expressed in the trust instrument was affected by a mistake of fact or law, whether in expression or inducement. The court may provide that the modification have retroactive effect.

§ 7740.6. **Modification to achieve settlor's tax objectives - UTC 416.**

The court may modify a trust instrument in a manner that is not contrary to the settlor's probable intention in order to achieve the settlor's tax objectives. The court may provide that the modification have retroactive effect.

§ 7740.7. **Division of trusts.**

(a) **Without court approval.**—A trustee may, without court approval, divide a trust into separate trusts, allocating to each separate trust either a fractional share of each asset and each liability held by the original trust or assets having an appropriate aggregate fair market value and fairly representing the appreciation or depreciation in the assets of the original trust as a whole. The beneficiaries of the separate trusts may be different so long

as their rights are not impaired. If the division reflects disclaimers or different tax elections, the division shall relate back to the date to which the disclaimer or tax election relates.

(b) With court approval.—The court, for cause shown, may authorize the division of a trust into two separate trusts upon such terms and conditions and with notice as the court shall direct.

(c) Separate fund.—A trustee may, without court approval, set aside property in a separate fund prior to actual distribution, after which income earned on the separate fund and appreciation or depreciation of the fund set-aside shall belong to the separate fund.

§ 7740.8. Combination of trusts.

(a) With court approval.—The court, for cause shown, may authorize the combination of separate trusts with substantially similar provisions upon terms and conditions and with notice as the court shall direct notwithstanding that the trusts may have been created by separate instruments and by different persons. If necessary to protect possibly different future interests, the assets shall be valued at the time of the combination, and a record made of the proportionate interest of each separate trust in the combined fund.

(b) Without court approval.—A trustee may, without court approval, combine trusts that were created under the same or different instruments if the trusts have identical provisions, tax attributes and trustees.

SUBCHAPTER E
CREDITOR’S CLAIMS; SPENDTHRIFT AND
DISCRETIONARY TRUSTS

Sec.

7741. Rights of beneficiary’s creditor or assignee - UTC 501.

7742. Spendthrift provision - UTC 502.

7743. Exceptions to spendthrift provision - UTC 503.

7744. Discretionary trusts; effect of standard - UTC 504.

7745. Creditor’s claim against settlor - UTC 505(a).

7746. Overdue distribution - UTC 506.

7747. Personal obligations of trustee - UTC 507.

7748. Property subject to power of withdrawal - UTC 505(b).

§ 7741. Rights of beneficiary’s creditor or assignee - UTC 501.

A judgment creditor or assignee of the beneficiary may reach the beneficiary’s interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means to the extent the beneficiary’s interest is not subject to a spendthrift provision.

§ 7742. Spendthrift provision - UTC 502.

(a) Validity.—A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(b) Creation.—A trust instrument providing that the interest of a beneficiary is held subject to a “spendthrift trust,” or words of similar import,

is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) Effect.—A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision. Except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary of a spendthrift trust may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§ 7743. Exceptions to spendthrift provision - UTC 503.

(a) (Reserved).

(b) Who may override.—A spendthrift provision is unenforceable against:

(1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interests in the income and principal of the trust;

(2) any other person who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interest in the trust's income;

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

(4) a claim of the United States or the Commonwealth to the extent Federal law or a statute of this Commonwealth provides.

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

(d) Definition.—As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this Commonwealth or another state.

§ 7744. Discretionary trusts; effect of standard - UTC 504.

(a) (Reserved).

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

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

(2) the trustee has abused the discretion; or

(3) the beneficiary is the trustee or a cotrustee of the trust.

(c) Exception.—To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution from the trust's income, principal or both may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child to the extent of the beneficiary's interests in the trust's income, principal or both, and the court shall direct the trustee to pay the child from the trust

an amount as is equitable under the circumstances, but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion; and

(2) a distribution from trust income may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of any person other than the beneficiary's child to the extent of the beneficiary's interest in the income of the trust, and the court shall direct the trustee to pay the person an amount from the income of the trust as is equitable under the circumstances, but not more than the amount of income the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

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

(e) (Reserved).

(f) Definition.—As used in this section, the term “child” includes any person for whom an order or judgment for child support has been entered in this Commonwealth or another state.

§ 7745. Creditor's claim against settlor - UTC 505(a).

Whether or not a trust instrument contains a spendthrift provision and notwithstanding section 7744 (relating to discretionary trusts; effect of standard - UTC 504):

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

(2) A judgment creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the creditor or assignee of a particular settlor may reach the portion of the trust attributable to that settlor's contribution.

(3) After the death of the settlor and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a revocable trust is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and the family exemption to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and exemption and no other statute specifically exempts the property from those claims.

§ 7746. Overdue distribution - UTC 506.

(a) Distribution not made within reasonable time.—Whether or not the interest of the beneficiary in the trust is subject to a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if

the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

(b) **Definition.**—As used in this section, the term “mandatory distribution” means a distribution of income or principal that the trustee is required by the trust instrument to make to a beneficiary, including a distribution upon the termination of the trust. The term excludes a distribution that is subject to the exercise of the trustee’s discretion regardless of whether the trust instrument includes a support or other standard to guide the trustee in making distribution decisions or provides that the trustee “may” or “shall” make discretionary distributions, including distributions pursuant to a support or other standard.

§ 7747. Personal obligations of trustee - UTC 507.

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

§ 7748. Property subject to power of withdrawal - UTC 505(b).

Trust property that is subject to a power of withdrawal, during the period the power may be exercised and after its lapse, release or waiver, may be reached by a creditor or an assignee of the holder of the power whether or not the interest of the holder in the trust is subject to a spendthrift provision.

SUBCHAPTER F REVOCABLE TRUSTS

Sec.

7751. Capacity of settlor of revocable trust - UTC 601.

7752. Revocation or amendment of revocable trust - UTC 602.

7753. Trustee’s duties; powers of withdrawal - UTC 603.

7754. Actions contesting validity of revocable trust.

7755. Claims and distribution after settlor’s death.

§ 7751. Capacity of settlor of revocable trust - UTC 601.

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

§ 7752. Revocation or amendment of revocable trust - UTC 602.

(a) **Power to revoke or amend.**—The settlor may revoke or amend a trust unless the trust instrument expressly provides that the trust is irrevocable.

(b) **More than one settlor.**—If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, either spouse alone who notifies the other spouse may revoke the trust, but the trust may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with respect to the portion of the trust property attributable to that settlor’s contribution upon notice to each other settlor; and

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

(c) How to revoke or amend.—The settlor may revoke or amend a revocable trust only:

(1) by substantial compliance with a method provided in the trust instrument; or

(2) if the trust instrument does not provide a method or the method provided in the trust instrument is not expressly made exclusive, by a later writing, other than a will or codicil, that is signed by the settlor and expressly refers to the trust or specifically conveys property that would otherwise have passed according to the trust instrument.

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

(e) Agent.—A settlor's powers with respect to revocation or amendment of the nondispositive provisions of or withdrawal of property from a trust may be exercised by an agent under a power of attorney only to the extent expressly authorized by the trust instrument or the power. The agent under a power of attorney that expressly authorizes the agent to do so may amend the dispositive provisions of a revocable trust as the court may direct.

(f) Guardian.—A guardian of the settlor's estate may exercise the settlor's powers with respect to revocation or amendment of or withdrawal of property from a revocable trust as the court may direct.

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

§ 7753. Trustee's duties; powers of withdrawal - UTC 603.

(a) Power of settlor.—Regardless of the legal capacity of the settlor, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor while a trust is revocable.

(b) Holder of power of withdrawal.—The holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power during the period the power may be exercised.

§ 7754. Actions contesting validity of revocable trust.

(a) How action may be commenced.—A person having standing to do so may contest the validity of a revocable trust by filing a petition with the court.

(b) Time limit.—The petition described in subsection (a) must be filed no later than one year after the date on which the trustee gave the notice required by section 7780.3(c) (relating to duty to inform and report). The court, upon petition of a party in interest and with such notice as the court may direct, may limit the time by which a petition under this section must be

filed to six months after the date on which the trustee gave the notice required by section 7780.3(c).

