

SENATE No. 02094

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

SECTION 1. Chapter 186 of the General Laws is hereby amended by striking out section 1, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 1. If land is demised for the term of 100 years or more, the term shall, so long as 50 years thereof remain unexpired, be regarded as an estate in fee simple as to everything concerning the descent and devise thereof upon the decease of the owner, the sale thereof by personal representatives, guardians, conservators or trustees, the levy of execution thereon and the redemption thereof if mortgaged or taken on execution. Whoever holds as lessee or assignee under such a lease shall, so long as 50 years of the term remain unexpired, be regarded as a freeholder for all purposes.

SECTION 2. Section 2 of chapter 186 of the General Laws is hereby repealed.

SECTION 3. Section 1-401 of chapter 190B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “pending”, in line 18, the following words: - or in a newspaper designated by the register of probate in a county identified by the court.

SECTION 4. Said section 1-401 of said chapter 190B, as so appearing, is hereby further amended by inserting after the word “date.”, in line 33, the following sentence:— If the objecting party is a respondent as defined in section 5-101, the respondent or the respondent’s appointed counsel shall file a written affidavit of objection to the proceeding, stating the specific facts and grounds upon which the objection is based within 30 days after the return date.

SECTION 5. Section 1-404 of said chapter 190B, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons or incapacitated persons and in judicially supervised settlements, or otherwise, a minor, a protected person, an incapacitated person or a person not ascertained or not in being may be or may become interested in any property, real or personal or, in the enforcement or defense of any legal rights, the court in which any action, petition or proceeding of any kind relative to or affecting any such estate or legal rights is pending may, upon the representation of any party thereto or of any person interested, appoint a suitable person to appear and act therein as guardian ad litem or next friend of such minor, protected person, incapacitated person or person not ascertained or not in being. A judgment, order or decree issued as a result of such proceedings, following an appointment made under this subsection, shall be conclusive upon all persons for whom a guardian ad litem or next friend was appointed.

SECTION 6. Said section 1-404 of said chapter 190B, as so appearing, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentence:- Unless the spouse, heir or devisee is under conservatorship or, if not under conservatorship, is under guardianship by someone other than the petitioner or is represented by someone other than the petitioner, the court shall appoint a guardian ad litem who shall be provided notice of all proceedings.

SECTION 7. Subsection (b) of section 2-114 of said chapter 190B, as so appearing, is hereby amended by adding the following sentence:- The court may decree that the rights of succession to property under this section, or under former section 7 of chapter 210, shall vest in an adopted individual as of the date of the filing of the petition for adoption.

SECTION 8. Section 2-603 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 8, the words “by representation” and inserting in place thereof the following words:- per capita at each generation.

SECTION 9. Section 2-702 of said chapter 190B, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words “except for purposes of part 3 of article VI [Uniform TOD Security Registration Act] and”.

SECTION 10. Said section 2-702 of said chapter 190B, as so appearing, is hereby further amended by striking out, in lines 7 to 9, inclusive, the words “and except for a security registered in beneficiary form (TOD) under part 3 of article VI, Uniform TOD Security Registration Act”.

SECTION 11. Said chapter 190B is hereby further amended by striking out section 2-706, as so appearing, and inserting in place thereof the following section:-

Section 2-706. [Life insurance; retirement plan; account with POD designation; transfer-on-death registration; deceased beneficiary.]

(a) If a beneficiary fails to survive the decedent and is a grandparent or a descendant of a grandparent, the following shall apply:

(1) If the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift shall be created in the beneficiary's surviving descendants. Such descendants shall take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(2) If the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family", or a class described by language of similar import, a substitute gift shall be created in the deceased beneficiary or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent shall pass to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary shall take the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary shall take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" is a class member who failed to survive the decedent and left 1 or more surviving descendants.

(b) (1) A payor shall be protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section shall discharge the payor, but not the recipient, from all claims for the amounts paid. A payor shall be liable for a payment made after the payor has received written notice of the claim. A recipient shall be liable for a payment received, whether or not written notice of the claim is given.

(2) The written notice of the claim shall be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been

commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court shall discharge the payor from all claims for the amounts paid.

(c) (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, shall not be obligated under this section to return the payment, item of property or benefit nor shall such person be liable under this section for the amount of the payment or the value of the item of property or benefit; provided, however, that a person who, not for value, receives a payment, item of property or any other benefit to which such person is not entitled under this section shall be obligated to return the payment, item of property or benefit or shall be personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which such person is not entitled under this section shall be obligated to return the payment, item of property or benefit or shall be personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section, or part of this section, not so preempted.

SECTION 12. Said chapter 190B is hereby further amended by striking out section 2-707, as so appearing, and inserting in place thereof the following section:-

Section 2-707. [Survivorship with respect to future interests under terms of trust; substitute takers.]

(a) If an instrument is silent on the requirement of survivorship, a future interest under the terms of a trust shall be contingent on the beneficiary surviving the distribution date. In that case, if a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following shall apply:

(1) If the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift shall be created in the beneficiary's surviving descendants. Such descendants shall take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(2) If the future interest is in the form of a class gift, other than a future interest to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives” or “family”, or a class described by language of similar import, a substitute gift shall be created in the deceased beneficiary or beneficiaries’ surviving descendants. The property to which the beneficiaries would have been entitled had all of the beneficiaries survived the distribution date shall pass to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary shall take the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary’s surviving descendants who are substituted for the deceased beneficiary take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, “deceased beneficiary” shall mean a class member who failed to survive the distribution date and left 1 or more surviving descendants.

