

# HOUSE . . . . . No. 03780

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The committee on Ways and Means, to whom was referred the Bill to establish the Massachusetts Uniform Trust Code (House, No. 3756), reports recommending the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 3780). October 31, 2011.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act to establish the Massachusetts Uniform Trust Code..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 2. Paragraph (7) of subsection (a) of section 3-606 of Article III of said chapter 190B,  
2 as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by striking the  
3 words “section 7-304” and inserting in place thereof the following:- “section 702 of chapter  
4 203E”

5 SECTION 1. Article VII of Chapter 190B of the General Laws, as appearing in the 2010  
6 Official Edition, is hereby amended by striking out parts 1 to 4, inclusive, and inserting in place  
7 thereof the following:-

8 PART 1. [RESERVED]

9 PART 2. [RESERVED]

10 PART 3. [RESERVED]

11 PART 4. [RESERVED]

12 SECTION 3. Section 7-502 of Article VII of said chapter 190B, as so appearing, is hereby  
13 amended by striking the words “section 7-401” and inserting in place thereof the following:-  
14 “section 816 of chapter 203E”

15 SECTION 4. Section 3C of chapter 203 of the General Laws is hereby repealed.

16 SECTION 5. The General Laws are hereby amended by inserting after chapter 203D the  
17 following chapter—

18 CHAPTER 203E

19 MASSACHUSETTS UNIFORM TRUST CODE

20 ARTICLE 1

21 GENERAL PROVISIONS AND DEFINITIONS

22 Section 101. Short Title

23 Section 101. This chapter shall be known and may be cited as the Massachusetts Uniform Trust  
24 Code.

25 Section 102. Scope

26 Section 102. This chapter applies to express trusts, charitable or non-charitable, of a donative  
27 nature and trusts created pursuant to a judgment or decree that requires the trust to be  
28 administered in the manner of an express trusts.

29 Section 103. Definitions

30 Section 103. In this chapter the following words shall, unless the context clearly requires  
31 otherwise, have the following meanings:

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

33 (2) “Ascertainable standard”, a standard relating to an individual’s health, education, support or  
34 maintenance.

35 (3) “Beneficiary”, a person who has a present or future beneficial interest in a trust, vested or  
36 contingent.

37 (4) “Charitable trust”, a trust, or portion of a trust, created for a charitable purpose described in  
38 section 405(a).

39 (5) “Environmental law”, a federal, state or local law, rule, regulation or ordinance relating to  
40 protection of the environment.

41 (6) “Interests of the beneficiaries”, the beneficial interests provided in the terms of the trust.

42 (7) “Jurisdiction”, a geographic area, including a state or country.

43 (8) “Person”, an individual, corporation, business trust, estate, trust, partnership, limited liability  
44 company, association, joint venture, government, governmental subdivision, agency or  
45 instrumentality, public corporation or any other legal or commercial entity.

46 (9) “Property”, anything that may be the subject of ownership, whether real, personal, legal,  
47 equitable or any interest therein.

48 (10) “Qualified beneficiary”, a beneficiary who, on the date the beneficiary’s qualification is  
49 determined:

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

51 (B) would be a distributee or permissible distributee of trust income or principal if the trust

52 terminated on that date.

53 (11) “Revocable”, a trust that is revocable by the settlor without the consent of the trustee or a

54 person holding an adverse interest.

55 (12) “Settlor”, a person, including a testator, who creates or contributes property to a trust. If

56 more than one person creates or contributes property to a trust, each person is a settlor of the

57 portion of the trust property attributable to that person’s contribution except to the extent another

58 person has the power to revoke or withdraw that portion.

59 (13) “Spendthrift provision”, a term of a trust which restrains transfer of a beneficiary’s interest.

60 (14) “State”, a state of the United States, the District of Columbia, Puerto Rico, the United

61 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the

62 United States, including an Indian tribe or band recognized by federal law or formally

63 acknowledged by a state.

64 (15) “Terms of a trust”, the manifestation of the settlor’s intent regarding a trust’s provisions as

65 expressed in the trust instrument or as may be established by other evidence that would be

66 admissible in a judicial proceeding.

67 (16) “Trust instrument”, an instrument that contains terms of the trust, including any

68 amendments thereto.

69 (17) “Trustee”, an original, additional or successor trustee or a co-trustee.

70 Section 104. Knowledge

71 Section 104. (a) Subject to subsection (b), a person has knowledge of a fact if the person:

72 (1) has actual knowledge of it;

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

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

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

85 Section 105. Default And Mandatory Rules

86 Section 105. (a) Except as otherwise provided in the terms of the trust, this chapter governs the  
87 duties and powers of a trustee, relations among trustees and the rights and interests of a  
88 beneficiary.

89 (b) The terms of a trust prevail over any provision of this chapter except:

90 (1) the requirements for creating a trust;

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

93 (3) the requirement that a trust have a purpose that is lawful and not contrary to public policy;

94 (4) the power of the court to modify or terminate a trust under sections 410 through 416;

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

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

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

101 (8) the effect of an exculpatory term under section 1008;

102 (9) the rights under sections 1010 through 1013 of a person other than a trustee or beneficiary;  
103 and

104 (10) the power of the court to take such action and exercise such jurisdiction as may be  
105 necessary in the interests of justice.

106 Section 106. Common Law of Trusts; Principles of Equity

107 Section 106. The common law of trusts and principles of equity supplement this chapter, except  
108 to the extent modified by this chapter or any other general or special law.

109 Section 108. Principal Place of Administration

110 Section 108. (a) Without precluding other means for establishing a sufficient connection with  
111 the designated jurisdiction, terms of a trust designating the principal place of administration are  
112 valid and controlling if:

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

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

116 (b) Without precluding the right of a court to order, approve or disapprove a transfer, the trustee  
117 may, but has no affirmative duty to, transfer the trust's principal place of administration to  
118 another state or to a jurisdiction outside of the United States.

119 (c) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal  
120 place of administration not less than 60 days before initiating the transfer. The notice of  
121 proposed transfer must include:

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

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

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

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

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

129 (d) The authority of a trustee under this section to transfer a trust's principal place of  
130 administration terminates if a qualified beneficiary notifies the trustee of an objection to the  
131 proposed transfer on or before the date specified in the notice.