(c) Grounds for contest.—The grounds for contesting the validity of a revocable trust shall be the same as those for contesting the validity of a will. § 7755. Claims and distribution after settlor's death.

(a) Creditors' rights.—Creditors of the settlor of a revocable trust shall have the same rights against the trust assets determined immediately before the settlor's death as they have against the settlor's estate, but the assets of the settlor's estate shall be applied first toward satisfaction of the creditors' claims. This subsection shall not expose to creditors' claims trust assets for which other provisions of substantive law provide exemption from the claims of the settlor's creditors.

(b) Enforcement of claim against revocable trust.—A creditor may make a claim against a revocable trust by notifying the settlor's personal representative as provided in section 3384 (relating to notice of claim) or, if no personal representative has been appointed, by notifying the trustee according to the methods set forth in section 3384. A personal representative who receives notice shall within 20 days notify the trustee in writing and upon doing so shall have no liability under this section to the creditor.

(c) No personal representative.—If no personal representative is appointed within 90 days after the settlor's death, the trustee shall advertise the trust's existence and the name and address of the trustee in the manner set forth in section 3162 (relating to advertisement of grant of letters).

(d) Liability of personal representative.—A personal representative who has received the notice required by section 7780.3(c) (relating to duty to inform and report) and does not notify the trustee of a revocable trust of a creditor's claim known to the personal representative within one year after the first complete advertisement of the grant of letters to the personal representative shall be liable to the creditor to the extent the creditor's interest is prejudiced thereby. A personal representative shall have no liability under this section to a creditor whose claim is not known to the personal representative within one year after the first complete advertisement of the grant of letters to the personal representative. The provisions of this section shall not affect the liability of the settlor's personal representative under other provisions of law.

(e) Liability to any creditor.—At the trustee's own risk and without the filing, audit or confirmation of the trustee's account, a trustee of a revocable trust who has either given the settlor's personal representative the notice required by section 7780.3(c) or given the notice required by subsection (c) may distribute real or personal property of the revocable trust. That distribution shall be without liability to any creditor of the settlor unless the claim of that creditor is known to the trustee within 13 months after the first complete advertisement of the grant of letters to the personal representative or, if no personal representative has been appointed, within one year after the first complete advertisement under subsection (c).

(f) Rights of creditors against distributed property.—

(1) No creditor shall have any claim against personal property distributed by the trustee of a revocable trust at the trustee's own risk under subsection (e) unless the claim of the creditor is known to the trustee within 13 months after the first complete advertisement of the grant of letters to the personal representative or, if no personal representative has been appointed, within one year after the first complete advertisement of the trust under subsection (c).

(2) No creditor shall have any claim against real property distributed by the trustee of a revocable trust at the trustee's own risk under subsection (e) unless the creditor, within one year after the settlor's death, files a written notice of claim with the clerk. The claim against real property shall expire at the end of five years after the settlor's death unless within that time the trustee files an account or the creditor files a petition to compel an accounting.

(g) Judicial principles.—In any proceeding by a creditor against a trustee or beneficiary of a revocable trust, the court shall apply principles analogous to:

- (1) section 3387 (relating to claims not due; certain to become due);
- (2) section 3388 (relating to claims not certain to become due);
- (3) section 3392 (relating to classification and order of payment); and
- (4) section 3393 (relating to notice to Commonwealth and political subdivisions).

SUBCHAPTER G OFFICE OF TRUSTEE

Sec.

7761. Accepting or declining trusteeship - UTC 701.

7762. Trustee's bond - UTC 702.

7763. Cotrustees - UTC 703.

7764. Vacancy in trusteeship; appointment of successor - UTC 704.

7765. Resignation of trustee; filing resignation.

7766. Removal of trustee - UTC 706.

7767. Delivery of property by former trustee - UTC 707.

7768. Compensation of trustee - UTC 708.

7769. Reimbursement of expenses - UTC 709.

7770. Liability of successor trustee.

§ 7761. Accepting or declining trusteeship - UTC 701.

(a) Accepting trusteeship.—Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

- (1) by substantially complying with a method of acceptance provided in the trust instrument; or
- (2) if the trust instrument does not provide a method or the method provided in the trust instrument is not expressly made exclusive, by

accepting delivery of the trust property, exercising powers or performing duties as trustee or by otherwise indicating acceptance of the trusteeship.

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

(c) Actions not constituting acceptance of trusteeship.—A person designated as trustee, without accepting the trusteeship, may:

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

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

§ 7762. Trustee's bond - UTC 702.

(a) When required.—A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the provisions of the trust instrument and the court has not dispensed with the requirement.

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

(c) Institutional trustees.—An institution qualified to do trust business in this Commonwealth need not give bond even if required by the trust instrument.

§ 7763. Cotrustees - UTC 703.

(a) Majority decision.—Cotrustees who do not reach a unanimous decision may act by majority decision.

(a.1) When no majority.—When a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them, unless otherwise provided by the trust instrument, the court in its discretion, upon petition filed by any of the trustees or any party in interest, aided if necessary by the report of a master, may direct the exercise or nonexercise of the power as it deems necessary for the best interest of the trust.

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

(c) Performance.—A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under the law or other reason or the cotrustee has properly delegated the performance of the function to another trustee.

(d) Unavailability.—If a cotrustee is unavailable to perform duties and prompt action is necessary to achieve the purposes of the trust or to avoid injury or loss to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) (Reserved).

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

(g) **Reasonable care.**—Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a breach of trust involving fraud or self-dealing; and

(2) compel a cotrustee to redress a breach of trust involving fraud or self-dealing.

(h) **Dissenting trustee.**—A dissenting trustee shall join the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a breach of trust involving fraud or self-dealing.

§ 7764. **Vacancy in trusteeship; appointment of successor - UTC 704.**

(a) **When vacancy occurs.**—A vacancy in a trusteeship occurs if:

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

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

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a trustee is determined by the court to be incapacitated pursuant to section 5511 (relating to petition and hearing; independent evaluation).

(b) **Filling of vacancy.**—A vacancy in a trusteeship need not be filled if one or more cotrustees remain in office and the trust instrument does not require that it be filled. A vacancy shall be filled if the trust has no remaining trustee.

(c) **Filling vacancy for noncharitable trust.**—A vacancy in a trusteeship of a noncharitable trust that is required to be filled shall be filled in the following order of priority:

(1) by a person designated in or pursuant to the provisions of the trust instrument to act as successor trustee;

(2) by a person appointed by unanimous written agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

(d) **Filling vacancy for charitable trust.**—A vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:

(1) by a person designated in or under the provisions of the trust instrument to act as successor trustee;

(2) by a person selected by unanimous written agreement of the qualified beneficiaries if the Office of Attorney General concurs in the selection; or

(3) by a person appointed by the court.

(e) Appointment by court.—Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary if the court considers the appointment desirable for the administration of the trust.

(f) Filing appointment.—An appointment of a trustee and an acceptance of an appointment of a trustee may be filed with the clerk of court having jurisdiction over the trust.

§ 7765. Resignation of trustee; filing resignation.

(a) Court approval.—A trustee may resign with court approval.

(b) Without court approval if authorized by trust instrument.—A trustee may resign without court approval if authorized to resign by the trust instrument.

(c) Without court approval and without authorization in trust instrument.—

(1) Unless expressly provided to the contrary in the trust instrument, an individual trustee may resign without court approval and without authorization in the trust instrument if:

(i) there is at least one cotrustee and all cotrustees consent in writing to the resignation; and

(ii) all the qualified beneficiaries consent in writing to the resignation.

(2) This subsection shall not authorize the sole trustee of a trust to resign unless the trust instrument names a successor trustee or provides a method for appointing a successor trustee, and in either case the resignation shall not be effective until the successor trustee accepts the appointment in writing.

(d) Liability.—The resignation of a trustee shall not by itself relieve the resigning trustee of liability in connection with the administration of the trust.

(e) Filing resignation.—A resignation of a trustee may be filed with the clerk of the court having jurisdiction over the trust.

§ 7766. Removal of trustee - UTC 706.

(a) Request to remove trustee; court authority.—The settlor, a cotrustee or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.

(b) When court may remove trustee.—The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) the trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or

(4) there has been a substantial change of circumstances.