(b) If, after the application of subsection (a), there is no surviving taker, the property shall pass in the following order:

(1) if the trust was created in a nonresiduary devise in the transferor’s will or in a codicil to the transferor’s will, the property shall pass under the residuary clause in the transferor’s will, For purposes of this section, a residuary clause shall be treated as creating a future interest under the terms of a trust;

(2) if no taker is produced by the application of clause (1), the property shall pass to the transferor’s heirs under section 2-711.

SECTION 13. Section 2-801 of said chapter 190B, as so appearing, is hereby amended by striking out subsection (j) and inserting in place thereof the following subsection:-

(j) Except for subsection (h), this section shall not abridge the right of any person to disclaim, waive, release, renounce or abandon any interest in property under any other statute or rule of law.

SECTION 14. Said chapter 190B, is hereby further amended by striking out section 3-108, as so appearing, and inserting in place thereof the following section:-

Section 3-108. [Probate, testacy and appointment proceedings; ultimate time limit.]

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator’s domicile and appointment proceedings relating to an estate in which there has been a

prior appointment, may be commenced more than 3 years after the decedent's death, except that: (1) if a previous proceeding was dismissed because of doubt relative to the fact of the decedent's death, then appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not unduly delayed initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained relative to the estate of an absent, disappeared or missing person at any time within 3 years after the death of the person may be established; (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; (4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings relative to the succession or estate administration has occurred within the 3 year period after the decedent's death, but the personal representative shall have no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration shall not be presented against the estate; and (5) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will. These limitations shall not apply to proceedings to construe probated wills or to determine heirs of an intestate. In cases under clauses (1) or (2), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death.

SECTION 15. Section 3-203 of said chapter 190B, is hereby amended by striking out subsection (e), as so appearing, and inserting in place thereof the following subsection:-

(e) Appointment of a person with priority, a person who is nominated under subsection (c), or a person whose entitlement to appointment results from renunciation by another person with priority may be made in either formal or informal proceedings. Before formal appointment of one without priority, the court shall determine that those having priority, although provided notice of the proceedings, failed to request appointment or to nominate another for appointment and that administration is necessary.

SECTION 16. Section 3-301 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 69, the words “section 3-610(c)” and inserting in place thereof the following words:- section 3-610.

SECTION 17. Said section 3-301 of said chapter 190B, as so appearing, is hereby further amended by striking out, in line 73, the words “and describe the priority of the petitioner” and inserting in place thereof the following words:- describe the priority of the nominee.

SECTION 18. Section 3-605 of said chapter 190B, as so appearing, is hereby amended by striking out the first 3 sentences and inserting in place thereof the following 3 sentences:- Any person apparently having an interest in the estate worth in excess of \$5000 or any creditor having a claim in excess of \$5000, may make a written demand that a personal representative give sureties on the bond. The demand shall be filed with the court and a copy mailed to the personal representative if appointment and qualification have occurred. Thereupon, sureties shall be required but such requirement shall cease if the person demanding sureties ceases to be interested in the estate or if sureties are excused under section 3-604.

SECTION 19. Section 3-606 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 32, the words “section 7-304” and inserting in place thereof the following words:- section 702 of chapter 203E.

SECTION 20. Said chapter 190B, is hereby further amended by striking out section 3-610, as so appearing, and inserting in place thereof the following section:-

Section 3-610. [Resignation by personal representative.]

A personal representative may resign the personal representative’s position by filing a written statement of resignation with the court after having provided at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation shall be ineffective as a termination of appointment and shall be effective only upon the appointment and qualification of a successor representative and delivery of the assets to such successor representative.

SECTION 21. Section 3-617 of said chapter 190B, as so appearing, is hereby amended by adding the following subsection:-

(c) Unless otherwise ordered by the court, the authority of any personal representative previously appointed by the court or magistrate shall be suspended for as long as a special personal representative has authority.

SECTION 22. Said chapter 190B is hereby further amended by striking out section 3-706, as so appearing, and inserting in place thereof the following section:-

Section 3-706. [Duty of personal representative; inventory and appraisalment.]

(a) Within 3 months after appointment, a personal representative, who is not a successor to another representative, shall prepare an inventory of the property owned by the decedent at the time of death, listing it with reasonable detail and indicating the fair market value of each listed item as of the date of death, and the type and amount of any encumbrance that may exist with reference to any item.

(b) Within 3 months after appointment, a successor personal representative shall prepare an inventory of the property of the estate, listing it with reasonable detail and indicating the fair market value of each listed item as of the date of the successor personal representative's appointment, and the type and amount of any encumbrance that may exist with reference to any item.

(c) The personal representative shall file with the court, or mail to all interested persons whose addresses are reasonably available, a copy of the inventory. The personal representative may also file the original of the inventory with the court.

SECTION 23. Section 3-1201 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 1, the words "an inhabitant of" and inserting in place thereof the following words:- a person domiciled in.

SECTION 24. Section 5-101 of said chapter 190B, as so appearing, is hereby amended by inserting after the definition of "Protective proceeding" the following definition:-

(23.5) "Respondent", an individual for whom the appointment of a guardian or conservator or other protective order is sought.

SECTION 25. Section 5-105 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 12, the word "of", the second time it appears.

SECTION 26. Subsection (a) of section 5-106 of said chapter 190B, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the commonwealth or the petitioner as the court may order.

SECTION 27. Section 5-107 of said chapter 190B, as so appearing, is hereby amended by striking out, in lines 5, 7 and 11 and in lines 12 and 13, the words "ill

person” and inserting in place thereof, in each instance, the following words:- protected person.

SECTION 28. Section 5-204 of said chapter 190B, as so appearing, is hereby amended by striking out, in lines 45 and 46, the words “over the age of 14 years” and inserting in place thereof the following words:- 14 or more years of age.

SECTION 29. Section 5-206 of said chapter 190B, as so appearing, is hereby amended by inserting after the words “A minor”, in line 3, the following words:- 14 or more years of age.

