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SENATE . . . . . No. 2128

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act further regulating the probate code and establishing a trust code.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to further regulate the probate code and to establish a trust code, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

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 Section 2 of said chapter 186 is hereby repealed.

11 SECTION 3. Section 1-401 of chapter 190B of the General Laws, as appearing in the
12 2010 Official Edition, is hereby amended by inserting after the word “pending”, in line 18, the
13 following words: - or in a newspaper designated by the register of probate in a county identified
14 by the court.

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

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

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

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

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

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

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

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

52 SECTION 11. Said chapter 190B is hereby further amended by striking out section 2-
53 706, as so appearing, and inserting in place thereof the following section:-

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

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

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

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

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

82 (2) The written notice of the claim shall be mailed to the payor's main office or
83 home by registered or certified mail, return receipt requested, or served upon the payor in the
84 same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor
85 may pay any amount owed by it to the court having jurisdiction of the probate proceedings
86 relating to the decedent's estate or, if no proceedings have been commenced, to the court having
87 jurisdiction of probate proceedings relating to decedents' estates located in the county of the
88 decedent's residence. The court shall hold the funds and, upon its determination under this
89 section, shall order disbursement in accordance with the determination. Payment made to the
90 court shall discharge the payor from all claims for the amounts paid.

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

98 personally liable for the amount of the payment or the value of the item of property or benefit to
99 the person who is entitled to it under this section.

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

107 SECTION 12. Said chapter 190B is hereby further amended by striking out section 2-
108 707, as so appearing, and inserting in place thereof the following section:-

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

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

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

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

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

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

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

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

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

146 SECTION 14. Said chapter 190B, is hereby further amended by striking out section 3-
147 108, as so appearing, and inserting in place thereof the following section:-

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

149 No informal probate or appointment proceeding or formal testacy or appointment
150 proceeding, other than a proceeding to probate a will previously probated at the testator's
151 domicile and appointment proceedings relating to an estate in which there has been a prior
152 appointment, may be commenced more than 3 years after the decedent's death, except that: (1)
153 if a previous proceeding was dismissed because of doubt relative to the fact of the decedent's
154 death, then appropriate probate, appointment or testacy proceedings may be maintained at any
155 time thereafter upon a finding that the decedent's death occurred prior to the initiation of the
156 previous proceeding and the applicant or petitioner has not unduly delayed initiating the
157 subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be
158 maintained relative to the estate of an absent, disappeared or missing person at any time within 3
159 years after the death of the person may be established; (3) a proceeding to contest an informally
160 probated will and to secure appointment of the person with legal priority for appointment in the
161 event the contest is successful, may be commenced within the later of 12 months from the
162 informal probate or 3 years from the decedent's death; (4) an informal appointment or a formal

163 testacy or appointment proceeding may be commenced thereafter if no proceedings relative to
164 the succession or estate administration has occurred within the 3 year period after the decedent's
165 death, but the personal representative shall have no right to possess estate assets as provided in
166 section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and
167 claims other than expenses of administration shall not be presented against the estate; and (5) a
168 formal testacy proceeding may be commenced at any time after 3 years from the decedent's
169 death for the purpose of establishing an instrument to direct or control the ownership of property
170 passing or distributable after the decedent's death from one other than the decedent when the
171 property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a
172 part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the
173 decedent's will. These limitations shall not apply to proceedings to construe probated wills or to
174 determine heirs of an intestate. In cases under clauses (1) or (2), the date on which a testacy or
175 appointment proceeding is properly commenced shall be deemed to be the date of the decedent's
176 death for purposes of other limitations provisions of this chapter which relate to the date of
177 death.

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

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

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

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

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

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

204 SECTION 20. Said chapter 190B, is hereby further amended by striking out section 3-
205 610, as so appearing, and inserting in place thereof the following section:-

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

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

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

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

219 SECTION 22. Said chapter 190B is hereby further amended by striking out section 3-
220 706, as so appearing, and inserting in place thereof the following section:-

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

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

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

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

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

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

240 (23.5) "Respondent", an individual for whom the appointment of a guardian or
241 conservator or other protective order is sought.

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

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

248 SECTION 27. Section 5-107 of said chapter 190B, as so appearing, is hereby amended
249 by striking out, in lines 5, 7 and 11 and in lines 12 and 13, the words “ill person” and inserting in
250 place thereof, in each instance, the following words:- protected person.