#### 132 Section 109. Methods and Waiver of Notice

133 Section 109. (a) Notice to a person under this chapter, or the sending of a document to a person  
134 under this chapter, must be accomplished in a manner reasonably suitable under the  
135 circumstances and likely to result in receipt of the notice or document. Permissible methods of  
136 notice, or for sending a document, include first-class mail, personal delivery or delivery to the  
137 person's last known place of residence or place of business.

138 (b) Notice required under this chapter, or a document required to be sent under this chapter,  
139 need not be provided to a person whose identity or location is unknown to and not reasonably  
140 ascertainable by the trustee.

141 (c) Notice under this chapter, or the sending of a document under this chapter, may be waived  
142 by the person to be notified or sent the document.

143 (d) Notice of a judicial proceeding authorized by this chapter to be brought by petition in the  
144 probate and family court department of the trial court must be given as provided in section 1-401  
145 of chapter 190B. Notice of any other judicial proceeding must be given as provided in the  
146 applicable procedural rules.

#### 147 Section 110. Others Treated as Qualified Beneficiaries



148 Section 110. (a) Whenever notice to qualified beneficiaries of a trust is required under this  
149 chapter, the trustee must also give notice to any other beneficiary who has sent the trustee a  
150 request for notice.

151 (b) A charitable organization expressly designated to receive distributions under the terms of a  
152 charitable trust has the rights of a qualified beneficiary under this chapter if the charitable  
153 organization, on the date the charitable organization's qualification is being determined:

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

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

157 (c) A person appointed to enforce a trust created for the care of an animal or another non-  
158 charitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary  
159 under this chapter.

#### 160 Section 111. Non-judicial Settlement Agreements

161 (a) For purposes of this section, "interested persons" means persons whose consent would be  
162 required in order to achieve a binding settlement were the settlement to be approved by the court.

163 (b) Except as otherwise provided in subsection (c), interested persons may enter into a binding  
164 non-judicial settlement agreement with respect to any matter involving a trust.

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

168 (d) Matters that may be resolved by a non-judicial settlement agreement include:

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

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

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

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

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

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

177 (e) Any interested person may request the court to approve a non-judicial settlement agreement,  
178 to determine whether the representation as provided in article 3 was adequate, and to determine  
179 whether the agreement contains terms and conditions the court could have properly approved.

180 Section 112. Rules of Construction

181 Section 112. The rules of construction that apply in the commonwealth to the interpretation of  
182 and disposition of property shall also apply as appropriate to the interpretation of the terms of a  
183 revocable trust and the disposition of the trust property. A "revocable trust", for purposes of this  
184 section, shall mean a trust that was (1) revocable by the settlor until the time of his or her death,  
185 (2) created or amended by the settlor after the effective date of this act, and (3) was intended to  
186 dispose of the settlor's property at death, whether under will or otherwise and whether the trust  
187 was funded at the time of the settlor's death or not.

188 Section 113. Qualification of Foreign Trustee

189 Section 113. A foreign corporate trustee is required to qualify as a foreign corporation doing  
190 business in the commonwealth if it maintains the principal place of administration of any trust  
191 within the commonwealth. A foreign co-trustee is not required to qualify in the commonwealth  
192 solely because its co-trustee maintains the principal place of administration in the  
193 commonwealth. Unless otherwise doing business in the commonwealth, local qualification by a  
194 foreign trustee, corporate or individual, is not required in order for the trustee to receive  
195 distribution from a local estate, to hold, invest in, manage or acquire property located in the  
196 commonwealth, or to maintain litigation. Nothing in this section affects a determination of what  
197 other acts require qualification as doing business in the commonwealth.

198 ARTICLE 2

199 JUDICIAL PROCEEDINGS

200 Section 201. Role of Court in Administration of Trust

201 Section 201. (a) The court may intervene in the administration of a trust to the extent its  
202 jurisdiction is invoked by an interested person or as provided by law.

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

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

206 (d) A proceeding brought pursuant to this chapter in the probate and family court department of  
207 the trial court to appoint or remove a trustee, to approve the resignation of a trustee, to review  
208 and settle accounts of a trustee, or concerning any other matter relating to the administration of a

209 trust may be initiated by filing a petition and giving notice as provided in section 109 to  
210 interested parties. A decree will be valid as to all who are given notice of the proceeding even if  
211 fewer than all interested parties are notified.

## 212 Section 202. Jurisdiction Over Trustee and Beneficiary

213 Section 202. (a) By accepting the trusteeship of a trust having its principal place of  
214 administration in the commonwealth or by moving the principal place of administration to the  
215 commonwealth, the trustee submits personally to the jurisdiction of the courts of the  
216 commonwealth regarding any matter involving the trust.

217 (b) With respect to their interests in the trust, the beneficiaries of a trust having its principal  
218 place of administration in the commonwealth are subject to the jurisdiction of the courts of the  
219 commonwealth regarding any matter involving the trust. By accepting a distribution from such a  
220 trust, the recipient submits personally to the jurisdiction of the courts of the commonwealth  
221 regarding any matter involving the trust.

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

## 224 Section 203. Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts

225 Section 203. The court shall not, over the objection of a party, entertain proceedings under  
226 section 201 involving a trust registered or having its principal place of administration in another  
227 state, unless (1) all appropriate parties could not be bound by litigation in the courts of the state  
228 where the trust is registered or has its principal place of administration or (2) the interests of  
229 justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a

230 proceeding under this section on the consent of any party to jurisdiction of the state in which the  
231 trust is registered or has its principal place of administration, or the court may grant a  
232 continuance or enter any other appropriate order.

### 233 Section 204. Venue

234 Section 204. A trust shall be subject to the jurisdiction of the probate and family court  
235 department of the trial court of the commonwealth for the county in which is located its principal  
236 place of administration. The principal place of administration of a testamentary trust shall be  
237 deemed to be the location of the court of the commonwealth in which the will creating the trust  
238 was granted informal or formal probate. Unless otherwise designated in the trust instrument, the  
239 principal place of administration of an inter vivos trust is the trustee's usual place of business  
240 where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no  
241 such place of business. In the case of co-trustees, the principal place of administration, if not  
242 otherwise designated in the trust instrument, is (1) the usual place of business of the corporate  
243 trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of  
244 the individual trustee who is a professional fiduciary if there is but one such person and no  
245 corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-  
246 trustees as agreed upon by them.