(c) Court remedies.—Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under section 7781(b) (relating to remedies for breach of trust - UTC 1001) as may be necessary to protect the trust property or the interests of the beneficiaries.

(d) Procedure.—The procedure for removal and discharge of a trustee and the effect of removal and discharge shall be the same as that set forth in sections 3183 (relating to procedure for and effect of removal) and 3184 (relating to discharge of personal representative and surety).

§ 7767. Delivery of property by former trustee - UTC 707.

(a) Duties and powers of trustee.—Unless a cotrustee remains in office or the court otherwise orders, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property until the trust property is delivered to a successor trustee or other person entitled to it.

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

§ 7768. Compensation of trustee - UTC 708.

(a) If unspecified.—If neither the trust instrument nor a separate written agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies the trustee's compensation, the trustee is entitled to compensation that is reasonable under the circumstances. Neither a compensation provision in a trust instrument nor a fee agreement governs compensation payable from trust principal unless it explicitly so provides.

(b) If specified; adjustment.—If a trust instrument or written fee agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies a trustee's compensation, the trustee is entitled to the specified compensation. The court may allow reasonable compensation that is more or less than that specified if:

(1) the duties of the trustee have become substantially different from those contemplated when the trust was created or when the fee agreement was executed;

(2) the compensation specified in the trust instrument or fee agreement would be unreasonable; or

(3) the trustee performed extraordinary services, and the trust instrument or fee agreement does not specify the trustee's compensation for those services.

(c) Entitlement not barred.—None of the following shall bar a trustee's entitlement to compensation from the income or principal of the trust:

(1) The trust is perpetual or for any other reason has not yet terminated.

(2) The trustee's term of office has not yet ended.

(3) The trustee of a testamentary trust also acted as a personal representative of the settlor and was or might have been compensated for services as a personal representative from the principal of the settlor's estate.

(d) Court authority.—In determining reasonable compensation, the court may consider, among other facts, the market value of the trust and may determine compensation as a fixed or graduated percentage of the trust's market value. The court may allow compensation from principal, income or both and determine the frequency with which compensation may be collected. Compensation at levels that arise in a competitive market shall be presumed to be reasonable in the absence of compelling evidence to the contrary.

(e) Cemetery lots.—The authority in this section to pay compensation from trust principal shall not apply to trusts created by cemetery lot owners as endowments for the endowed care and maintenance of burial or cemetery lots if the principal sum involved is less than \$20,000. Compensation shall be paid exclusively from the income of such trusts.

§ 7769. Reimbursement of expenses - UTC 709.

(a) Reimbursement from trust property.—A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

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

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

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

§ 7770. Liability of successor trustee.

A successor trustee shall not be personally liable for the acts or omissions of the trustee's predecessor and shall have no duty to investigate the acts or omissions of the predecessor.

SUBCHAPTER H DUTIES AND POWERS OF TRUSTEE

Sec.

7771. Duty to administer trust - UTC 801.

7772. Duty of loyalty - UTC 802.

7773. Impartiality - UTC 803.

7774. Prudent administration - UTC 804.

7775. Costs of administration - UTC 805.

7776. Trustee's skills - UTC 806.

7777. Delegation by trustee.

7778. Powers to direct - UTC 808.

7779. Control and protection of trust property - UTC 809.

7780. Recordkeeping and identification of trust property - UTC 810.

7780.1. Enforcement and defense of claims - UTC 811.

7780.2. (Reserved).

7780.3. Duty to inform and report.

7780.4. Discretionary powers.

7780.5. Powers of trustees - UTC 815.

7780.6. Illustrative powers of trustee.

7780.7. Distribution upon termination.

§ 7771. Duty to administer trust - UTC 801.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its provisions and purposes and the interests of the beneficiaries and in accordance with applicable law.

§ 7772. Duty of loyalty - UTC 802.

(a) Duty of trustee.—A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Effect of conflict of interest.—Subject to the rights of persons dealing with or assisting the trustee as provided in section 7790.2 (relating to protection of person dealing with trustee - UTC 1012), a sale, purchase, exchange, encumbrance or other disposition of property between a trust and either the trustee in the trustee's individual capacity or one of the persons identified in subsection (c) is voidable by a court upon application by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the trust instrument;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 7785 (relating to limitation of action against trustee);

(4) the beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with section 7789 (relating to beneficiary's consent, release or ratification - UTC 1009); or

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

(c) What constitutes conflict of interest.—A sale, purchase, exchange, encumbrance or other disposition of property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's parent or a spouse of the parent;

(3) a descendant of the trustee's parent or a spouse of the descendant;

(4) an agent of the trustee unless the trustee is a corporation and the agent is an affiliate of the corporation or the transaction is authorized by section 7209 (relating to mutual funds);

(5) a corporation or other person or enterprise in which the trustee or a person that owns a significant interest in the trustee has an interest that might affect the trustee's judgment, but this paragraph does not apply to

an affiliate of a corporate trustee or to a transaction authorized by section 7209; or

(6) the trustee personally.

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

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

(f) (Reserved).

(g) Business enterprises.—In voting shares of stock or in exercising powers of control over similar interests in other forms of business enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or business enterprise in the best interests of the beneficiaries.

(h) Permissible transactions.—This section does not preclude the following transactions if fair to the beneficiaries:

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

(2) payment of reasonable compensation to the trustee and payment of reasonable compensation to affiliates of a corporate trustee if the compensation is disclosed to the current beneficiaries;

(3) a transaction between a trust and another trust, decedent's estate or guardianship, of which the trustee is a fiduciary or in which a beneficiary has an interest;

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

(5) an advance by the trustee of money for the protection of the trust; or

(6) a transaction authorized by section 7209.

(i) (Reserved).

§ 7773. Impartiality - UTC 803.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests in light of the purposes of the trust. The duty to act impartially does not mean that the trustee must treat the beneficiaries equally. Rather, the trustee must treat the beneficiaries equitably in light of the purposes of the trust.

§ 7774. Prudent administration - UTC 804.

A trustee shall administer the trust as a prudent person would, by considering the purposes, provisions, distributional requirements and other circumstances of the trust and by exercising reasonable care, skill and caution.

§ 7775. Costs of administration - UTC 805.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

§ 7776. Trustee's skills - UTC 806.

A trustee who has special skills or expertise relevant to a trust or who is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise relevant to a trust shall use those special skills or expertise in the administration of the trust.

§ 7777. Delegation by trustee.

(a) Standards for delegation.—A trustee may delegate duties and powers that a prudent trustee of comparable skills might delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (1) selecting an agent;
- (2) establishing the scope and specific terms of the delegation, consistent with the purposes and provisions of the trust; and
- (3) reviewing periodically the agent's actions in order to monitor the agent's performance and compliance with the scope and specific terms of the delegation.

(b) Agent's duty.—The agent shall comply with the scope and terms of the delegation and shall exercise the delegated duties and powers with reasonable care, skill and caution and shall be liable to the trust for failure to do so. An agent who represents having special skills or expertise shall use those special skills or that expertise.

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

(d) Jurisdiction.—An agent who accepts the delegation of duties or powers from a trustee who is subject to the jurisdiction of a court of this Commonwealth shall be deemed to have submitted to the jurisdiction of that court even if the terms of the delegation provide for a different jurisdiction or venue.

(e) When one trustee may delegate to another.—A trustee may delegate duties and powers to another trustee if the delegating trustee reasonably believes that the other trustee has greater skills than the delegating trustee with respect to those duties and powers and the other trustee accepts the delegation. The delegating trustee shall not be responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and

in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and that trustee's compliance with the scope and specific terms of the delegation.

§ 7778. Powers to direct - UTC 808.

(a) Direction of settlor.—While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the trust instrument.

(b) Compliance with power.—If a trust instrument confers upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with a written exercise of the power unless the attempted exercise is manifestly contrary to the trust instrument or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) Modification or termination of trust.—A trust instrument may confer upon a trustee or other person a power to modify or terminate the trust.

(d) Fiduciary relationship.—A person other than a beneficiary who holds a power to direct certain actions of a trustee is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of the holder's fiduciary duty.

§ 7779. Control and protection of trust property - UTC 809.