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

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

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

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

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

266 (e) The court may require additional medical or psychological testimony as to the mental
267 and physical condition of the person alleged to be incapacitated or disabled and may require that

268 such person submit to examination. The court may also appoint 1 or more persons, expert in
269 incapacity or disability, to examine such person and report the conclusions thereof to the court.

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

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

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

279 SECTION 35. Section 5-305 of said chapter 190B, as so appearing, is hereby amended
280 by striking out, in lines 9 to 11, inclusive, the words “by will of a deceased spouse or by other
281 writing signed by the spouse and attested by at least 2 witnesses” and inserting in place thereof
282 the following words:- pursuant to subsection (b) of section 5-301.

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

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

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

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

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

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

308 (g) No guardian shall have the authority to admit an incapacitated person to a nursing
309 facility, except upon a specific finding by the court that such admission is in the incapacitated

310 person's best interest, unless: (1) the admission shall not exceed 60 days; (2) any person
311 authorized to sign a medical certificate recommends such admission; (3) neither any interested
312 person nor the incapacitated person objects; (4) on or before such admission, a written notice of
313 intent to admit the incapacitated person to a nursing facility for short term-services has been filed
314 by the guardian in the appointing court and a copy thereof has been served in-hand on the
315 incapacitated person and provided to the nursing facility; and (5) the incapacitated person is
316 represented by counsel or counsel is appointed forthwith. The notice of intent to admit the
317 incapacitated person to a nursing facility for short-term services shall be on a form prescribed by
318 the chief justice of the probate and family court.

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

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

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

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

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

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

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

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

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

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

344 SECTION 44. Section 5-411 of said chapter 190B, as so appearing, is hereby amended
345 by striking out, in line 3, the figure "5-410" and inserting in place thereof the following figure:-
346 5-307.

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

350 SECTION 46. Subsection (e) of section 5-418 of said chapter 190B, as so appearing, is
351 hereby amended by adding the following sentence:- Such discharge shall forever exonerate the

352 conservator and the conservator's sureties from all liability under such decree unless the
353 conservator's account is impeached for fraud or manifest error.

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

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

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

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

371 SECTION 50. Said chapter 190B, is hereby amended by striking out sections 7-101 to 7-
372 401, inclusive, as so appearing, and inserting in place thereof the following headings:-

373 PART 1. [RESERVED]

374 PART 2. [RESERVED]

375 PART 3. [RESERVED]

376 PART 4. [RESERVED]

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

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

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

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

385 CHAPTER 203E

386 MASSACHUSETTS UNIFORM TRUST CODE

387 ARTICLE 1

388 GENERAL PROVISIONS AND DEFINITIONS

389 Section 101. Short title

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

391 Section 102. Scope

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

395 Section 103. Definitions

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

398 "Action", with respect to an act of a trustee, includes a failure to act.

399 "Ascertainable standard", a standard relating to an individual's health, education, support
400 or maintenance.

401 "Beneficiary", a person who has a present or future beneficial interest in a trust, vested or
402 contingent.

403 "Charitable trust", a trust, or portion of a trust, created for a charitable purpose described
404 in subsection (a) of section 405.

405 "Environmental law", a federal, state or local law, rule, regulation or ordinance relating
406 to protection of the environment.

407 "Interests of the beneficiaries", the beneficial interests provided in the terms of the trust.

408 "Jurisdiction", a geographic area, including a state or country.

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

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

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

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

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

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

421 “Settlor”, a person, including a testator, who creates or contributes property to a trust. If
422 more than one person creates or contributes property to a trust, each person is a settlor of the
423 portion of the trust property attributable to that person’s contribution except to the extent another
424 person has the power to revoke or withdraw that portion.

425 “Spendthrift provision”, a term of a trust which restrains transfer of a beneficiary’s
426 interest.

427 “State”, a state of the United States, the District of Columbia, Puerto Rico, the United
428 States Virgin Islands or any territory or insular possession subject to the jurisdiction of the

429 United States, including an Indian tribe or band recognized by federal law or formally
430 acknowledged by a state.

431 "Terms of a trust", the manifestation of the settlor's intent regarding a trust's provisions
432 as expressed in the trust instrument or as may be established by other evidence that would be
433 admissible in a judicial proceeding.