SECTION 30. Section 5-303 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 44, the word “attach” and inserting in place thereof the following words:- “file with the petition”.

SECTION 31. Said section 5-303 of said chapter 190B, as so appearing, is hereby further amended by striking out, in line 66, the word “physician” and inserting in place thereof the following words:- registered physician, certified psychiatric nurse clinical specialist, nurse practitioner.

SECTION 32. Said section 5-303 of said chapter 190B, as so appearing, is hereby further amended by striking out subsection (e) and inserting in place thereof the following 2 subsections:-

(e) The court may require additional medical or psychological testimony as to the mental and physical condition of the person alleged to be incapacitated or disabled and may require that such person submit to examination. The court may also appoint 1 or more persons, expert in incapacity or disability, to examine such person and report the conclusions thereof to the court.

(f) Reasonable expenses incurred in any examination conducted pursuant to this section shall be paid by the petitioner, the estate of the person alleged to be incapacitated or by the commonwealth as the court may determine.

SECTION 33. Section 5-304 of said chapter 190B, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words “, and if notice is required in a proceeding for appointment of a temporary guardian or temporary conservator”.

SECTION 34. Said section 5-304 of said chapter 190B, as so appearing, is hereby further amended by striking out, in line 8, the words “and his” and inserting in place thereof the following words:- , if 14 or more years of age, and the person’s.

SECTION 35. Section 5-305 of said chapter 190B, as so appearing, is hereby amended by striking out, in lines 9 to 11, inclusive, the words “by will of a deceased

spouse or by other writing signed by the spouse and attested by at least 2 witnesses” and inserting in place thereof the following words:- pursuant to subsection (b) of section 5-301.

SECTION 36. Subsection (a) of section 5-306A of said chapter 190B, as so appearing, is hereby amended by adding the following sentence:- When approving and authorizing an antipsychotic medication treatment plan by order or decree, the court shall consider the testimony or affidavit of a licensed physician or certified psychiatric nurse clinical specialist regarding such plan.

SECTION 37. Subsection (c) of said section 5-306A of said chapter 190B, as so appearing, is hereby amended by inserting after the word “the”, in line 29, the following words:- minor’s or.

SECTION 38. Said subsection (c) of said section 5-306A of said chapter 190B, as so appearing, is hereby further amended by inserting after the word “the”, in line 30, the following words:- minor or.

SECTION 39. Subsection (d) of said section 5-306A of said chapter 190B, as so appearing, is hereby amended by striking out, in lines 35 to 38, inclusive, the words “An incapacitated person is required to attend any hearing relative to authority to consent to treatment for which a substituted judgment determination is required, unless the court finds that there exist extraordinary circumstances requiring the absence of the” and inserting in place thereof the following words:- A minor 14 or more years of age or an incapacitated person shall be required to attend any hearing relative to authority to consent to treatment for which a substituted judgment determination is required, unless the court finds that there exist extraordinary circumstances requiring the absence of the minor or.

SECTION 40. Section 5-309 of said chapter 190B, as so appearing, is hereby amended by inserting after the word “guardianships”, in line 42, the following words:- of incapacitated persons.

SECTION 41. Said section 5-309 of said chapter 190B, as so appearing, is hereby further amended by striking out subsection (g) and inserting in place thereof the following subsection:-

(g) No guardian shall have the authority to admit an incapacitated person to a nursing facility, except upon a specific finding by the court that such admission is in the incapacitated person's best interest, unless: (1) the admission shall not exceed 60 days; (2) any person authorized to sign a medical certificate recommends such admission; (3) neither any interested person nor the incapacitated person objects; (4) on or before such admission, a written notice of intent to admit the incapacitated person to a nursing facility

for short term-services has been filed by the guardian in the appointing court and a copy thereof has been served in-hand on the incapacitated person and provided to the nursing facility; and (5) the incapacitated person is represented by counsel or counsel is appointed forthwith. The notice of intent to admit the incapacitated person to a nursing facility for short-term services shall be on a form prescribed by the chief justice of the probate and family court.

SECTION 42. Subsection (b) of section 5-404 of said chapter 190B, as so appearing, is hereby amended by striking out clause (11) and inserting in place thereof the following clause:-

(11) except for a conservatorship of a minor filed pursuant to section 5-401(b), a statement:

(A) that a medical certificate conforming to section 5-303(c), dated within 30 days of the filing of the petition; provided that such medical certificate is based upon an examination of such minor that was conducted with 30 days of the filing of the petition or, in the case of a person alleged to be developmentally disabled, a clinical team report dated within 180 days of the filing of the petition, is in the possession of the court or accompanies the petition; or

(B) of the nature of any circumstance which renders obtaining a medical certificate or clinical team report impossible, supported by affidavit or affidavits meeting the requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the requirement of filing a medical certificate or clinical team report.

SECTION 43. Section 5-407 of said chapter 190B, as so appearing, is hereby amended by striking out clauses (5) to (7), inclusive, and inserting in place thereof the following 4 clauses:-

(5) any required clinical team report is dated and the examinations have taken place within 180 days prior to the filing of the petition;

(6) the person for whom a conservator is sought is a disabled person;

(7) the appointment is necessary or desirable as a means of providing continuing care and supervision of the property and business affairs of the person to be protected; and

(8) the person's needs cannot be met by less restrictive means, including the use of appropriate technological assistance.

The court, on appropriate findings, may enter any appropriate order or dismiss the proceedings.

SECTION 44. Section 5-411 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 3, the figure “5-410” and inserting in place thereof the following figure:- 5-307.

SECTION 45. Section 5-413 of said chapter 190B, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- The court may order that such compensation be paid by any party or parties as it shall determine.