### 247 Section 205. Petition for Transfers of Trust Property Whose Disposition Depends upon the 248 Death of an Absentee

249 Section 205. (a) If a trustee holds trust property the disposition of which depends upon the death  
250 of an absentee whose death has not otherwise been determined, on or after the day 5 years after  
251 the date of the absentee's disappearance, the trustee, or any person who would be interested in

252 the trust property were the absentee dead, may petition the court having jurisdiction of the trust  
253 for an order that the trust property be disposed of to the persons to whom, and in the shares or  
254 proportions in which, it would be distributed under the provisions of the trust if the absentee had  
255 died on that day.

256 (b) The court may direct the petitioner to report the results of, or make and report back  
257 concerning, a reasonably diligent search for the absentee in any manner that may seem advisable,  
258 including any or all of the following methods:

259 (1) by inserting in a periodical of general circulation a notice requesting information from any  
260 person having knowledge of the whereabouts of the absentee;

261 (2) by notifying law enforcement officials, public welfare agencies and registers of deaths in  
262 appropriate locations of the disappearance of the absentee;

263 (3) by engaging the services of an investigator.

264 The costs of any search so directed shall be paid from the trust property.

265 (c) After any such report directed by the court under paragraph (b) above has been completed to  
266 the satisfaction of the court, notice of the hearing on the petition shall be given.

267 (d) If after the hearing the court finds that the facts warrant a presumption of death, it shall enter  
268 an appropriate order of disposition of the trust property and any undistributed net income.

269 ARTICLE 3

270 REPRESENTATION

271 Section 301. Representation: Basic Effect

272 Section 301. (a) Notice to a person who may represent and bind another person under this article  
273 shall have the same effect as if notice were given directly to the other person.

274 (b) The consent of a person who may represent and bind another person under this article is  
275 binding on the person represented unless the person represented objects to the representation  
276 before the consent would otherwise have become effective.

277 (c) Except as otherwise provided in section 602, a person who under this article may represent a  
278 settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

279 (d) A settlor may not represent and bind a beneficiary under this article with respect to the  
280 termination or modification of a trust under section 411(a).

281 Section 302. Representation by Holder of General Testamentary Power of Appointment

282 Section 302. To the extent there is no conflict of interest between the holder of a general  
283 testamentary power of appointment and the persons represented with respect to the particular  
284 question or dispute, the holder may represent and bind persons whose interests, as permissible  
285 appointees, takers in default, or otherwise, are subject to the power.

286 Section 303. Representation by Fiduciaries and Parents

287 Section 303. To the extent there is no conflict of interest between the representative and the  
288 person represented or among those being represented with respect to a particular question or  
289 dispute:

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

291 (2) a guardian may represent and bind the ward or protected person if a conservator has not been  
292 appointed;

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

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

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

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

#### 300 Section 304. Representation by Person Having Substantially Identical Interest

301 Section 304. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a  
302 person whose identity or location is unknown and not reasonably ascertainable, may be  
303 represented by and bound by another having a substantially identical interest with respect to the  
304 particular question or dispute, but only to the extent there is no conflict of interest between the  
305 representative and the person represented.

#### 306 Section 305. Appointment of Guardian ad Litem

307 Section 305. (a) If the court determines that an interest is not represented under this article, or  
308 that the otherwise available representation might be inadequate, the court may appoint a guardian  
309 ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a  
310 minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A  
311 guardian ad litem may be appointed to represent several persons or interests.



312 (b) A guardian ad litem may act on behalf of the individual represented with respect to any  
313 matter arising under this chapter, whether or not a judicial proceeding concerning the trust is  
314 pending.

315 (c) In making decisions, a guardian ad litem may consider general benefit accruing to the living  
316 members of the individual's family.

## 317 ARTICLE 4

### 318 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

#### 319 Section 401. Methods Of Creating Trust

320 Section 401. A trust may be created by:

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

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

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

#### 325 Section 402. Requirements For Creation

326 Section 402. (a) A trust shall be created only if:

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

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

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

330 (A) a charitable trust;

331 (B) a trust for the care of an animal, as provided in section 408; or

332 (C) a trust for a non-charitable purpose, as provided in section 409;

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

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

335 (b) A beneficiary shall be definite if the beneficiary can be ascertained now or in the future,

336 subject to any applicable rule against perpetuities.

337 (c) A power in a trustee to select a beneficiary from an indefinite class shall be valid. If the

338 power is not exercised within a reasonable time, the power fails and the property subject to the

339 power passes to the persons who would have taken the property had the power not been

340 conferred.

341 Section 403. Trusts Created in Other Jurisdictions

342 Section 403. A trust not created by will shall be validly created if its creation complies with the

343 law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction

344 in which, at the time of creation:

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

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

347 (3) any trust property was located.

348 Section 404. Trust Purposes

349 Section 404. A trust may be created only to the extent its purposes are lawful and not contrary to  
350 public policy.

351 Section 405. Charitable Purposes; Enforcement

352 Section 405. (a) A charitable trust may be created for the relief of poverty, the advancement of  
353 education or religion, the promotion of health, governmental or municipal purposes, or other  
354 purposes the achievement of which is beneficial to the community.

355 (b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary  
356 and do not provide a method to select such a purpose or beneficiary, the court may select one or  
357 more charitable purposes or beneficiaries. The selection must be consistent with the settlor's  
358 intention to the extent it can be ascertained.

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

361 Section 406. Creation of Trust Induced By Fraud, Duress, or Undue Influence

362 Section 406. A trust shall be void to the extent its creation was induced by fraud, duress, or  
363 undue influence.

364 Section 407. Evidence of Oral Trust

365 Section 407. Except as required by a statute other than this chapter, a trust need not be evidenced  
366 by a trust instrument, but the creation of an oral trust and its terms may be established only by  
367 clear and convincing evidence.

368 Section 408. Trust for Care of Animal

369 Section 408. (a) A trust for the care of animals alive during the settlor's lifetime shall be valid.  
370 Unless the trust instrument provides for an earlier termination, the trust shall terminate upon the  
371 death of the animal or, if the trust was created to provide for the care of more than 1 animal alive  
372 during the settlor's lifetime, upon the death of last surviving animal.