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 7780. Recordkeeping and identification of trust property - UTC 810.

(a) Records.—A trustee shall keep adequate records of the administration of the trust.

(b) Commingling trust property prohibited.—A trustee shall keep trust property separate from the trustee's own property.

(c) Designating trust property.—Except as otherwise provided in subsection (d) and section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

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

§ 7780.1. Enforcement and defense of claims - UTC 811.

Except as provided in section 7770 (relating to liability of successor trustee), a trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. When one of several trustees is individually liable to the trust, the other trustee or trustees shall take any legal action against that trustee necessary to protect the trust.

§ 7780.2. (Reserved).

§ 7780.3. Duty to inform and report.

(a) Duty to respond to requests.—A trustee shall promptly respond to a beneficiary's reasonable request for information related to the trust's administration.

(b) Notice after settlor of revocable trust has been adjudicated incapacitated.—No later than 30 days after the date on which the trustee of a revocable trust learns that the settlor has been adjudicated incapacitated, the trustee shall send the notice described in subsection (i) to the settlor's guardian.

(c) Notice after settlor of revocable trust has died.—No later than 30 days after the date on which the trustee of a revocable trust learns that the settlor has died, the trustee shall send the notice described in subsection (i) to:

- (1) the settlor's personal representative;
- (2) the settlor's spouse or, if the settlor's spouse is incapacitated, the spouse's guardian;
- (3) each of the settlor's children who is sui juris and the guardian, if any, of each child who is not sui juris; and
- (4) the trust's current beneficiaries.

(d) Notice after settlor of irrevocable trust has been adjudicated incapacitated.—No later than 30 days after the date on which the trustee of an irrevocable trust learns that the settlor has been adjudicated incapacitated, the trustee shall send the notice described in subsection (i) to the trust's current beneficiaries. A revocable trust shall not be deemed irrevocable for the purposes of this subsection merely because the settlor has been adjudicated incapacitated.

(e) Notice after settlor of irrevocable trust has died.—No later than 30 days after the date on which the trustee of an irrevocable trust learns that the settlor has died, the trustee shall send the notice described in subsection (i) to the trust's current beneficiaries unless the settlor had been adjudicated incapacitated and the trustee sent notices to the current beneficiaries as required by subsection (d).

(f) Notice to current beneficiaries.—No later than 30 days after the date on which the trustee of an irrevocable trust learns that a person who did not previously receive the notice described in subsection (i) is a current beneficiary of the trust, the trustee shall send the notice described in subsection (i) to the current beneficiary if, at that time, the trustee knows that the settlor is then deceased or has been adjudicated incapacitated.

(g) Change in trusteeship.—Apart from the other requirements of this section, the trustee shall send the notice described in subsection (i) to the current beneficiaries each time there is a change in trusteeship.

(h) Trustee's notice to any beneficiary at any time.—Apart from the requirements of this section, the trustee may send the notice described in subsection (i) to any beneficiary of the trust at any time.

(i) Contents of notice.—Any notice under this section shall be written and convey the following information:

- (1) The fact of the trust's existence.
- (2) The identity of the settlor.
- (3) The trustee's name, address and telephone number.
- (4) The recipient's right to receive a copy of the trust instrument.
- (5) The recipient's right to receive, at least annually, a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements since the date of the last such report.

(j) Waiver.—Any beneficiary may waive in writing the right to receive the notice described in subsection (i) and thereafter may rescind in writing that waiver.

(k) Notice to settlor's appointee.—The settlor of a trust may in the trust instrument appoint one or more persons or a succession of persons to receive, on behalf of one or more named current beneficiaries of the trust, the notices required by this section. The trustee giving the notice required by this section to that appointee satisfies the trustee's duty to give to the named current beneficiary the notice required by this section if:

- (1) the trustee notifies the appointee that the notice is being given to the appointee as representing the named current beneficiary; and
- (2) the appointee does not decline to receive the notice in a writing that is given to the trustee no later than 60 days after receipt of the trustee's notice.

(l) Applicability.—

(1) If the death or adjudication of incapacity described in subsection (b), (c), (d) or (e) occurs on or after November 6, 2006, the time limit for notice set forth in that subsection shall apply.

(2) If the death or adjudication of incapacity described in subsection (b), (c), (d) or (e) has occurred before November 6, 2006, the time limit for notice set forth in that subsection shall be November 6, 2008.

(3) The notice under subsection (f) shall not be required to be completed until two years after November 6, 2006.

§ 7780.4. Discretionary powers.

The trustee shall exercise a discretionary power in good faith and in accordance with the provisions and purposes of the trust and the interests of the beneficiaries, notwithstanding the breadth of discretion granted to a trustee in the trust instrument, including the use of such terms as "absolute," "sole" or "uncontrolled."

§ 7780.5. Powers of trustees - UTC 815.

(a) Exercise of power.—Except as otherwise provided in the trust instrument or in other provisions of this title, a trustee has all the powers over the trust property that an unmarried competent owner has over individually owned property and may exercise those powers without court approval from the time of creation of the trust until final distribution of the assets of the trust.

(b) (Reserved).

§ 7780.6. Illustrative powers of trustee.

(a) Listing.—The powers which a trustee may exercise pursuant to section 7780.5 (relating to powers of trustees - UTC 815) include the following powers:

(1) To accept, hold, invest in and retain investments as provided in Chapter 72 (relating to prudent investor rule).

(2) To pay or contest a claim; settle a claim by or against the trust by compromise, arbitration or otherwise; and release, in whole or in part, any claim belonging to the trust.

(3) To resolve a dispute regarding the interpretation of the trust or the administration of the trust by mediation, arbitration or other alternative dispute resolution procedures.

(4) To prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of the trustee's duties.

(5) To abandon or decline to administer any property which is of little or no value, transfer title to abandoned property and decline to accept title to and administer property which has or may have environmental or other liability attached to it.

(6) To insure the assets of the trust against damage or loss and, at the expense of the trust, protect the trustee, the trustee's agents and the beneficiaries from liability to third persons arising from the administration of the trust.

(7) To advance money for the protection of the trust and for all expenses, losses and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets. The trustee has a lien on the trust assets as against the beneficiary for an advance under this paragraph, including interest on the advance.

(8) To pay taxes, assessments, compensation of the trustee and employees and agents of the trustee and other expenses incurred in the administration of the trust.

(9) To receive additions to the assets of the trust.

(10) To sell or exchange any real or personal property at public or private sale, without obligation to repudiate an otherwise binding agreement in favor of better offers. If the trustee has been required to give bond, no proceeds of the sale of real estate, including proceeds arising by the reason of involuntary conversion, shall be paid to the trustee until:

(i) the court has made an order excusing the trustee from entering additional security; or

(ii) the court has made an order requiring additional security and the trustee has entered the additional security.

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

(12) To grant options for sales or leases of a trust asset and acquire options for the acquisition of assets, including options exercisable after the trust terminates.

(13) To join in any reorganization, consolidation, merger, dissolution, liquidation, voting trust plan or other concerted action of securityholders and to delegate discretionary duties with respect thereto.

(14) To vote a security, in person or by general or limited proxy, with or without power of substitution.

(15) To borrow funds and mortgage or pledge trust assets as security for repayment of the funds borrowed, including repayments after the trust terminates.

(16) To make loans to and buy property from the personal representatives of the settlor and the settlor's spouse. Loans under this paragraph shall be adequately secured, and the purchases under this paragraph shall be for fair market value.

(17) To partition, subdivide, repair, improve or develop real estate; enter into agreements concerning the partition, subdivision, repair, improvement, development, zoning or management of real estate; impose or extinguish restrictions on real estate; dedicate land and easements to public use; adjust boundaries; and do anything else regarding real estate which is commercially reasonable or customary under the circumstances.

(18) With respect to possible liability for violation of environmental law:

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

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

(iii) to decline to accept property into trust or disclaim a power with respect to property that is or may be burdened with liability for violation of environmental law;

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

(v) to pay the expense of inspection, review, abatement or remedial action to comply with environmental law.