SECTION 46. Subsection (e) of section 5-418 of said chapter 190B, as so appearing, is hereby amended by adding the following sentence:- Such discharge shall forever exonerate the conservator and the conservator’s sureties from all liability under such decree unless the conservator’s account is impeached for fraud or manifest error.

SECTION 47. Section 5-423 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 97, the letter “(c)” and inserting in place thereof the following letter:- (d).

SECTION 48. Section 5-429 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 10, the word “incapacitated” and inserting in place thereof the following word:- disabled.

SECTION 49. Section 5-504 of said chapter 190B, as so appearing, is hereby amended by adding the following subsection:-

(c) No revocation by a principal under a written power of attorney, durable or otherwise, shall revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the revocation, acts in good faith under the power or relies in good faith on acts under the power. Any action so taken or relied upon, unless otherwise invalid or unenforceable, binds the principal and successors in interest of the principal. As to a person other than the attorney in fact, such person shall not be deemed to have actual knowledge unless the revocation is in a writing executed by the principal or a duly appointed personal representative of the principal and is actually received by such person or, in the case of transactions involving real estate or any interest therein, is recorded in due course as provided in section 25 of chapter 184.

SECTION 50. Said chapter 190B, is hereby amended by striking out sections 7-101 to 7-401, inclusive, as so appearing, and inserting in place thereof the following headings:-

PART 1. [RESERVED]

PART 2. [RESERVED]

PART 3. [RESERVED]

PART 4. [RESERVED]

SECTION 51. Section 7-502 of said chapter 190B, as so appearing, is hereby amended by striking out, in line 1, the words “section 7-401” and inserting in place thereof the following words:- section 816 of chapter 203E.

SECTION 52. Sections 1 to 8, inclusive, of chapter 196 of the General Laws are hereby repealed.

SECTION 53. Section 3C of chapter 203 of the General Laws is hereby repealed.

SECTION 54. The General Laws are hereby amended by inserting after chapter 203D the following chapter—

CHAPTER 203E

MASSACHUSETTS UNIFORM TRUST CODE

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section 101. Short title

This chapter shall be known and may be cited as the Massachusetts Uniform Trust Code.

Section 102. Scope

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

Section 103. Definitions

In this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:-

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

“Ascertainable standard”, a standard relating to an individual’s health, education, support or maintenance.

“Beneficiary”, a person who has a present or future beneficial interest in a trust, vested or contingent.

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

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

“Interests of the beneficiaries”, the beneficial interests provided in the terms of the trust.

“Jurisdiction”, a geographic area, including a state or country.

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

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

“Qualified beneficiary”, a beneficiary who, on the date the beneficiary’s qualification is determined:

- (i) is a distributee or permissible distributee of trust income or principal; or
- (ii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

“Revocable”, a trust that is revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

“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 term of a trust which restrains transfer of a beneficiary’s interest.

“State”, a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States, including an Indian tribe or band recognized by federal law or formally acknowledged by a state.

“Terms of a trust”, the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

“Trust instrument”, an instrument that contains terms of the trust, including any amendments thereto.

“Trustee”, an original, additional or successor trustee or a co-trustee.

Section 104. Knowledge

(a) Subject to subsection (b), a person shall have knowledge of a fact if the person:

(1) has actual knowledge of it;

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

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

(b) 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.

Section 105. Default and mandatory rules

(a) Except as otherwise provided in the terms of the trust, this chapter shall govern the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

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

(1) the requirements for creating a trust;

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

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

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

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

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

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

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

(9) the rights under sections 1010 to 1013, inclusive, of a person other than a trustee or beneficiary; and

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

Section 106. Common law of trusts; principles of equity

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

Section 107. [Reserved]

Section 108. Principal place of administration

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration shall be 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; or

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

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

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

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

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

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

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

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

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

Section 109. Methods and waiver of notice

(a) Notice to a person under this chapter, or the sending of a document to a person under this chapter, shall 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 shall include first-class mail, personal delivery or delivery to the person's last known place of residence or place of business.

(b) Notice required under this chapter, or a document 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.

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

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

Section 110. Others treated as qualified beneficiaries

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

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

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

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

(c) A person appointed to enforce a trust created for the care of an animal or another non-charitable purpose, as provided in sections 408 and 409, shall have the rights of a qualified beneficiary under this chapter.

Section 111. Non-judicial settlement agreements

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

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

(c) A non-judicial settlement agreement shall be 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 by a non-judicial settlement agreement shall include:

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

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

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

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

- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

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

Section 112. Rules of construction

The rules of construction that apply in the commonwealth to the interpretation of and disposition of property shall also apply, as appropriate, to the interpretation of the terms of a revocable trust and the disposition of the trust property. For the purposes of this section, a "revocable trust" shall mean a trust that is: (1) revocable by the settlor until the time of the settlor's death; (2) created or amended by the settlor after the effective date of this chapter; and (3) was intended to dispose of the settlor's property at death, whether under will or otherwise and whether the trust was funded at the time of the settlor's death.

Section 113. Qualification of foreign trustee

A foreign corporate trustee shall qualify as a foreign corporation doing business in the commonwealth if it maintains the principal place of administration of any trust within the commonwealth. A foreign co-trustee shall not be required to qualify in the commonwealth solely because its co-trustee maintains the principal place of administration in the commonwealth. Unless otherwise doing business in the commonwealth, local qualification by a foreign trustee, corporate or individual, shall not be required for the trustee to receive distribution from a local estate, to hold, invest in, manage or acquire property located in the commonwealth or to maintain litigation. Nothing in this section shall affect a determination of what other acts require qualification as doing business in the commonwealth.

ARTICLE 2

JUDICIAL PROCEEDINGS

Section 201. Role of court in administration of trust

(a) 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) A trust shall not be subject to continuing judicial supervision unless ordered by the court.