373 (b) Except as otherwise expressly provided in the trust instrument, no portion of the principal or  
374 income shall be converted to the use of the trustee, other than reasonable trustee fees and  
375 expenses of administration, or to any use other than for the benefit of covered animals.

376 (c) A court may reduce the amount of property held by the trust if it determines that the amount  
377 substantially exceeds the amount required for the intended use and the court finds that there will  
378 be no substantial adverse impact in the care, maintenance, health or appearance of the covered  
379 animal. The amount of the reduction shall pass as unexpended trust property in accordance with  
380 subsection (d).

381 (d) Upon reduction or termination, the trustee shall transfer the unexpended trust property in the  
382 following order:

383 (1) as directed in the trust instrument;

384 (2) to the settlor, if living;

385 (3) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the  
386 transferor's will, under the residuary clause in the transferor's will; or

387 (4) to the settlor's heirs in accordance with chapter 190B.

388 (e) If a trustee is not designated by the trust instrument or no designated trustee is willing or able  
389 to serve, the court shall name a trustee. The court may order the transfer of the property to

390 another trustee if the transfer is necessary to ensure that the intended use is carried out. The court  
391 may also make other orders and determinations as are advisable to carry out the intent of the  
392 settler and the intended use of the trust.

393 (f) The intended use of the principal or income may be enforced by an individual designated for  
394 that purpose in the trust instrument, by the person having custody of an animal for which care is  
395 provided by the trust instrument, by a remainder beneficiary or by an individual appointed by a  
396 court upon application to it by an individual or charitable organization.

397 (g) The settlor or other custodian of an animal for whose benefit the trust was created may  
398 transfer custody of the animal to the trustee at or subsequent to the creation of the trust.

399 (h) Any trust created under this section shall be subject to sections 2-901 to 2-906 of chapter  
400 190B, and the common law Rule Against Perpetuities; provided, however, that the life or lives in  
401 being shall be measured based on the animal or animals alive at the time of the settlor's death or  
402 when the trust becomes irrevocable. The measuring lives shall be those of the beneficiary  
403 animals, not human lives.

404 Section 409. Non-charitable Trust Without Ascertainable Beneficiary.

405 Section 409. Except as otherwise provided in section 408, or by another general or special law,  
406 the following rules shall apply:

407 (1) A trust may be created for a non-charitable purpose without a definite or definitely  
408 ascertainable beneficiary or for a non-charitable but otherwise valid purpose to be selected by the  
409 trustee.

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

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

417 Section 410. Modification or Termination of Trust; Proceedings for Approval or Disapproval

418 Section 410. (a) In addition to the methods of termination prescribed by sections 411 through  
419 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no  
420 purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful,  
421 contrary to public policy, or impossible to achieve.

422 (b) A proceeding to approve or disapprove a proposed modification or termination under  
423 sections 411 through 416, or trust combination or division under section 417, may be  
424 commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed  
425 modification or termination under section 411 may be commenced by the settlor.

426 Section 411. Modification or Termination of Non-charitable Irrevocable Trust by Consent

427 Section 411. (a) If, upon petition, the court finds that the settlor and all beneficiaries consent to  
428 the modification or termination of a non-charitable irrevocable trust, the court may approve the  
429 modification or termination even if the modification or termination is inconsistent with a  
430 material purpose of the trust.

431 (b) A non-charitable irrevocable trust may be terminated upon consent of all of the beneficiaries  
432 if the court concludes that continuance of the trust is not necessary to achieve any material  
433 purpose of the trust. A non-charitable irrevocable trust may be modified upon consent of all of  
434 the beneficiaries if the court concludes that modification is not inconsistent with a material  
435 purpose of the trust.

436 (c) If not all of the beneficiaries consent to a proposed modification or termination of the trust  
437 under subsection (a) or (b), the modification or termination may be approved by the court if the  
438 court is satisfied that:

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

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

442 Section 412. Modification or Termination Because of Unanticipated Circumstances or Inability  
443 to Administer Trust Effectively

444 Section 412. (a) The court may modify the administrative or dispositive terms of a trust or  
445 terminate the trust if, because of circumstances not anticipated by the settlor, modification or  
446 termination will further the purposes of the trust. To the extent practicable, the modification  
447 must be made in accordance with the settlor's probable intention.

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

450 Section 414. [Modification or Termination of Uneconomic Trust.]

451 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property  
452 having a total value less than \$200,000 may terminate the trust if the trustee concludes that the  
453 value of the trust property is insufficient to justify the cost of administration.

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

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

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

460 (e) Action may be taken under this section regardless of any spendthrift or similar protective  
461 provision.

#### 462 Section 415. Reformation to Correct Mistakes

463 Section 415. The court may reform the terms of a trust, even if unambiguous, to conform the  
464 terms to the settlor's intention if it is proved by clear and convincing evidence that the settlor's  
465 intent or the terms of the trust were affected by a mistake of fact or law, whether in expression or  
466 inducement.

#### 467 Section 417. Combination and Division of Trusts

468 Section 417. After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts  
469 into a single trust or divide a trust into 2 or more separate trusts, if the result does not impair  
470 rights of any beneficiary or adversely affect achievement of the purposes of the trust.



471 ARTICLE 5

472 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

473 Section 501. Rights of Beneficiary's Creditor or Assignee

474 Section 501. To the extent a beneficiary's interest is not subject to a spendthrift provision, the  
475 court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by  
476 attachment of present or future distributions to or for the benefit of the beneficiary or other  
477 means. The court may limit the award to such relief as is appropriate under the circumstances.

478 Section 502. Spendthrift Provision

479 Section 502. (a) A spendthrift provision in any instrument shall be valid only if it restrains both  
480 voluntary and involuntary transfer of a beneficiary's interest.

481 (b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift  
482 trust," or words of similar import, shall be sufficient to restrain both voluntary and involuntary  
483 transfer of the beneficiary's interest.

484 (c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift  
485 provision and, except as otherwise provided in this article, a creditor or assignee of the  
486 beneficiary may not reach the interest or a distribution by the trustee before its receipt by the  
487 beneficiary.