(19) To operate, repair, maintain, equip and improve any farm or farm operation; to purchase and sell livestock, crops, feed and other property that is normally perishable; and to purchase, use and dispose of farm equipment and employ one or more farm managers and others in connection with farm equipment and pay them reasonable compensation.

(20) To make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish improvements; and raze existing or erect new party walls or buildings.

(21) To enter into a lease or arrangements for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(22) To exercise all rights and incidents of ownership of life insurance policies held by the trust, including borrowing on policies, entering into and terminating split-dollar plans, exercising conversion privileges and rights to acquire additional insurance and selecting settlement options.

(23) To employ a custodian; hold property unregistered or in the name of a nominee, including the nominee of any institution employed as custodian, without disclosing the fiduciary relationship and without retaining possession and control of securities or other property so held or registered; and pay reasonable compensation to the custodian.

(24) To apply funds distributable to a beneficiary who is, in the trustee's opinion, disabled by illness or other cause and unable properly to manage the funds directly for the beneficiary's benefit or to pay such funds for expenditure on the beneficiary's behalf to:

(i) the beneficiary;

(ii) a guardian of the beneficiary's estate;

(iii) an agent acting under a general power of attorney for the beneficiary; or

(iv) if there is no agent or guardian, a relative or other person having legal or physical custody or care of the beneficiary.

(25) To pay funds distributable to a minor beneficiary to the minor or to a guardian of the minor's estate or to apply the funds directly for the minor's benefit.

(26) To do any of the following:

(i) Pay any funds distributable to a beneficiary who is not 21 years of age or older to:

(A) the beneficiary;

(B) an existing custodian for the beneficiary under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or under any other state's version of the Uniform Transfers to Minors Act;

(C) an existing custodian for the beneficiary under the former Pennsylvania Uniform Gifts to Minors Act or under any other state's version of the Uniform Gifts to Minors Act; or

(D) a custodian for the beneficiary appointed by the trustee under Chapter 53.

(ii) Apply the funds for the beneficiary.

(27) To pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(28) To sell or exercise stock subscription or conversion rights.

(29) To continue or participate in the operation of any business or other enterprise and to effect incorporation, merger, consolidation, dissolution or other change in the form of the organization of the business or enterprise.

(30) To select a mode of payment under a qualified employee benefit plan or a retirement plan payable to the trustee and exercise rights under the plan.

(31) To distribute in cash or in kind or partly in each and allocate particular assets in proportionate or disproportionate shares.

(32) To appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove the appointed trustee.

(33) To execute and deliver instruments which will accomplish or facilitate the exercise of the trustee's powers.

(b) Effect.—The trustee shall have no further responsibility or liability for funds upon any of the following:

- (1) Payment under subsection (a)(24).
- (2) Payment under subsection (a)(25).
- (3) Payment or application under subsection (a)(26).

§ 7780.7. Distribution upon termination.

Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed to distribute the trust property within a reasonable time to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses and taxes.

SUBCHAPTER I LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES

Sec.

- 7781. Remedies for breach of trust - UTC 1001.
- 7782. Damages for breach of trust - UTC 1002.
- 7783. Damages in absence of breach - UTC 1003.
- 7784. (Reserved).
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- 7788. Exculpation of trustee - UTC 1008.
- 7789. Beneficiary's consent, release or ratification - UTC 1009.
- 7790. Limitation on personal liability of trustee - UTC 1010.
- 7790.1. Interest as general partner - UTC 1011.
- 7790.2. Protection of person dealing with trustee - UTC 1012.
- 7790.3. Certification of trust - UTC 1013.

§ 7781. Remedies for breach of trust - UTC 1001.

(a) What constitutes breach of trust.—A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) Remedies.—To remedy a breach of trust that has occurred or may occur, the court may order any appropriate relief, including the following:

- (1) Compelling the trustee to perform the trustee's duties.
- (2) Enjoining the trustee from committing a breach of trust.
- (3) Compelling the trustee to redress a breach of trust by paying money, restoring property or other means.
- (4) Ordering a trustee to file an account.
- (5) Taking any action authorized by Chapter 43 (relating to temporary fiduciaries).
- (6) (Reserved).
- (7) Removing the trustee as provided in section 7766 (relating to removal of trustee - UTC 706).
- (8) Reducing or denying compensation to the trustee.
- (9) Subject to section 7790.2 (relating to protection of person dealing with trustee - UTC 1012):
 - (i) voiding an act of the trustee;
 - (ii) imposing a lien or a constructive trust on trust property; or
 - (iii) tracing trust property wrongfully disposed of and recovering the property or its proceeds.
- (10) (Reserved).

§ 7782. Damages for breach of trust - UTC 1002.

(a) Liability for breach of trust.—A trustee who commits a breach of trust is liable to the beneficiaries affected.

(b) Contribution.—

(1) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.

(2) A trustee is not entitled to contribution if the trustee:

- (i) was substantially more at fault than another trustee; or
- (ii) committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

(3) A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 7783. Damages in absence of breach - UTC 1003.

(a) Profit.—A trustee is accountable to an affected beneficiary for any profit, excluding reasonable compensation, made by the trustee arising from the administration of the trust, even absent a breach of trust.

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

§ 7784. (Reserved).

§ 7785. Limitation of action against trustee.

(a) Imposed by trustee's written reports.—

(1) A beneficiary may not challenge a transaction or assert a claim against a trustee for breach of trust on the basis of a transaction if:

(i) the trustee provided the beneficiary with a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements for the year in which the transaction occurred and for each of the four subsequent calendar years;

(ii) the transaction was disclosed in the first of the five reports to which subparagraph (i) refers;

(iii) the beneficiary did not notify the trustee in writing within six months after receiving the fifth annual report that the beneficiary objects to the transaction and provide the basis in writing for that objection; and

(iv) all reports were accompanied by a conspicuous written statement describing the effect of this paragraph.

(2) A claim not barred by paragraph (1) may nevertheless be barred by subsection (b).

(b) Five-year absolute bar.—If not previously barred by subsection (a) or section 7798 (relating to failure to present claim at audit):

(1) Except as provided in paragraph (2) or (3), a claim by a beneficiary against a trustee, including a claim preserved by the beneficiary notifying the trustee in the manner described in subsection (a), shall be barred five years after the first to occur of the following events:

(i) the date after the removal, resignation or death of the trustee on which the beneficiary was given the notice required by section 7780.3(g) (relating to duty to inform and report);

(ii) the termination of the beneficiary's interest in the trust; or

(iii) the termination of the trust.

(2) Except as set forth in paragraph (3), if the first to occur of the events set forth in paragraph (1) occurred before November 6, 2006, a claim described in paragraph (1) shall be barred five years after November 6, 2006.

(3) A claim described in paragraph (1) is not barred if, prior to the respective date set forth in either paragraph (1) or (2), the trustee has filed an account with the court or the beneficiary has petitioned the court to compel the trustee to file an account.

§ 7786. Reliance on trust instrument - UTC 1006.

A trustee who acts in reasonable reliance on the express provisions of the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 7787. Event affecting administration or distribution - UTC 1007.

If the happening of an event, including marriage, divorce, performance of educational requirements, attaining a specific age or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 7788. Exculpation of trustee - UTC 1008.

(a) When exculpatory provision unenforceable.—A provision of a trust instrument relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

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

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

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

§ 7789. Beneficiary's consent, release or ratification - UTC 1009.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless the consent, release or ratification of the beneficiary was induced by improper conduct of the trustee.

§ 7790. Limitation on personal liability of trustee - UTC 1010.

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

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

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

§ 7790.1. Interest as general partner - UTC 1011.

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

personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to 15 Pa.C.S. Ch. 83 (relating to general partnerships) or 85 (relating to limited partnerships).

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

(c) When immunity inapplicable.—The immunity provided by this section does not apply if an interest in the partnership is held by:

- (1) the trustee in a capacity other than that of trustee;
- (2) the trustee's spouse; or
- (3) the trustee's descendant, sibling or parent or the spouse of a descendant, sibling or parent.

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

§ 7790.2. Protection of person dealing with trustee - UTC 1012.

(a) (Reserved).