434 "Trust instrument", an instrument that contains terms of the trust, including any
435 amendments thereto.

436 "Trustee", an original, additional or successor trustee or a co-trustee.

437 Section 104. Knowledge

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

439 (1) has actual knowledge of it;

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

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

443 (b) An organization that conducts activities through employees has notice or knowledge
444 of a fact involving a trust only from the time the information was received by an employee
445 having responsibility to act for the trust, or would have been brought to the employee's attention
446 if the organization had exercised reasonable diligence. An organization exercises reasonable
447 diligence if it maintains reasonable routines for communicating significant information to the
448 employee having responsibility to act for the trust and there is reasonable compliance with the

449 routines. Reasonable diligence does not require an employee of the organization to communicate
450 information unless the communication is part of the individual's regular duties or the individual
451 knows a matter involving the trust would be materially affected by the information.

452 Section 105. Default and mandatory rules

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

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

457 (1) the requirements for creating a trust;

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

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

462 (4) the power of the court to modify or terminate a trust under sections 410 to
463 416, inclusive;

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

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

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

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

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

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

475 Section 106. Common law of trusts; principles of equity

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

478 Section 107. [Reserved]

479 Section 108. Principal place of administration

480 (a) Without precluding other means for establishing a sufficient connection with the
481 designated jurisdiction, terms of a trust designating the principal place of administration shall be
482 valid and controlling if:

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

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

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

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

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

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

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

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

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

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

503 Section 109. Methods and waiver of notice

504 (a) Notice to a person under this chapter, or the sending of a document to a person under
505 this chapter, shall be accomplished in a manner reasonably suitable under the circumstances and

506 likely to result in receipt of the notice or document. Permissible methods of notice or for sending
507 a document shall include first-class mail, personal delivery or delivery to the person's last known
508 place of residence or place of business.

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

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

514 (d) Notice of a judicial proceeding, authorized by this chapter to be brought by petition
515 in the probate and family court department of the trial court, shall be given as provided in section
516 1-401 of chapter 190B. Notice of any other judicial proceeding shall be given as provided in the
517 applicable procedural rules.

518 Section 110. Others treated as qualified beneficiaries

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

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

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

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

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

532 Section 111. Non-judicial settlement agreements

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

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

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

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

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

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

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

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

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

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

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

554 Section 112. Rules of construction

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

562 Section 113. Qualification of foreign trustee

563 A foreign corporate trustee shall qualify as a foreign corporation doing business in the
564 commonwealth if it maintains the principal place of administration of any trust within the
565 commonwealth. A foreign co-trustee shall not be required to qualify in the commonwealth
566 solely because its co-trustee maintains the principal place of administration in the

567 commonwealth. Unless otherwise doing business in the commonwealth, local qualification by a
568 foreign trustee, corporate or individual, shall not be required for the trustee to receive distribution
569 from a local estate, to hold, invest in, manage or acquire property located in the commonwealth
570 or to maintain litigation. Nothing in this section shall affect a determination of what other acts
571 require qualification as doing business in the commonwealth.

572 ARTICLE 2

573 JUDICIAL PROCEEDINGS

574 Section 201. Role of court in administration of trust

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

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

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

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

587 Section 202. Jurisdiction over trustee and beneficiary

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

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

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

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

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

608 Section 204. Venue

609 A trust shall be subject to the jurisdiction of the probate and family court department of
610 the trial court of the commonwealth in the county where its principal place of administration is
611 located. The principal place of administration of a testamentary trust shall be deemed to be the
612 location of the court of the commonwealth in which the will creating the trust was granted
613 informal or formal probate. Unless otherwise designated in the trust instrument, the principal
614 place of administration of an inter vivos trust shall be the trustee's usual place of business where
615 the records pertaining to the trust are kept or at the trustee's residence if the trustee has no such
616 place of business. In the case of co-trustees, the principal place of administration, if not
617 otherwise designated in the trust instrument, shall be: (1) the usual place of business of the
618 corporate trustee if there is but 1 corporate co-trustee; (2) the usual place of business or residence
619 of the individual trustee who is a professional fiduciary if there is but 1 such person and no
620 corporate co-trustee; or (3) the usual place of business or residence of any of the co-trustees as
621 agreed upon by them.