488 Section 505. Creditor's Claim Against Settlor

489 Section 505. (a) Whether or not the terms of a trust contain a spendthrift provision, the  
490 following rules shall apply:

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

493 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the  
494 maximum amount that can be distributed to or for the settlor's benefit and, if a trust has more  
495 than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not  
496 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.  
497 Trust property shall not be considered distributable to or for the settlor's benefit solely because  
498 the trustee is authorized by the terms of the trust to reimburse the settlor for any tax on trust  
499 income or capital gain that is payable by the settlor under the law imposing such tax; no creditor  
500 or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based  
501 on the discretionary authority described in this sentence.

502 (3) After the death of a settlor, and subject to the settlor's right to direct the source from which  
503 liabilities will be paid, the property of a trust that was revocable at the settlor's death shall be  
504 subject to claims of the settlor's creditors, the expenses of the settlor's funeral and disposal of  
505 remains, and statutory allowances to a surviving spouse and children to the extent the settlor's  
506 probate estate is inadequate to satisfy those claims, expenses, and allowances.

#### 507 Section 506. Overdue Distribution

508 Section 506. (a) In this section, "mandatory distribution" shall mean a distribution of income or  
509 principal which the trustee is required to make to a beneficiary under the terms of the trust,  
510 including a distribution upon termination of the trust. "Mandatory distribution" shall not include  
511 a distribution subject to the exercise of the trustee's discretion even if (1) the discretion is

512 expressed in the form of a standard of distribution, or (2) the terms of the trust authorizing a  
513 distribution couple language of discretion with language of direction.

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

518 Section 507. Personal Obligations of Trustee

519 Section 507. Trust property shall not be subject to personal obligations of the trustee, even if the  
520 trustee becomes insolvent or bankrupt.

521 ARTICLE 6

522 REVOCABLE TRUSTS

523 Section 602. Revocation or Amendment of Revocable Trust

524 Section 602. (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the  
525 settlor may revoke or amend the trust.

526 (b) If a revocable trust is created or funded by more than 1 settlor:

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

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

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

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

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

536 (2) if the terms of the trust do not provide a method, by any method manifesting clear and  
537 convincing evidence of the settlor's intent.

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

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

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

546 Section 603. Settlor's Powers; Powers of Withdrawal

547 Section 603. (a) While a trust is revocable and the settlor has capacity to revoke the trust, rights  
548 of the beneficiaries are subject to the control of, and the duties of the trustee are owed  
549 exclusively to, the settlor.

550 (b) During the period the power may be exercised, the holder of a non-lapsing power of  
551 withdrawal shall be treated for purposes of this section as if he or she were the settlor of a  
552 revocable trust to the extent of the property subject to the power.

553 Section 604. Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust  
554 Property

555 Section 604. (a) A person may commence a judicial proceeding to contest the validity of a trust  
556 that was revocable at the settlor's death within the earlier of:

557 (1) 1 year after the settlor's death; or

558 (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice informing  
559 the person of the trust's existence, of the trustee's name and address, and of the time allowed for  
560 commencing a proceeding.

561 (b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee  
562 may proceed to distribute the trust property in accordance with the terms of the trust. The trustee  
563 shall not be subject to liability for doing so unless:

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

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

568 (c) A beneficiary of a trust that is determined to have been invalid shall be liable to return any  
569 distribution received.

570 ARTICLE 7

571 OFFICE OF TRUSTEE

572 Section 701. Accepting or Declining Trusteeship

573 Section 701. (a) Except as otherwise provided in subsection (c), a person designated as trustee  
574 accepts the trusteeship:

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

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

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

582 (c) A person designated as trustee, without accepting the trusteeship, may, but need not:

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

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

588 Section 702. Duty to Provide Bond

589 Section 702. In the case of a testamentary trust, a trustee shall furnish a bond for the performance  
590 of the trustee's fiduciary duties and a surety shall be required unless waived by the terms of the  
591 trust, or found by the probate and family court department of the trial court to be not necessary to  
592 protect the interests of the beneficiaries. On petition of the trustee or other interested person the  
593 probate court may excuse a requirement of bond, reduce the amount of the bond, release the  
594 surety, or permit the substitution of another bond with the same or different sureties. When the  
595 instrument creating the trust exempts the trustee from furnishing a bond or limits the amount  
596 thereof, or the probate court determines that the bond is insufficient, the probate court may if it  
597 concludes that a bond is necessary or that a bond of a larger amount is necessary, require the  
598 furnishing of such bond. The terms and conditions of the bond shall be as set forth in section 3-  
599 606 of chapter 190B.

600 Section 703. Co-Trustees

601 Section 703. (a) Co-trustees who are unable to reach a unanimous decision may act by majority  
602 decision.

603 (b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust.

604 (c) A co-trustee shall participate in the performance of a trustee's function unless the co-trustee  
605 is unavailable to perform the function because of absence, illness, disqualification under other  
606 law, or other temporary incapacity or the co-trustee has properly delegated the performance of  
607 the function to another trustee.

608 (d) If a co-trustee is unavailable to perform duties because of absence, illness, disqualification  
609 under other law, or other temporary incapacity, and prompt action is necessary to achieve the

610 purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a  
611 majority of the remaining co-trustees may act for the trust.

612 (e) Except as otherwise provided in subsection (f), a trustee who does not join in an action of  
613 another trustee shall not be liable for the action.

614 (f) Each trustee shall exercise reasonable care to:

615 (1) prevent a co-trustee from committing a breach of trust; and

616 (2) compel a co-trustee to redress a breach of trust.

617 Section 704. Vacancy in Trusteeship; Appointment of Successor

618 Section 704. (a) A vacancy in a trusteeship shall occur if:

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

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

621 (3) a trustee resigns;

622 (4) a trustee is disqualified or removed;

623 (5) a trustee dies; or

624 (6) a guardian or conservator is appointed for an individual serving as trustee.

625 (b) If one or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. A  
626 vacancy in a trusteeship shall be filled if the trust has no remaining trustees.



627 (c) A vacancy in a trusteeship that is required to be filled shall be filled in the following order of  
628 priority:

629 (1) by a person designated by the terms of the trust to act as successor trustee;

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

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

632 (d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may  
633 appoint an additional trustee or special fiduciary whenever the court considers the appointment  
634 necessary for the administration of the trust.

635 Section 705. Resignation of Trustee

636 Section 705. (a) A trustee may resign:

637 (1) upon at least 30 days' notice to: (i) in the case of a revocable trust, the settlor and all co-  
638 trustees of the trust, and (ii) in the case of any other trust, the qualified beneficiaries and all co-  
639 trustees of the trust; or

640 (2) with the approval of the court.