(a.1) Protection from liability.—Unless a person assisting or dealing with a trustee has actual knowledge that the trustee is committing a breach of trust or has knowledge of such facts that the trustee's conduct amounts to bad faith, the person:

- (1) may assume without inquiry the existence of trust powers and their proper exercise by the trustee;
- (2) is not bound to inquire whether the trustee has power to act or is properly exercising the power; and
- (3) is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise.

(b) No requirement to inquire.—A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) (Reserved).

(c.1) Ultra vires.—A trustee's act may not be set aside or not specifically enforced because the trustee's act was not authorized by section 7780.5 (relating to powers of trustees - UTC 815) or 7780.6 (relating to illustrative powers of trustee) or because the trustee's act was authorized but the authority was improperly exercised. A court's power to set aside a transaction for fraud, accident, mistake or self-dealing is unaffected by this subsection.

(d) Former trustee.—A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a

former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

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

§ 7790.3. Certification of trust - UTC 1013.

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

(1) The trust's existence and the date the trust instrument was executed.

(2) The identity of the settlor.

(3) The identity and address of the currently acting trustee.

(4) The powers of the trustee.

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

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

(7) The trust's taxpayer identification number.

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

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

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

(d) Dispositive trust provisions.—A certification of trust need not contain the dispositive provisions of the trust instrument.

(e) Provisions to be made available upon request.—A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) Reliance on certification.—A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the provisions of the trust instrument may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

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

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

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

SUBCHAPTER J MISCELLANEOUS PROVISIONS

Sec.

- 7791. Abandonment of property.
- 7792. Powers, duties and liabilities identical with personal representatives.
- 7793. Effect of removal, or of probate of later will or codicil.
- 7794. Title of purchaser.
- 7795. Reports for school district trustees.
- 7796. Jurisdiction.
- 7797. Filing accounts.
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- 7799. Income on distributive shares.
- 7799.1. Annexation of account of distributed estate or trust.
- 7799.2. Accounts, audits and distributions.
- 7799.3. Pooled trusts for persons with disabilities.

§ 7791. Abandonment of property.

If any property is so burdensome or is so encumbered or is in such condition that it is of no value to the trust, the trustee may abandon it. If property without value cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the trustee to transfer or renounce it without consideration if it finds that this will be for the best interests of the trust.

§ 7792. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a trustee shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or a minor's estate:

Section 3184 (relating to discharge of personal representative and surety).

Section 3321(d) and (e) (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3332 (relating to inherent powers and duties).

Section 3353 (relating to order of court).

Section 3354 (relating to power given in governing instrument).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

Section 3359 (relating to record of proceedings; county where real estate lies).

§ 7793. Effect of removal, or of probate of later will or codicil.

(a) No impeachment.—No act of administration performed by a testamentary trustee in good faith shall be impeached by the subsequent:

(1) revocation of the probate of the will from which the trustee derives authority;

(2) probate of a later will or of a codicil; or

(3) dismissal of the trustee.

(b) Good faith dealings.—Regardless of the good or bad faith of the testamentary trustee, no person who deals in good faith with a testamentary trustee shall be prejudiced by the occurrence of any of the contingencies set forth in subsection (a).

§ 7794. Title of purchaser.

If the trustee has given a bond as required in accordance with this title, any sale, pledge, mortgage or exchange by a trustee, whether pursuant to a decree or to the exercise of a power conferred by the trust instrument or of a power under this title, shall pass the full title of the trust in the property, unless otherwise specified. Persons dealing with the trustee shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the trust. A sale or exchange by a trustee pursuant to a decree under section 3353 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law if the holder of the mortgage consents by writing filed in the proceeding. No sale, mortgage, exchange or conveyance shall be prejudiced by the subsequent dismissal of the trustee. No sale, mortgage, exchange or conveyance by a testamentary trustee shall be prejudiced by the terms of a will or codicil thereafter probated if the person dealing with the trustee did so in good faith.

§ 7795. Reports for school district trustees.

(a) Scope.—This section applies if a school district is a trustee of land in accordance with all of the following:

(1) The land is held for the benefit of the public.

(2) The land is not used directly for school purposes.

(b) Requirement.—

(1) By January 30, the school district shall prepare a report for the prior year concerning the trust.

(2) The report shall detail all of the following:

(i) Revenues generated.

(ii) Expenses incurred.

(iii) Balance of funds held by the school district as trustee.

(iv) A statement regarding the activities taken by the trustee during the prior year to advance the purposes of the trust.

(3) The report must be certified as correct by the district superintendent.

(4) The report shall be made public as follows:

(i) The report shall be published in 14-point type in a newspaper of general circulation in each county in which the land is located.

(ii) The report shall be available during business hours for inspection and copying at the office of the district superintendent. A reasonable fee may be charged for copying.

§ 7796. Jurisdiction.

Notwithstanding 42 Pa.C.S. § 931 (relating to original jurisdiction and venue), jurisdiction over an action involving land referred to in section 7795 (relating to reports for school district trustees) shall be vested in the court of common pleas in the judicial district where:

(1) all of the land is located; or

(2) more than 50% of the land is located.

§ 7797. Filing accounts.

(a) When to file.—A trustee shall file an account of his administration whenever directed to do so by the court and may file an account at any other time.

(b) Where to file.—All accounts of trustees shall be filed in the office of the clerk.

§ 7798. Failure to present claim at audit.

(a) Applicability.—This section applies to a person that, at the audit of a trustee's account, has a claim that:

(1) arose out of the administration of trust property or arises out of the distribution of trust property upon any interim or final accounting of the trust; and

(2) is not reported to the court as an admitted claim.

(b) Bar.—A person that fails, at the call for audit or confirmation, to present a claim under subsection (a) shall be forever barred from making a claim against:

(1) trust property distributed pursuant to the audit or confirmation;

(2) a distributee of trust property distributed pursuant to the audit or confirmation; and

(3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), trust property awarded back upon further trust pursuant to the audit or confirmation.

(c) Liens and charges unimpaired.—Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the trust existing at the time of the audit.

§ 7799. Income on distributive shares.

Except as otherwise provided by the trust instrument or by the provisions of section 3543 (relating to income on distributive shares):

(1) If a sum of money is directed to be set aside at a specified time as a separate trust, it shall be entitled to income at the annual rate of 5% from the date it was to be set aside until it is set aside. If a sum of money is directed to be paid outright, it shall be entitled to income at the annual rate of 5% from three months after it became payable until it is paid.

(2) A donee of a gift of specific real or personal property directed to be distributed from a trust shall be entitled to the net income from property given to the donee accrued from the date it became distributable.

(3) All income from real and personal property earned during the administration of a trust and not payable to others pursuant to the governing instrument or the provisions of this section shall be distributed pro rata among the income beneficiaries of a continuing trust and other persons entitled to residuary shares of the trust.

§ 7799.1. 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 the estate or other trust to an account filed by the trustee covering the administration of the trust under the trustee's 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. If 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.

§ 7799.2. Accounts, audits and distributions.

The provisions concerning accounts, audits and distributions in trust estates shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3533 (relating to award upon final confirmation of account).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3538 (relating to distributions involving persons born out of wedlock).

Section 3539 (relating to change in law after pattern of distribution established).

Section 3540 (relating to absentee and additional distributees).

Section 3541 (relating to order of abatement).

Section 3545 (relating to transcripts of balances due by personal representative).

§ 7799.3. Pooled trusts for persons with disabilities.

(a) Scope.—This section relates to pooled trusts.

(b) Organization of pooled trust.—

(1) A pooled trust shall be administered by a trustee governed by a board. The trust may employ persons as necessary.

(2) The members of a board and employees of a trustee, if any, shall stand in a fiduciary relationship to the beneficiaries and the trustee regarding investment of the trust and shall not profit, either directly or indirectly, with respect to the investment.

(3) A trustee shall maintain a separate account for each beneficiary of a pooled trust; but, for purposes of investment and management of funds, the trustee may pool these accounts. The trustee shall have exclusive control and authority to manage and invest the money in the pooled trust in accordance with this section, subject, however, to the exercise of that degree of judgment, skill and care under the prevailing circumstances that persons of prudence, discretion and intelligence who are familiar with investment matters exercise in the management of their affairs, considering the probable income to be derived from the investment and the probable safety of their capital. The trustee may charge a trust management fee to cover the costs of administration and management of the pooled trust.