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

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

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

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

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

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

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

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

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

645 ARTICLE 3

646 REPRESENTATION

647 Section 301. Representation: basic effect

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

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

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

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

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

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

663 Section 303. Representation by fiduciaries and parents

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

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

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

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

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

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

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

676 Section 304. Representation by person having substantially identical interest

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

682 Section 305. Appointment of guardian ad litem

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

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

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

693 ARTICLE 4

694 CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

695 Section 401. Methods of creating trust

696 A trust may be created by:

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

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

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

702 Section 402. Requirements for creation

703 (a) A trust shall be created only if:

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

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

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

707 (A) a charitable trust;

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

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

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

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

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

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

718 Section 403. Trusts created in other jurisdictions

719 A trust not created by will shall be validly created if its creation complies with the law of
720 the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which,
721 at the time of creation:

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

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

724 (3) any trust property was located.

725 Section 404. Trust purposes

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

728 Section 405. Charitable purposes; enforcement

729 (a) A charitable trust may be created for the relief of poverty, the advancement of
730 education or religion, the promotion of health, governmental or municipal purposes or other
731 purposes which are beneficial to the community.

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

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

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

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

740 Section 407. Evidence of oral trust

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

743 Section 408. Trust for care of an animal

744 (a) A trust for the care of animals alive during the settlor's lifetime shall be valid. Unless
745 the trust instrument provides for an earlier termination, the trust shall terminate upon the death of

746 the animal or, if the trust was created to provide for the care of more than 1 animal alive during
747 the settlor's lifetime, upon the death of last surviving animal.

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

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

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

758 (1) as directed in the trust instrument;

759 (2) to the settlor, if living;

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

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

763 (e) If a trustee is not designated by the trust instrument or no designated trustee is willing
764 or able to serve, the court shall name a trustee. The court may order the transfer of the property
765 to another trustee if the transfer is necessary to ensure that the intended use is carried out. The

766 court may also make other orders and determinations as the court deems advisable to carry out
767 the intent of the settlor and the intended use of the trust.

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

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

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

779 Section 409. Non-charitable trust without ascertainable beneficiary.

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

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

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

787 (3) Property of a trust authorized by this section may be applied only to its intended use,
788 except to the extent the court determines that the value of the trust property exceeds the amount
789 required for the intended use. Property not required for the intended use shall be distributed to
790 the settlor, if then living, otherwise to the settlor's successors in interest, unless the terms of the
791 trust provide otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

827 Section 413. [Reserved]

828 Section 414. Modification or termination of uneconomic trust

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

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

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

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

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

840 Section 415. Reformation to correct mistakes

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

845 Section 416. [Reserved]

846 Section 417. Combination and division of trusts

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

850 ARTICLE 5

851 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

852 Section 501. Rights of beneficiary's creditor or assignee

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

857 Section 502. Spendthrift provision

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

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

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

867 Section 503. [Reserved]

868 Section 504. [Reserved]

869 Section 505. Creditor's claim against settlor

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

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

874 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may
875 reach the maximum amount that can be distributed to or for the settlor's benefit and, if a trust has
876 more than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not
877 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
878 Trust property shall not be considered distributable to or for the settlor's benefit solely because
879 the trustee has the discretion under the terms of the trust to reimburse the settlor for any tax on
880 trust income or capital gain that is payable by the settlor under the law imposing such tax; no
881 creditor or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust
882 property based on the discretionary authority described in this sentence.

883 (3) After the death of a settlor, and subject to the settlor's right to direct the
884 source from which liabilities will be paid, the property of a trust that was revocable at the
885 settlor's death shall be subject to claims of the settlor's creditors, the expenses of the settlor's
886 funeral and disposal of remains and statutory allowances to a surviving spouse and children to

887 the extent the settlor's probate estate is inadequate to satisfy those claims, expenses and
888 allowances.

889 Section 506. Overdue distribution

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

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

900 Section 507. Personal obligations of trustee

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

903 ARTICLE 6

904 REVOCABLE TRUSTS

905 Section 601. [Reserved]

906 Section 602. Revocation or amendment of revocable trust

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

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

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

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

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

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

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

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

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

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

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

929 Section 603. Settlor's powers; powers of withdrawal

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

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

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

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

941 (1) 1 year after the settlor's death; or

942 (2) 60 days after the trustee sent the person a copy of the trust instrument and a
943 notice informing the person of the trust's existence, the trustee's name and address and the time
944 allowed for commencing a proceeding.