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

643 (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or  
644 omissions of the trustee shall not be discharged or affected by the trustee's resignation.

645 Section 706. Removal of Trustee

646 Section 706. (a) The settlor, a co-trustee, or a beneficiary may request the court to remove a  
647 trustee, or a trustee may be removed by the court on its own initiative.

648 (b) The court may remove a trustee if:

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

650 (2) lack of cooperation among co-trustees substantially impairs the administration of the trust;

651 (3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust  
652 effectively, the court determines that removal of the trustee best serves the interests of the  
653 beneficiaries; or

654 (4) there has been a substantial change of circumstances or removal is requested by all of the  
655 qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all  
656 of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-  
657 trustee or successor trustee is available.

658 (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to  
659 removing a trustee, the court may order such appropriate relief under section 1001(b) as may be  
660 necessary to protect the trust property or the interests of the beneficiaries.

661 Section 707. Delivery of Property by Former Trustee

662 Section 707. A trustee who has resigned or been removed shall proceed expeditiously to deliver  
663 the trust property within the trustee's possession to the co-trustee, successor trustee, or other  
664 person entitled to it.

665 Section 708. Compensation of Trustee

666 Section 708. (a) If the terms of a trust do not specify the trustee's compensation, a trustee shall  
667 be entitled to compensation that is reasonable under the circumstances.

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

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

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

673 Section 709. Reimbursement of Expenses

674 Section 709. (a) A trustee shall be entitled to be reimbursed out of the trust property, with  
675 interest as appropriate, for:

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

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

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

681 ARTICLE 8

682 DUTIES AND POWERS OF TRUSTEE

683 Section 801. Duty to Administer Trust

684 Section 801. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith,  
685 in accordance with its terms and purposes and the interests of the beneficiaries, and in  
686 accordance with this chapter.

687 Section 802. Duty of Loyalty

688 Section 802. (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

689 (b) Subject to the rights of persons dealing with or assisting the trustee as provided in section  
690 1012, a sale, encumbrance, or other transaction involving the investment or management of trust  
691 property entered into by the trustee for the trustee's own personal account or which is otherwise  
692 affected by a conflict between the trustee's fiduciary and personal interests is voidable by a  
693 beneficiary affected by the transaction unless:

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

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

696 (3) the beneficiary did not commence a judicial proceeding within the time allowed by section  
697 1005;

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

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

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

705 (1) the trustee's spouse;

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

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

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

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

713 (e) An investment by a trustee in securities of an investment company or investment trust to  
714 which the trustee, or its affiliate, provides services in a capacity other than as trustee is not  
715 presumed to be affected by a conflict between personal and fiduciary interests if the investment  
716 otherwise complies with the prudent investor rule of chapter 203C. In addition to its  
717 compensation for acting as trustee, the trustee may be compensated by the investment company  
718 or investment trust for providing those services out of fees charged to the trust. If the trustee  
719 receives compensation from the investment company or investment trust for providing  
720 investment advisory or investment management services, the trustee must at least annually notify  
721 the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate  
722 and method by which that compensation was determined.

723 (f) In voting shares of stock or in exercising powers of control over similar interests in other  
724 forms of enterprise, the trustee shall act in the best interests of the beneficiaries.

725 (g) This section does not preclude the following transactions, if fair to the beneficiaries:

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

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

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

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

732 (5) an advance or loan by the trustee of money to the trust for a proper trust purpose.

733 Section 803. Impartiality

734 Section 803. If a trust has two or more beneficiaries, the trustee shall act impartially in investing,  
735 managing and distributing the trust property, giving due regard to the beneficiaries' respective  
736 interests.

737 Section 804. Prudent Administration

738 Section 804. A trustee shall administer the trust as a prudent person would, considering the  
739 purposes, terms and other circumstances of the trust. In satisfying this standard, the trustee shall  
740 exercise reasonable care, skill and caution.

741 Section 805. Costs of Administration

742 Section 805. In administering a trust, the trustee may incur only costs that are appropriate and  
743 reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

744 Section 806. Trustee's Skills

745 Section 806. A trustee who has special skills or expertise, or is named trustee in reliance upon  
746 the trustee's representation that the trustee has such special skills or expertise, shall have a duty  
747 to use such special skills or expertise.

748 Section 807. Delegation by Trustee

749 Section 807. (a) A trustee may delegate duties and powers if it is prudent to do so. The trustee  
750 shall exercise reasonable care, skill, and caution in:

751 (1) selecting an agent;

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

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

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

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

760 (d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the  
761 law of the commonwealth, an agent submits to the jurisdiction of the courts of the  
762 commonwealth.

### 763 Section 808. Powers to Direct

764 Section 808. (a) While a trust is revocable, the trustee may follow a direction of the settlor that  
765 is contrary to the terms of the trust.

766 (b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to  
767 direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the  
768 power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee  
769 knows the attempted exercise would constitute a serious breach of a fiduciary duty that the  
770 person holding the power owes to the beneficiaries of the trust.

771 (c) A person who holds a power to direct is presumptively a fiduciary who, as such, is required  
772 to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.  
773 The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

### 774 Section 809. Control and Protection of Trust Property

775 Section 809. A trustee shall take reasonable steps to take control of and protect the trust property.

### 776 Section 810. Recordkeeping and Identification of Trust Property.

777 Section 810. (a) A trustee shall keep adequate records of the administration of the trust.

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



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

781 Section 811. Enforcement and Defense of Claims

782 Section 811. A trustee shall take reasonable steps to enforce claims of the trust and to defend  
783 claims against the trust.

784 Section 812. Collecting Trust Property

785 Section 812. A trustee shall take reasonable steps to compel a former trustee or other person to  
786 deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have  
787 been committed by a former trustee.

788 Section 813. Duty to Inform and Report

789 Section 813. (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed  
790 about the administration of the trust. Unless unreasonable under the circumstances, a trustee  
791 shall promptly respond to a qualified beneficiary's request for information related to the  
792 administration of the trust.

793 (b) Within 30 days after acceptance of the trust or the trust becomes irrevocable, whichever is  
794 later, the trustee shall inform in writing the qualified beneficiaries of the trustee's name and  
795 address. The information shall be delivered or sent by ordinary first class mail.