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

(d) A proceeding brought under this chapter in the probate and family court department of the trial court to appoint or remove a trustee, to approve the resignation of a trustee, to review and settle accounts of a trustee or concerning any other matter relating to the administration of a trust may be initiated by filing a petition and giving notice to interested parties, as provided in section 109. A decree or judgment shall be valid only to those who are given notice of the proceeding.

Section 202. Jurisdiction over trustee and beneficiary

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

(b) With respect to their interests in the trust, the beneficiaries of a trust with its principal place of administration in the commonwealth shall be subject to the jurisdiction of the courts of the commonwealth regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of the commonwealth regarding any matter involving the trust.

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

Section 203. Trust proceedings; dismissal of matters relating to foreign trusts

The court shall not over the objection of a party, entertain proceedings under section 201 involving a trust registered or having its principal place of administration in another state, unless: (1) all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or (2) the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of a party to submit to the jurisdiction of the state in which the trust is registered or has its principal place of administration or the court may grant a continuance or enter any other appropriate order.

Section 204. Venue

A trust shall be subject to the jurisdiction of the probate and family court department of the trial court of the commonwealth in the county where its principal place of administration is located. The principal place of administration of a testamentary trust shall be deemed to be the location of the court of the commonwealth in which the will

creating the trust was granted informal or formal probate. Unless otherwise designated in the trust instrument, the principal place of administration of an inter vivos trust shall be the trustee's usual place of business where the records pertaining to the trust are kept or at the trustee's residence if the trustee has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, shall be: (1) the usual place of business of the corporate trustee if there is but 1 corporate co-trustee; (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but 1 such person and no corporate co-trustee; or (3) the usual place of business or residence of any of the co-trustees as agreed upon by them.

Section 205. Petition for transfers of trust property the disposition of which depends upon the death of an absentee

(a) If a trustee holds trust property the disposition of which depends upon the death of an absentee whose death has not been determined, the trustee, or any person who would be interested in the trust property if the absentee were dead may on or after the day 5 years after the date of the absentee's disappearance petition the court having jurisdiction of the trust for an order that the trust property be disposed of to the persons it would have been distributed to under the trust if the absentee had died on that day.

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

- (1) by inserting in a periodical of general circulation a notice requesting information from any person having knowledge of the whereabouts of the absentee;
- (2) by notifying law enforcement officials, public welfare agencies and registers of deaths in appropriate locations of the disappearance of the absentee; or
- (3) by engaging the services of an investigator.

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

(c) After a search described in subsection (b) has been completed to the satisfaction of the court, notice of the hearing on the petition shall be given as provided in section 1-401 of chapter 190B.

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

ARTICLE 3

REPRESENTATION

Section 301. Representation: basic effect

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

(b) The consent of a person who may represent and bind another person under this article shall be binding on the person represented unless the person represented objects to the representation before the consent becomes effective.

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

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

Section 302. Representation by holder of general testamentary power of appointment

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

Section 303. Representation by fiduciaries and parents

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

- (1) a conservator may represent and bind the estate that the conservator controls;
- (2) a guardian may represent and bind the ward or protected person if a conservator has not been appointed;
- (3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (4) a trustee may represent and bind the beneficiaries of the trust;
- (5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

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

Section 304. Representation by person having substantially identical interest

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

Section 305. Appointment of guardian ad litem

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

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

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

ARTICLE 4

CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

Section 401. Methods of creating trust

A trust may be created by:

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

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

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

Section 402. Requirements for creation

(a) A trust shall be created only if:

- (1) the settlor has capacity to create a trust;
- (2) the settlor indicates an intention to create the trust;
- (3) the trust has a definite beneficiary or is:
 - (A) a charitable trust;
 - (B) a trust for the care of an animal, as provided in section 408; or
 - (C) a trust for a non-charitable purpose, as provided in section 409;
- (4) the trustee has duties to perform; and
- (5) the same person is not the sole trustee and sole beneficiary.

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

(c) A power in a trustee to select a beneficiary from an indefinite class shall be valid. If the power is not exercised within a reasonable time, the power shall fail and the property subject to the power shall pass to the persons who would have taken the property had the power not been conferred.

Section 403. Trusts created in other jurisdictions

A trust not created by will shall be 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 place of abode or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

Section 404. Trust purposes

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

Section 405. Charitable purposes; enforcement

(a) 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 which are beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary and do not provide a method to select such a purpose or beneficiary, the court may select 1 or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust may maintain a proceeding to enforce the trust.

Section 406. Creation of trust induced by fraud, duress or undue influence

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

Section 407. Evidence of oral trust

Except as required by statute, a trust need not be evidenced by a trust instrument. The creation of an oral trust and its terms shall be established by clear and convincing evidence.

Section 408. Trust for care of an animal

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

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

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

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

(1) as directed in the trust instrument;

(2) to the settlor, if living;

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

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

(e) If a trustee is not designated by the trust instrument or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out. The court may also make other orders and determinations as the court deems advisable to carry out the intent of the settlor and the intended use of the trust.

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

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

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

Section 409. Non-charitable trust without ascertainable beneficiary.

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

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

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust 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. Property not required for the intended

use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest, unless the terms of the trust provide otherwise.

Section 410. Modification or termination of trust; proceedings for approval or disapproval

(a) In addition to the methods of termination prescribed by sections 411 to 414, inclusive, a trust shall terminate if it is revoked or expires under its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful, contrary to public policy or impossible to achieve.

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

Section 411. Modification or termination of non-charitable irrevocable trust by consent

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

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

(c) If not all of 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 if the court is satisfied that:

(1) if all of 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.

Section 412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively

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

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

Section 413. [Reserved]

Section 414. Modification or termination of uneconomic trust

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

(b) The court may modify or terminate a 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) 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.