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

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

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

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

955 ARTICLE 7

956 OFFICE OF TRUSTEE

957 Section 701. Accepting or declining trusteeship

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

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

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

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

968 (c) A person designated as trustee without accepting the trusteeship may:

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

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

974 Section 702. Duty to provide bond

975 In the case of a testamentary trust, a trustee shall furnish a bond for the performance of
976 the trustee's fiduciary duties and a surety shall be required unless waived by the terms of the
977 trust or found by the probate and family court department of the trial court to be not necessary to
978 protect the interests of the beneficiaries. On petition of the trustee or other interested person the
979 probate court may excuse a requirement of bond, reduce the amount of the bond, release the
980 surety or permit the substitution of another bond with the same or different sureties. If the
981 instrument creating the trust exempts the trustee from furnishing a bond or limits the amount
982 thereof, or the probate court determines that the bond is insufficient, the probate court may, if it
983 concludes that a bond is necessary or that a bond of a larger amount is necessary, require the
984 furnishing of such bond. The terms and conditions of the bond shall be as set forth in section 3-
985 606 of chapter 190B.

986 Section 703. Co-trustees

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

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

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

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

999 (e) Except as otherwise provided in subsection (f), a trustee who does not join in an
1000 action of another trustee shall not be liable for the action.

1001 (f) Each trustee shall exercise reasonable care to:

1002 (1) prevent a co-trustee from committing a breach of trust; and

1003 (2) compel a co-trustee to redress a breach of trust.

1004 Section 704. Vacancy in trusteeship; appointment of successor

1005 (a) A vacancy in a trusteeship shall occur if:

1006 (1) a person designated as trustee rejects the trusteeship;

1007 (2) a person designated as trustee cannot be identified or does not exist;

1008 (3) a trustee resigns;

1009 (4) a trustee is disqualified or removed;

1010 (5) a trustee dies; or

1011 (6) a guardian or conservator is appointed for an individual serving as trustee.

1012 (b) If 1 or more co-trustees remain in office, a vacancy in a trusteeship need not be filled.
1013 A vacancy in a trusteeship shall be filled if the trust has no remaining trustees.

1014 (c) A vacancy in a trusteeship that is required to be filled shall be filled in the following
1015 order of priority:

1016 (1) by a person designated by the terms of the trust to act as successor trustee;

1017 (2) by a person appointed by unanimous agreement of the qualified beneficiaries;
1018 or

1019 (3) by a person appointed by the court.

1020 (d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court
1021 may appoint an additional trustee or special fiduciary whenever the court considers the
1022 appointment necessary for the administration of the trust.

1023 Section 705. Resignation of trustee

1024 (a) A trustee may resign:

1025 (1) upon at least 30 days' notice to: (i) the settlor and all co-trustees of the trust,
1026 in the case of a revocable trust, and (ii) the qualified beneficiaries and all co-trustees of the trust,
1027 in the case of any other trust; or

1028 (2) with the approval of the court.

1029 (b) In approving a resignation, the court may issue orders and impose conditions
1030 reasonably necessary for the protection of the trust property.

1031 (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or
1032 omissions of the trustee shall not be discharged or affected by the trustee's resignation.

1033 Section 706. Removal of trustee

1034 (a) The settlor, a co-trustee or a beneficiary may request the court to remove a trustee or
1035 a trustee may be removed by the court on its own initiative.

1036 (b) The court may remove a trustee if:

1037 (1) the trustee has committed a serious breach of trust;

1038 (2) there is a lack of cooperation among co-trustees that substantially impairs the
1039 administration of the trust;

1040 (3) because of unfitness, unwillingness or persistent failure of the trustee to
1041 administer the trust effectively, the court determines that removal of the trustee best serves the
1042 interests of the beneficiaries; or

1043 (4) there has been a substantial change of circumstances or removal is requested
1044 by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the

1045 interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust and
1046 a suitable co-trustee or successor trustee is available.

1047 (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition
1048 to removing a trustee, the court may order such appropriate relief under subsection (b) of section
1049 1001 as may be necessary to protect the trust property or the interests of the beneficiaries.