796 (c) A trustee shall send an account to the distributees and permissible distributees of trust  
797 income or principal, and to other qualified beneficiaries who request it, at least annually and at  
798 the termination of the trust. The account may be formal or informal, but shall include  
799 information relating to the trust property, liabilities, receipts, and disbursements, including the

800 amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective  
801 market values.

802 (d) A beneficiary may waive the right to a trustee's account or other information otherwise  
803 required to be furnished under this section. A beneficiary, with respect to future accounts and  
804 other information, may withdraw a waiver previously given. A waiver of a trustee's account or  
805 other information does not relieve the trustee from accountability and potential liability for  
806 matters that the account or other information would have disclosed.

#### 807 Section 814. Discretionary Powers; Tax Savings

808 Section 814. (a) Notwithstanding the broad discretion granted to a trustee in the terms of the  
809 trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall  
810 exercise a discretionary power in good faith and in accordance with the terms and purposes of  
811 the trust and the interests of the beneficiaries.

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

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

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

819 (c) A power whose exercise is limited or prohibited by subsection (b) may be exercised by a  
820 majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If

821 the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary  
822 with authority to exercise the power.

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

824 (1) a power held by the settlor's spouse who is the trustee of a trust for which a marital  
825 deduction was previously allowed; or

826 (2) any trust during any period that the trust may be revoked or amended by its settlor.

827 Section 815. General Powers of Trustee.

828 Section 815. (a) A trustee, without authorization by the court, may exercise:

829 (1) powers conferred by the terms of the trust; or

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

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

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

835 (C) any other powers conferred by this chapter.

836 (b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

837 Section 816. Specific Powers of Trustee

838 Section 816. Without limiting the authority conferred by section 815, a trustee may:

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

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

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

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

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

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

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

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

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

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

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

860 (8) with respect to an interest in real property, construct, or make ordinary or extraordinary  
861 repairs to, alterations to, or improvements in, buildings or other structures, demolish  
862 improvements, raze existing or erect new party walls or buildings, subdivide or develop land,  
863 dedicate land to public use or grant public or private easements, and make or vacate plats and  
864 adjust boundaries;

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

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

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

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

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

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

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

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

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

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

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

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

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

894 (17) select a mode of payment under any employee benefit or retirement plan, annuity, or life  
895 insurance payable to the trustee, exercise rights thereunder, including exercise of the right to  
896 indemnification for expenses and against liabilities, and take appropriate action to collect the  
897 proceeds;

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

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

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

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

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

911 (B) paying it to the beneficiary's custodian under chapter 201A or custodial trustee under part 5  
912 of Article VII of chapter 190B, and, for that purpose, creating a custodianship or custodial trust;

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

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

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

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

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

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

928 (26) establish or continue title-holding entities, including so-called "nominee trusts" for the  
929 purposes of holding legal title to any portion or all of the trust property without the need to  
930 record or make public the terms of the trust; and

931 (27) on termination of the trust, exercise the powers appropriate to wind up the administration of  
932 the trust and distribute the trust property to the persons entitled to it.

933 Section 817. Distribution upon Termination.

934 Section 817. (a) Upon termination or partial termination of a trust, the trustee may send to the  
935 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed  
936 distribution terminates if the beneficiary does not notify the trustee of an objection within 30  
937 days after the proposal was sent but only if the proposal (i) informed the beneficiary of the right  
938 to object and of the time allowed for objection and (ii) provided the beneficiary with sufficient  
939 material facts to enable the beneficiary to evaluate the proposal.

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



943 ARTICLE 10

944 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

945 Section 1001. Remedies for Breach of Trust

946 Section 1001. (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach  
947 of trust.

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

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

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

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

953 (4) order a trustee to account;

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

955 (6) suspend the trustee;

956 (7) remove the trustee;

957 (8) reduce or deny compensation to the trustee;

958 (9) subject to section 1012, void an act of the trustee, impose a lien or a constructive trust on  
959 trust property, or trace trust property wrongfully disposed of and recover the property or its  
960 proceeds; or

961 (10) order any other appropriate relief.

962 Section 1005. Limitation of Action Against Trustee

963 Section 1005. (a) Unless previously barred by adjudication, consent or limitation, any claim  
964 against a trustee for breach of trust is barred as to any beneficiary who has received a final  
965 account or other statement fully disclosing the matter and showing termination of the trust  
966 relationship between the trustee and the beneficiary unless a proceeding to assert the claim is  
967 commenced within six months after receipt of the final account or statement. In any event and  
968 notwithstanding lack of full disclosure a trustee who has issued a final account or statement  
969 received by the beneficiary and has informed the beneficiary of the location and availability of  
970 records for examination by the beneficiary is protected after three years. A beneficiary is  
971 deemed to have received a final account or statement if, being an adult, it is received by the  
972 beneficiary personally or if, being a minor or disabled person, it is received by the beneficiary's  
973 representative as described in article 3.

974 (b) Where a claim is not barred by the provisions of subsection (a), a beneficiary may not  
975 commence a proceeding against a trustee for breach of trust more than three years after the date  
976 the beneficiary or a representative of the beneficiary knew or reasonably should have known of  
977 the existence of a potential claim for breach of trust.

978 (c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for breach of  
979 trust must be commenced within five years after the first to occur of:

980 (1) the removal, resignation, or death of the trustee;

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

982 (3) the termination of the trust.

983 Section 1006. Reliance on Trust Instrument

984 Section 1006. A trustee who acts in reasonable reliance on the terms of the trust as expressed in  
985 the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach  
986 resulted from the reliance.

987 Section 1007. Event Affecting Administration or Distribution

988 Section 1007. If the happening of an event or change of status, including, but not limited to:  
989 birth, adoption, marriage, divorce, performance of educational requirements, or death, affects the  
990 administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain  
991 the happening of the event or change of status is not liable for a loss resulting from the trustee's  
992 lack of knowledge.

993 Section 1008. Exculpation of Trustee

994 Section 1008. (a) A term of a trust relieving a trustee of liability for breach of trust shall be  
995 unenforceable to the extent that it:

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

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

1000 (b) An exculpatory term drafted or caused to be drafted by the trustee may be invalid as an  
1001 abuse of a fiduciary or confidential relationship unless the trustee proves that its existence and  
1002 contents were adequately communicated to the settlor.