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

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

Section 415. Reformation to correct mistakes

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

Section 416. [Reserved]

Section 417. Combination and division of trusts

After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not

impair the rights of any beneficiary or adversely affect achievement of the purposes of the trusts.

ARTICLE 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

Section 501. Rights of beneficiary's creditor or assignee

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

Section 502. Spendthrift provision

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

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

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

Section 503. [Reserved]

Section 504. [Reserved]

Section 505. Creditor's claim against settlor

(a) Whether or not a trust contains a spendthrift provision, the following rules shall apply:

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

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit and, if a trust has more than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. Trust property shall not be considered

distributable to or for the settlor's benefit solely because the trustee has the discretion under the terms of the trust to reimburse the settlor for any tax on trust income or capital gain that is payable by the settlor under the law imposing such tax; no creditor or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based on the discretionary authority described in this sentence.

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

Section 506. Overdue distribution

(a) In this section, "mandatory distribution" shall mean a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. "Mandatory distribution" shall not include a distribution subject to the exercise of the trustee's discretion even if: (1) the discretion is expressed in the form of a standard of distribution; or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains 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 designated distribution date.

Section 507. Personal obligations of trustee

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

ARTICLE 6

REVOCABLE TRUSTS

Section 601. [Reserved]

Section 602. Revocation or amendment of revocable trust

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

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

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but 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 regard to the portion of the trust property attributable to that settlor's contribution; and

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

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

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

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

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

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

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

Section 603. Settlor's powers; powers of withdrawal

(a) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries shall be subject to the control of the settlor and the duties of the trustee shall be owed exclusively to the settlor.

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

Section 604. Limitation on action contesting validity of revocable trust; distribution of trust property

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

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

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

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

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

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

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

ARTICLE 7

OFFICE OF TRUSTEE

Section 701. Accepting or declining trusteeship

(a) Except as otherwise provided in subsection (c), a person designated as trustee shall accept the trusteeship:

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

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

(b) 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 shall be deemed to have rejected the trusteeship.

(c) 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 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.

Section 702. Duty to provide bond

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

Section 703. Co-trustees

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

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

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

(d) If a co-trustee is unavailable to perform duties because of absence, illness, disqualification under other laws or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

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

(f) Each trustee shall exercise reasonable care to:

- (1) prevent a co-trustee from committing a breach of trust; and
- (2) compel a co-trustee to redress a breach of trust.

Section 704. Vacancy in trusteeship; appointment of successor

(a) A vacancy in a trusteeship shall occur 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 guardian or conservator is appointed for an individual serving as

trustee.

(b) If 1 or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustees.

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

- (1) by a person designated by the terms of the trust to act as successor trustee;
- (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) by a person appointed by the court.

(d) 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 whenever the court considers the appointment necessary for the administration of the trust.

Section 705. Resignation of trustee

(a) A trustee may resign:

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

(2) with the approval of the court.

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

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

Section 706. Removal of trustee

(a) The settlor, a co-trustee 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) The court may remove a trustee if:

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

(2) there is a lack of cooperation among co-trustees that substantially impairs the administration of the trust;

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

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

(c) 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 such appropriate relief under subsection (b) of section 1001 as may be necessary to protect the trust property or the interests of the beneficiaries.

Section 707. Delivery of property by former trustee

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

Section 708. Compensation of trustee

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

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

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

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

Section 709. Reimbursement of expenses

(a) A trustee shall be 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) expenses that were not properly incurred in the administration of the trust, to the extent necessary to prevent unjust enrichment of the trust.

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

ARTICLE 8

DUTIES AND POWERS OF TRUSTEE

Section 801. Duty to administer trust

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

Section 802. Duty of loyalty

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

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

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

(2) the transaction was approved by the court;

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

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

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

(c) A sale, encumbrance or other transaction involving the investment or management of trust property shall be 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 descendants, siblings, parents or their spouses;

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

(4) 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 best judgment.

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

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

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

(g) This section shall 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;
- (3) a transaction between a trust and another trust, decedent's estate or conservatorship 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; or
- (5) an advance or loan by the trustee of money to the trust for a proper trust purpose.

Section 803. Impartiality

If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests.

Section 804. Prudent administration

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

Section 805. Costs of administration

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

Section 806. Trustee's skills

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

Section 807. Delegation by trustee

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

(1) selecting an agent;

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

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

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

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

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the laws of the commonwealth, an agent shall submit to the jurisdiction of the courts of the commonwealth.

Section 808. Powers to direct

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

(b) If the terms of a trust confer 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 an exercise of the power, unless the attempted exercise is manifestly contrary to the terms of the trust 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) A person who holds a power to direct is presumptively a fiduciary who 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 shall be liable for any loss that results from a breach of a fiduciary duty.

Section 809. Control and protection of trust property

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

Section 810. Recordkeeping and identification of trust property

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

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

(c) A trustee may invest as a whole, the property of 2 or more separate trusts, if the trustee maintains records clearly indicating the respective interests.

Section 811. Enforcement and defense of claims

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

Section 812. Collecting trust property

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

Section 813. Duty to inform and report

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

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

(c) A trustee shall send an account to the distributees and permissible distributees of trust income or principal and to other qualified beneficiaries who request it, at least annually and at the termination of the trust. The account of trust income and principal may be formal or informal, but shall include information relating to the trust property, liabilities, receipts and disbursements, including the amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values.

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

Section 814. Discretionary powers; tax savings

(a) Notwithstanding the broad discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole" or "uncontrolled", the trustee

shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

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

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

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

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

(d) Subsection (b) shall not apply to:

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

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

Section 815. General powers of trustee

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

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

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

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

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

(iii) any other powers conferred by this chapter.