(4) A board member shall disclose and abstain from participation in a discussion or voting on an issue if a conflict of interest arises with the board member on a particular issue or vote.

(5) No board member may receive compensation for services provided as a member of the board. No fees or commissions may be paid to a board member. A board member may be reimbursed for necessary expenses incurred which are in the best interest of the beneficiaries of the pooled trust as a board member upon presentation of receipts.

(6) The trustee shall disburse money from a beneficiary's account for the sole benefit of the beneficiary. A disbursement from a beneficiary's account must have a reasonable relationship to the needs of the beneficiary.

(c) Pooled trust fund.—Before the funding of a pooled trust, all liens and claims in favor of the Department of Public Welfare for repayment of cash and medical assistance shall first be satisfied. All money received for pooled trust funds shall be deposited with a court-approved corporate fiduciary or

with the State Treasury if no court-approved corporate fiduciary is available to the trustee. The funds shall be pooled for investment and management. A separate account shall be maintained for each beneficiary, and quarterly accounting statements shall be provided to each beneficiary by the trustee. The court-approved corporate fiduciary or the State Treasury shall provide quarterly accounting statements to the trustee. The court-approved corporate fiduciary or the State Treasury may charge a trust management fee to cover the costs of managing the funds in the pooled trust.

(d) Reporting.—

(1) In addition to reports required to be filed under 15 Pa.C.S. Pt. III (relating to partnerships and limited liability companies), the trustee shall file an annual report with the Office of Attorney General and the Department of Public Welfare, along with an itemized statement which shows the funds collected for the year, income earned, salaries paid, other expenses incurred and the opening and final trust balances. A copy of this statement shall be available to the beneficiary, settlor or designee of the settlor upon request.

(2) The trustee shall prepare and provide each settlor or the settlor's designee annually with a detailed individual statement of the services provided to the settlor's beneficiary during the previous 12 months and of the services to be provided during the following 12 months. The trustee shall provide a copy of this statement to the beneficiary upon request.

(e) Coordination of services.—

(1) The Department of Public Welfare shall review and approve the pooled trust of an applicant for medical assistance.

(2) In the determination of eligibility for medical assistance benefits, the interest of a disabled beneficiary in a pooled trust that has been approved by the Department of Public Welfare shall not be considered as a resource for purposes of determining the beneficiary's eligibility for medical assistance.

(3) No State agency may reduce the benefits or services available to an individual because that person is a beneficiary of a pooled trust. The beneficiary's interest in a pooled trust is not reachable in satisfaction of a claim for support and maintenance of the beneficiary.

(f) Notice.—The Office of Attorney General and the Department of Public Welfare shall make available information on the treatment of pooled trusts for the persons with disabilities in the medical assistance program.

(g) Applicability.—This section shall apply to all of the following:

(1) Pooled trusts established after March 8, 2003.

(2) Accounts of individual beneficiaries established after March 8, 2003, in pooled trusts created before March 9, 2003.

(h) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Beneficiary.” An individual with a disability who has the right to receive services and benefits of a pooled trust.

“Board.” A group of persons vested with the management of the business affairs of a trustee.

“Disability.” A physical or mental impairment as defined in section 1614 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1382c).

“Pooled trust.” A trust which meets all of the following:

- (1) The trust contains assets of more than one beneficiary.
- (2) Each beneficiary has a disability.
- (3) The trust is managed by a nonprofit corporation.
- (4) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts. Accounts in the trust may be established by the parent, grandparent or legal guardian of the individual with a disability, by the individual with a disability or by a court.

(5) Upon the death of a beneficiary or upon the earlier termination of the trust, amounts remaining in the beneficiary’s account must be distributed in accordance with one of the following:

- (i) The trust may retain up to 50% of the remaining balance for the benefit of other beneficiaries. The remaining 50% of the balance must be reimbursed to the Commonwealth and any other state that provided medical assistance up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.
- (ii) The amounts must be used to reimburse the Commonwealth and any other state that provided medical assistance up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.

“Trustee.” A nonprofit organization that manages a pooled trust.

Section 10. The definitions of “principal” and “sui juris beneficiary” in section 8102 of Title 20 are amended to read:

§ 8102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Principal.” Property held in trust for distribution to a remainder beneficiary when the trust terminates *or property held in trust in perpetuity*.

* * *

“Sui juris beneficiary.” Includes:

- (1) a court-appointed guardian of an incapacitated beneficiary;
- (2) an agent for an incompetent beneficiary; and
- (3) a court-appointed guardian of a minor beneficiary’s estate [**or, if none, the parents of the minor beneficiary**].

* * *

Section 11. Sections 8104(c)(4), 8105 and 8107 of Title 20 are amended to read:

§ 8104. Trustee's power to adjust.

* * *

(c) Prohibited adjustments.—A trustee may not make an adjustment under this section if any of the following apply:

* * *

(4) The adjustment is from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax *charitable* deduction has been taken unless both income and principal are so set aside.

* * *

§ 8105. Power to convert to unitrust.

(a) Conversion.—Unless expressly prohibited by the governing instrument, a trustee may release the power under section 8104 (relating to trustee's power to adjust) and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

(i) are currently eligible to receive income from the trust; **[and]**

(ii) *would be eligible to receive, if no powers of appointment were exercised, income from the trust if the interest of all those eligible to receive income under subparagraph (i) were to terminate immediately prior to the giving of notice; and*

(iii) would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

(3) There is at least one sui juris beneficiary under paragraph (2)(i) and at least one sui juris beneficiary under *either* paragraph (2)(ii) *or* (iii).

(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under paragraph (2).

(b) Judicially approved conversion.—

(1) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

(i) A beneficiary timely objects to the conversion to a unitrust.

(ii) There are no sui juris beneficiaries under subsection (a)(2)(i).

(iii) There are no sui juris beneficiaries under *either* subsection (a)(2)(ii) *or* (iii).

(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(c) Consideration.—In deciding whether to exercise the power conferred by subsection (a), a trustee may consider, among other things, all of the following:

- (1) The size of the trust.
- (2) The nature and estimated duration of the trust.
- (3) The liquidity and distribution requirements of the trust.
- (4) The needs for regular distributions and preservation and appreciation of capital.
- (5) The expected tax consequences of the conversion.
- (6) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary.
- (7) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument.

(8) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(9) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(d) Post conversion.—After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

- (i) from appreciation of capital;
- (ii) from earnings and distributions from capital; or
- (iii) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(3) The term “income” in the governing instrument shall mean an annual distribution (the unitrust distribution) equal to 4% (the payout percentage) of the net fair market value of the trust’s assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

- (i) the three preceding years; or
- (ii) the period during which the trust has been in existence.

(e) Discretion of trustee.—The trustee may, in the trustee's discretion from time to time, determine all of the following:

- (1) The effective date of a conversion to a unitrust.
- (2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.
- (3) The frequency of unitrust distributions during the year.
- (4) The effect of other payments from or contributions to the trust on the trust's valuation.
- (5) Whether to value the trust's assets annually or more frequently.
- (6) What valuation dates to use.
- (7) How frequently to value nonliquid assets and whether to estimate their value.
- (8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.
- (9) Any other matters necessary for the proper functioning of the unitrust.

(f) Allocation.—

(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be *considered to have been* paid from [net income as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.] *the following sources in order of priority:*

- (i) *net income determined as if the trust were not a unitrust;*
- (ii) *ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);*
- (iii) *net realized short-term capital gains for Federal income tax purposes;*
- (iv) *net realized long-term capital gains for Federal income tax purposes; and*
- (v) *the principal of the trust estate.*

(g) Court orders.—The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

- (1) Select a payout percentage different than 4%.
- (2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

(3) Average the valuation of the trust's net assets over a period other than three years.

(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 8104 shall be revived.

(g.1) Reconversion from unitrust.—A trustee may reconvert a unitrust following the same procedures as in subsection (a) for converting a trust into a unitrust with the exception that the written notice shall state that the intent is to reconvert the unitrust into a trust for which income is defined under this chapter. Upon reconversion, the power to adjust under section 8104 shall be revived.