1003 Section 1009. Beneficiary's Consent, Release, or Ratification

1004 Section 1009. A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while  
1005 having capacity, in writing, consented to the conduct constituting the breach, released the trustee  
1006 from liability for the breach, or ratified the transaction constituting the breach, unless:

1007 (1) the consent, release, or ratification of the beneficiary was induced by improper conduct of  
1008 the trustee; or

1009 (2) at the time of the consent, release, or ratification, the beneficiary did not know of the  
1010 material facts relating to the breach.

1011 Section 1010. Limitation on Personal Liability of Trustee

1012 Section 1010. (a) Except as otherwise provided in the contract, a trustee is not personally liable  
1013 on a contract properly entered into in the trustee's fiduciary capacity in the course of  
1014 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

1015 (b) A trustee is personally liable for torts committed in the course of administering a trust, or for  
1016 obligations arising from ownership or control of trust property, including liability for violation of  
1017 environmental law, only if the trustee is personally at fault.

1018 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an  
1019 obligation arising from ownership or control of trust property, or on a tort committed in the

1020 course of administering a trust, may be asserted in a judicial proceeding against the trustee in the  
1021 trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

#### 1022 Section 1011. Interest as General Partner

1023 Section 1011. (a) Except as otherwise provided in subsection (c) or unless personal liability is  
1024 imposed in the contract, a trustee who holds an interest as a general partner in a general or  
1025 limited partnership shall not be personally liable on a contract entered into by the partnership  
1026 after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract  
1027 or in a statement previously filed pursuant to chapter 108A or chapter 109.

1028 (b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general  
1029 partner shall not be personally liable for torts committed by the partnership or for obligations  
1030 arising from ownership or control of the interest unless the trustee is personally at fault.

1031 (c) The immunity provided by this section shall not apply if an interest in the partnership is held  
1032 by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or  
1033 more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

1034 (d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is  
1035 personally liable for contracts and other obligations of the partnership as if the settlor were a  
1036 general partner.

#### 1037 Section 1012. Protection of Person Dealing with Trustee

1038 Section 1012. (a) A person other than a beneficiary who in good faith assists a trustee, or who in  
1039 good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or

1040 improperly exercising the trustee's powers shall be protected from liability as if the trustee  
1041 properly exercised the power.

1042 (b) A person other than a beneficiary who in good faith deals with a trustee shall not be required  
1043 to inquire into the extent of the trustee's powers or the propriety of their exercise.

1044 (c) A person who in good faith delivers assets to a trustee need not ensure their proper  
1045 application.

1046 (d) A person other than a beneficiary who in good faith assists a former trustee, or who in good  
1047 faith and for value deals with a former trustee, without knowledge that the trusteeship has  
1048 terminated shall be protected from liability as if the former trustee were still a trustee.

1049 (e) Comparable protective provisions of other laws relating to commercial transactions or  
1050 transfer of securities by fiduciaries prevail over the protection provided by this section.

#### 1051 Section 1013. Certification of Trust

1052 Section 1013. (a) Instead of furnishing a copy of the trust instrument to a person other than a  
1053 beneficiary, the trustee may furnish to the person a certification of trust containing the following  
1054 information:

1055 (1) that the trust exists and the date the trust instrument was executed;

1056 (2) the identity of the settlor;

1057 (3) the identity and address of the currently acting trustee;

1058 (4) the powers of the trustee;

1059 (5) the revocability or irrevocability of the trust and the identity of any person holding a power  
1060 to revoke the trust;

1061 (6) the authority of co-trustees to sign or otherwise authenticate and whether all or less than all  
1062 are required in order to exercise powers of the trustee;

1063 (7) the trust's taxpayer identification number; and

1064 (8) the manner of taking title to trust property.

1065 (b) A certification of trust may be signed or otherwise authenticated by any trustee.

1066 (c) A certification of trust must state that the trust has not been revoked, modified, or amended  
1067 in any manner that would cause the representations contained in the certification of trust to be  
1068 incorrect.

1069 (d) A certification of trust need not contain the dispositive terms of a trust.

1070 (e) A recipient of a certification of trust may require the trustee to furnish copies of those  
1071 excerpts from the original trust instrument and later amendments which designate the trustee and  
1072 confer upon the trustee the power to act in the pending transaction.

1073 (f) A person who acts in reliance upon a certification of trust without knowledge that the  
1074 representations contained therein are incorrect is not liable to any person for so acting and may  
1075 assume without inquiry the existence of the facts contained in the certification. Knowledge of  
1076 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust  
1077 instrument is held by the person relying upon the certification.

1078 (g) A person who in good faith enters into a transaction in reliance upon a certification of trust  
1079 may enforce the transaction against the trust property as if the representations contained in the  
1080 certification were correct.

1081 (h) A person making a demand for the trust instrument in addition to a certification of trust or  
1082 excerpts is liable for damages if the court determines that the person did not act in good faith in  
1083 demanding the trust instrument.

1084 (i) This section does not limit the right of a person to obtain a copy of the trust instrument in a  
1085 judicial proceeding concerning the trust.

1086 SECTION 6. (a) Except as otherwise provided in this act, :

1087 (1) this act shall apply to all trusts created before, on, or after the effective date;

1088 (2) this act shall apply to all judicial proceedings concerning trusts commenced on or after the  
1089 effective date;

1090 (3) an act done before the effective date shall not be affected by this act.

1091 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that  
1092 has commenced to run under any other statute before the effective date of this act, that statute  
1093 shall continue to apply to the right even if it has been superseded.

1094 SECTION 7. Paragraph (h) of section 408 of chapter 203E of section 5 shall not apply to a trust  
1095 created under an instrument executed before the effective date of this act.



1096 SECTION 8. Paragraph (a) of section 502 of chapter 203E of section 5 shall not apply to  
1097 spendthrift provisions in a trust created under an instrument executed before the effective date of  
1098 this act.

1099 SECTION 9. Paragraph (a) of section 602 of chapter 203E of section 5 shall not apply to trust  
1100 instruments executed before the effective date of this act.

1101 SECTION 10. Section 703 shall not apply to trust instruments executed before the effective date  
1102 of this act.

1103 SECTION 11. This act shall take effect on January 2, 2012.