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

Section 816. Specific powers of trustee

Without limiting the authority conferred by section 815, a trustee may:

- (1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) acquire or sell property, for cash or on credit, at public or private sale;
- (3) exchange, partition or otherwise change the character of trust property;
- (4) deposit trust money in an account in a regulated financial service institution;
- (5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members or property owners, including merging, dissolving or otherwise changing the form of business organization or contributing additional capital;
- (7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (i) vote, or give proxies to vote, with or without power of substitution or enter into or continue a voting trust agreement;
 - (ii) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - (iii) pay calls, assessments and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights; and
 - (iv) deposit the securities with a depository or other regulated financial service institution;
- (8) with respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements and make or vacate plats and adjust boundaries;

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

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

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

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

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

(i) 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) take action to prevent, abate or otherwise remedy any actual or potential violation of any 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) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 817. Distribution upon termination

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

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property 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.

ARTICLE 9 [Reserved]

ARTICLE 10

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

Section 1001. Remedies for breach of trust

(a) A violation by a trustee of a duty the trustee owes to a beneficiary shall be a breach of trust.

- (b) To remedy a breach of trust that has occurred or may occur, the court may:
- (1) compel the trustee to perform the trustee's duties;
 - (2) enjoin the trustee from committing a breach of trust;
 - (3) compel the trustee to redress a breach of trust by paying money, restoring property or other means;
 - (4) order a trustee to account;
 - (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
 - (6) suspend the trustee;
 - (7) remove the trustee;
 - (8) reduce or deny compensation to the trustee;
 - (9) subject to section 1012, void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or
 - (10) order any other appropriate relief.

Section 1002. [Reserved]

Section 1003. [Reserved]

Section 1004. [Reserved]

Section 1005. Limitation of action against trustee

(a) Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary, unless a proceeding to assert the claim is commenced within 6 months after receipt of the final account or statement. Any claim against a trustee for breach of trust shall be barred in any event and notwithstanding lack of full disclosure, against a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for examination by the beneficiary after 3 years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by the beneficiary personally or if, being a minor or disabled person, it is received by the beneficiary's representative as described in article 3.

(b) Where a claim is not barred by subsection (a), a beneficiary may not commence a proceeding against a trustee for breach of trust more than 3 years after the date the beneficiary or a representative of the beneficiary knew or reasonably should have known of the existence of a potential claim for breach of trust.

(c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for breach of trust must be commenced within 5 years after the first to occur of:

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

Section 1006. Reliance on trust instrument

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument shall not be liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Section 1007. Event affecting administration or distribution

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

Section 1008. Exculpation of trustee

(a) A term of a trust relieving a trustee of liability for breach of trust shall be 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) An exculpatory term drafted or caused to be drafted by the trustee may be invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that its existence and contents were adequately communicated to the settlor.

Section 1009. Beneficiary's consent, release or ratification

A trustee shall not be liable to a beneficiary for breach of trust if the beneficiary, while having capacity, in writing, consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless:

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

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

Section 1010. Limitation on personal liability of trustee

(a) Except as otherwise provided in the contract, a trustee shall not be 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) A trustee shall be 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) 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.

Section 1011. Interest as general partner

(a) 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, shall not be 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 under chapter 108A or chapter 109.

(b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general partner shall not be 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) The immunity provided by this section shall not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the

trustee's spouse or 1 or more of the trustee's descendants, siblings or parents, or the spouse of any of them.

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

Section 1012. Protection of person dealing with trustee

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

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

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

(d) 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 shall be protected from liability as if the former trustee were still a trustee.

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

Section 1013. Certification of trust

(a) 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) that the trust exists 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 co-trustees 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; and

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

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

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

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

(e) 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) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect shall not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust 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) 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) A person making a demand for the trust instrument, in addition to a certification of trust or excerpts, shall be liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

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

SECTION 55. Section 7 of chapter 210 of the General Laws is hereby repealed.

SECTION 56. Section 8 of chapter 210 of the General Laws is hereby repealed.

SECTION 57. Section 21 of chapter 246 of the General Laws is hereby repealed.

SECTION 58. Chapter 262 of the General Laws is hereby amended by striking out section 40, as appearing in the 2010 Official Edition, and inserting the place thereof the following section:-

Section 40. The fees of the registers of the probate and family court, shall be as follows:

for the filing of an amended or substituted account, for a petition for the allowance of an account, \$75;

for the filing of an account, including a common trust fund account, if the gross value accounted for in Schedule A of the account is \$1,000 or less, no fee; if the gross value is more than \$1,000 but not more than \$10,000, \$75; provided, however, that the fees shall not exceed \$170 regardless of the time covered by the account; if the gross value is \$10,000 or more but not more than \$100,000, \$100 for each year or fraction thereof covered by the account; if the gross value is more than \$100,000 but not more than \$500,000, \$150 for each year or fraction thereof covered by the account; if the gross value is more than \$500,000 but not more than \$1,000,000, \$200 for each year or fraction thereof covered by the account; if the gross value is more than \$1,000,000 but not more than \$2,000,000, \$400 for each year or fraction thereof covered by the account; if the gross value is more than \$2,000,000 but not more than \$5,000,000, \$750 for each year or fraction thereof covered by the account; if the gross value is more than \$5,000,000 but not more than \$7,500,000, \$1500 for each year or fraction thereof covered by the account; if the gross value is more than \$7,500,000 but not more than \$10,000,000, \$2500 for each year or fraction thereof covered by the account; if the gross value is more than \$10,000,000, \$3500 for each year or fraction thereof covered by the account;

for the filing of petition for adoption, \$100;

for the filing of a subsequent bond, demand for sureties, for the filing of a petition for new bond, discharge of surety, modification of bond, reduction of bond, \$75;