(h) Application.—A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(i) Prohibited conversions.—A trustee may not convert a trust into a unitrust in any of the following circumstances:

(1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(2) If the unitrust distribution would be made from **[any amount] trust funds** which **[is] are** permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax **charitable** deduction has been taken, unless both income and principal are so set aside. ***If both income and principal are so set aside, then section 8113 (relating to charitable trusts) and not this section shall be available.***

(3) If:

(i) possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for Federal income tax purposes; and

(ii) the individual would not be treated as the owner if the trustee did not possess the power to convert.

(4) If:

(i) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to Federal estate or gift tax with respect to an individual; and

(ii) the assets would not be subject to Federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(5) If the conversion would result in the disallowance of a Federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(6) If the trustee is a beneficiary of the trust.

(j) Permissible conversion when otherwise prohibited.—

(1) If subsection (i)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(2) If subsection (i)(3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

(k) Release of the power to convert.—

(1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i)(3), (4) or (5).

(ii) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i).

(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.

§ 8107. [(Reserved).] *Express trusts.*

(a) General rule.—In the absence of a contrary intent appearing in the governing instrument of an express unitrust, the governing instrument shall be construed in accordance with the following rules:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from:

(i) appreciation of capital;

(ii) earnings and distributions from capital; or

(iii) both.

(2) The unitrust distribution shall be an annual distribution of an amount equal to 4% of the net fair market value of the trust's assets, whether the assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) the three preceding years; or

(ii) the period during which the trust has been in existence.

(3) The trustee may, in the trustee's discretion from time to time, determine all of the following:

(i) The provisions for prorating a unitrust distribution for a short year in which the beneficiary's right to payments commences or ceases.

(ii) The frequency of unitrust distributions during the year.

(iii) The effect of other payments from or contributions to the trust on the trust's valuation.

(iv) Whether to value the trust's assets annually or more frequently.

(v) What valuation dates to use.

(vi) How frequently to value nonliquid assets and whether to estimate their value.

(vii) Whether to omit from the calculations residential real estate, tangible personal property or other trust property used, occupied or possessed by a beneficiary.

(viii) Any other matters necessary for the proper functioning of the unitrust.

(4) Expenses which would be deducted from income if the trust were not a unitrust shall not be deducted from the unitrust distribution.

(5) The unitrust distribution shall be considered to have been paid from the following sources in order of priority:

(i) net income determined as if the trust were not an express unitrust;

(ii) ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);

(iii) net realized short-term capital gains for Federal income tax purposes;

(iv) net realized long-term capital gains for Federal income tax purposes; and

(v) the principal of the trust estate.

(b) Definition.—As used in this section, the term “express unitrust” shall mean a trust which by its governing instrument creates a trust, other than a trust solely for charitable purposes or a qualified charitable split interest trust under section 664(d) or 170(f)(2)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 664(d) or 170(f)(2)(B)), and provides for an annual distribution, the unitrust distribution, equal to a fixed percentage of the net fair market value of the trust’s assets, valued at least annually, and computed with reference to such value in one or more years. If the fixed percentage is not less than 3% nor more than 5%, the unitrust distribution shall be considered the income of the trust for the purposes of this chapter.

Section 12. Section 8113(c) of Title 20 is amended and the section is amended by adding a subsection to read:

§ 8113. Charitable trusts.

*(c) Effect of election.—If an election is made to be governed by this section, the term “income” shall mean a percentage of the value of the trust. The trustee shall, in a writing maintained as part of the permanent records of the trust, [annually] select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust, but in no event shall the percentage be less than 2% nor more than 7% per year. The term “principal” shall mean all other assets held by the trustee with respect to the trust. *The selection may be made either annually or subject to change only when the trustee deems such change necessary and prudent.**

(f) Charitable organizations.—For a charitable organization defined under the act of June 17, 1971 (P.L.181, No.23), known as the Charitable

Instruments Act of 1971, the provisions of that act shall supersede subsection (c) if necessary to comply with the minimum investment return requirements.

Section 13. Sections 8121(2) and 8141(c) and (d) of Title 20 are amended to read:

§ 8121. Determination and distribution of net income.

After a decedent dies in the case of an estate or after an income interest in a trust ends, the following rules apply:

* * *

(2) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright and shall allocate to a pecuniary amount in trust the **[interest, other]** income or other amount provided by the governing instrument or, in the absence of any such provision, the income provided in section 3543 (relating to **[interest or]** income on distributive shares) or **[7187] 7799** (relating to **[interest or]** income on distributive shares) from net income determined under paragraph (3) or from principal to the extent that net income is insufficient.

* * *

§ 8141. Character of receipts.

* * *

(c) When received in partial liquidation.—Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property **[received] distributed by the entity to its owners** in **[a] one** distribution or **a** series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(d) When not received in partial liquidation.—Money is not received in partial liquidation nor may it be taken into account under subsection (c)(2) to the extent that it does not exceed the amount of income tax that a **[trustee or] trust** beneficiary must pay on taxable income of the entity that distributes the money.

* * *

Section 14. The act of December 9, 2002 (P.L.1379, No.168), known as the Pooled Trust Act, is repealed.

Section 15. (a) Except as set forth in subsection (b), the addition of 20 Pa.C.S. § 7799.3 is a consolidation of the act of December 9, 2002 (P.L.1379, No.168), known as the Pooled Trust Act. Any differences between 20 Pa.C.S. § 7799.3 and the Pooled Trust Act are intended only to conform to the style of the Pennsylvania Consolidated Statutes and are not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Pooled Trust Act.

(b) Subsection (a) does not apply to the addition of 20 Pa.C.S. § 7799.3(d)(1), (e)(1), (f) and paragraph (5) of the definition of “pooled trust” in subsection (h).

Section 16. The following apply:

(1) The addition of 20 Pa.C.S. § 3534.1 shall apply to the estates of decedents who die on or after the effective date of this paragraph.

(2) The amendment of 20 Pa.C.S. § 3702(h) shall apply to the estates of decedents who die on or after the effective date of this paragraph.

(3) Except as provided in paragraph (4), the addition of 20 Pa.C.S. Ch. 77 shall apply to all trusts created before, on or after the effective date of this paragraph.

(4) The following apply:

(i) The addition of 20 Pa.C.S. § 7737 shall not apply to oral trusts created before the effective date of this paragraph.

(ii) The addition of 20 Pa.C.S. § 7752(a) shall not apply to trusts created before the effective date of this paragraph.

Section 17. This act shall take effect as follows:

(1) The following provisions shall take effect in 60 days:

(i) The amendment of 20 Pa.C.S. § 908(a).

(ii) The addition of 20 Pa.C.S. § 3534.1.

(iii) The amendment of 20 Pa.C.S. § 3543.

(iv) The amendment of 20 Pa.C.S. § 7503(b).

(v) The addition of 20 Pa.C.S. § 7504(c).

(vi) The amendment of 20 Pa.C.S. § 7506.

(vii) The amendment of the definitions of “principal” and “sui juris beneficiary” in 20 Pa.C.S. § 8102.

(viii) The amendment of 20 Pa.C.S. § 8104(c).

(ix) The amendment of 20 Pa.C.S. § 8105.

(x) The amendment of 20 Pa.C.S. § 8107.

(xi) The amendment of 20 Pa.C.S. § 8113.

(xii) The amendment of 20 Pa.C.S. § 8141.

(xiii) Section 16(1) of this act.

(2) The following provisions shall take effect immediately:

(i) The amendment of 20 Pa.C.S. § 3702(h).

(ii) The amendment of 20 Pa.C.S. § 6104(d).

(iii) The amendment of 20 Pa.C.S. § 6106.

(iv) The amendment of 20 Pa.C.S. § 6107.

(v) The addition of 20 Pa.C.S. § 6107.1.

(vi) The amendment of the definition of “mutual fund” in 20 Pa.C.S. § 7201.

(vii) The amendment of 20 Pa.C.S. § 7314.1.

(viii) Section 15 of this act.

(ix) Section 16(2) of this act.

(x) This section.

(3) The remainder of this act shall take effect in 120 days.

APPROVED—The 7th day of July, A.D. 2006.

EDWARD G. RENDELL