for the filing of a motion for change of name, in divorce actions during nisi period, \$100;

for the filing of a petition for change of name, \$150;

for the filing of a foreign conservator sworn statement, \$75;

for the removal of a fiduciary, \$100;

for the filing of a petition to expand, modify or limit the powers of a conservator, \$150;

for the filing of a petition for the appointment of a conservator or for single transaction, \$240;

for the issuance of a contempt summons, \$5;

for the entry of an action seeking the post-judgment removal of a child from the commonwealth, \$50;

for the filing of a complaint for alimony, enforcement of foreign alimony decree, separate support, \$100;

for the filing of an action to convey land as if sole, \$150;

for marriage of a minor and marriage without delay, \$180;

for the filing of a complaint for affirmation of marriage, annulment, divorce, \$200;

for the filing of an action for modification relative to child support, custody and visitation, except for those actions filed by the IV-D agency for which there is no filing fee, \$50;

for the filing of a complaint to establish paternity or for custody-support-visitiation, except for those actions filed by the IV-D agency for which there is no filing fee, \$100;

for the filing of a complaint to modify a foreign custody or support decree pursuant to section 29 of chapter 208, except for those complaints filed by the IV-D agency for which there is no filing fee, \$100;

for the filing of an action for the modification of a judgment relative to all non-child related issues, \$150;

for the issuance of an injunction or temporary restraining order, \$100;

for the filing of a complaint in equity related to adoption, separate support or the custody or support of minors, \$100;

for the filing of a complaint in equity, except such as relates to adoption, separate support or the custody or support of minors, \$240;

for the filing of a petition to partition, to terminate a trust, for specific performance, for filing a complaint to correct birth record, to restrain a personal representative, to terminate a trust, \$240;

for the issuance of a subsequent letter, \$25;

for care of a burial lot, erection of monument, \$60;

for the filing of a petition to render an inventory or account, petition for approval of a compromise, determination of value, order of complete settlement, for the filing of a closing statement, foreign personal representative sworn statement, small estate closing statement, \$75;

for the filing of a will for safekeeping, \$75; provided, however, that no additional fee shall be charged for filing a will in substitution of a will previously filed and withdrawn;

for the filing of a petition for public administration, for formal removal of personal representative, \$100;

for the filing of a petition for counsel fees, to vacate a formal order, for a general probate petition, for a general petition, except such as relates to custody or support of minors, for a representation of insolvency, \$150;

for the filing of a petition to appoint a receiver of the estate of an absentee, for leave to deposit certain funds, for statement of voluntary administration, \$200;

for the filing of a declaration of common trust fund, \$400;

for the filing of a petition to appoint a special personal representative, to appoint a trustee, for a general trust petition, for a formal probate of will, adjudication of intestacy and appointment of personal representative, for formal appointment of successor personal representative, for supervised administration, for an informal probate of will and/or appointment of personal representative, for informal appointment of successor personal representative, \$400;

for the filing of a petition for leave to lease real estate, for leave to mortgage real estate, \$75;

for the filing of a petition or application for sale of real or personal estate by any fiduciary if the gross value accounted for is \$100,000 or less, \$100; if the gross value is more than \$100,000 but not more than \$250,000, \$250; if the gross value is more than \$250,000 but not more than \$500,000, \$500; if the gross value is more than \$500,000 but not more than \$1,000,000, \$750; if the gross value is more than \$1,000,000, \$1000; and

for the amendment of record except such as relates to separate support or the custody or support of minors, \$60;

Notwithstanding the provisions of this section, no fee shall be charged for the issuance of a temporary restraining order against a spouse related to a complaint for divorce or separate support, for the filing of a complaint for support of spouse or child

pursuant to section 32F of chapter 209, for the filing of a complaint for abuse protection, for the filing of a petition for disabled abuse, elderly abuse, dispense with consent to adoption, the appointment of a guardian, the resignation or termination of a guardian or conservator, the resignation of any fiduciary, to expand, modify or limit the powers of a guardian, grandparent visitation, payment of deposits, for leave to bring suit on a bond or for registration of foreign custody decree.

SECTION 59. Section 5 of chapter 521 of the acts of 2008 is hereby repealed.

SECTION 60. Section 15 of chapter 521 of the acts of 2008 is hereby repealed.

SECTION 61. Said chapter 521 is hereby further amended by inserting after section 27 the following section:-

Section 27A. Section 3 of chapter 203A of the General Laws is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- A proceeding for the allowance of an account brought pursuant to this chapter in the probate and family court department of the trial court may be initiated by filing a petition and giving notice as provided under sections 1-401 and 1-403 of chapter 190B and section 1-404 of said chapter 190B shall apply to such proceeding.

SECTION 62. Section 39 of chapter 521 of the acts of 2008 is hereby repealed.

SECTION 63. (a) Except as otherwise provided in this act:

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

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

(3) an action taken before the effective date of this act shall not be affected by this act.

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

SECTION 64. Subsection (h) of section 408 of chapter 203E of the General Laws shall not apply to a trust created under an instrument executed before the effective date of this act.

SECTION 65. Subsection (a) of section 502 of said chapter 203E shall not apply to spendthrift provisions in a trust created under an instrument executed before the effective date of this act.

SECTION 66. Subsection (a) of section 602 of said chapter 203E shall not apply to trust instruments executed before the effective date of this act.

SECTION 67. Subsection (a) of section 703 of said chapter 203E shall not apply to trust instruments executed before the effective date of this act.

SECTION 68. Subsection (c) of section 5-504 of chapter 190B of the General Laws shall apply to transactions under powers of attorney occurring before, on or after the effective date of this act, except with respect to a transaction that has been invalidated by a final decision of a court of competent jurisdiction prior to such effective date.

SECTION 69. This act shall take effect on January 2, 2012.