1050 Section 707. Delivery of property by former trustee

1051 A trustee who has resigned or been removed shall proceed expeditiously to deliver the
1052 trust property within the trustee's possession to the co-trustee, successor trustee or other person
1053 entitled to it.

1054 Section 708. Compensation of trustee

1055 (a) If the terms of a trust do not specify the trustee's compensation, a trustee shall be
1056 entitled to compensation that is reasonable under the circumstances.

1057 (b) If the terms of a trust specify the trustee's compensation, the trustee shall be entitled
1058 to be compensated as specified, but the court may allow more or less compensation if:

1059 (1) the duties of the trustee are substantially different from those contemplated
1060 when the trust was created; or

1061 (2) the compensation specified by the terms of the trust would be unreasonably
1062 low or high.

1063 Section 709. Reimbursement of expenses

1064 (a) A trustee shall be entitled to be reimbursed out of the trust property, with interest as
1065 appropriate, for:

1066 (1) expenses that were properly incurred in the administration of the trust; and

1067 (2) expenses that were not properly incurred in the administration of the trust, to
1068 the extent necessary to prevent unjust enrichment of the trust.

1069 (b) An advance by the trustee of money for the protection of the trust shall give rise to a
1070 lien against trust property to secure reimbursement with reasonable interest.

1071 ARTICLE 8

1072 DUTIES AND POWERS OF TRUSTEE

1073 Section 801. Duty to administer trust

1074 Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in
1075 accordance with its terms and purposes and the interests of the beneficiaries and in accordance
1076 with this chapter.

1077 Section 802. Duty of loyalty

1078 (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

1079 (b) Subject to the rights of persons dealing with or assisting the trustee, as provided in
1080 section 1012, a sale, encumbrance or other transaction involving the investment or management
1081 of trust property entered into by the trustee for the trustee's own personal account or which is
1082 otherwise affected by a conflict between the trustee's fiduciary and personal interests shall be
1083 voidable by a beneficiary affected by the transaction unless:

1084 (1) the transaction was authorized by the terms of the trust;

1085 (2) the transaction was approved by the court;

1086 (3) the beneficiary did not commence a judicial proceeding within the time
1087 allowed by section 1005;

1088 (4) the beneficiary consented to the trustee's conduct, ratified the transaction or
1089 released the trustee in compliance with section 1009; or

1090 (5) the transaction involves a contract entered into or claim acquired by the
1091 trustee before the person became a trustee.

1092 (c) A sale, encumbrance or other transaction involving the investment or management of
1093 trust property shall be presumed to be affected by a conflict between personal and fiduciary
1094 interests if it is entered into by the trustee with:

1095 (1) the trustee's spouse;

1096 (2) the trustee's descendants, siblings, parents or their spouses;

1097 (3) an agent or attorney of the trustee; or

1098 (4) a corporation or other person or enterprise in which the trustee, or a person
1099 that owns a significant interest in the trustee, has an interest that might affect the trustee's best
1100 judgment.

1101 (d) A transaction not concerning trust property, in which the trustee engages in the
1102 trustee's individual capacity, shall be a conflict between personal and fiduciary interests if the
1103 transaction concerns an opportunity properly belonging to the trust.

1104 (e) An investment by a trustee in securities of an investment company or investment trust
1105 to which the trustee, or its affiliate, provides services in a capacity other than as trustee shall not
1106 be presumed to be affected by a conflict between personal and fiduciary interests if the
1107 investment otherwise complies with the prudent investor rule of chapter 203C. In addition to
1108 compensation for acting as trustee, the trustee may be compensated by the investment company
1109 or investment trust for providing those services out of fees charged to the trust. If the trustee
1110 receives compensation from the investment company or investment trust for providing
1111 investment advisory or investment management services, the trustee shall at least annually notify
1112 the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate
1113 and method by which that compensation was determined.

1114 (f) In voting shares of stock or in exercising powers of control over similar interests in
1115 other forms of enterprise, the trustee shall act in the best interests of the beneficiaries.

1116 (g) This section shall not preclude the following transactions, if fair to the beneficiaries:

1117 (1) an agreement between a trustee and a beneficiary relating to the appointment
1118 or compensation of the trustee;

1119 (2) payment of reasonable compensation to the trustee;

1120 (3) a transaction between a trust and another trust, decedent's estate or
1121 conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

1122 (4) a deposit of trust money in a regulated financial service institution operated
1123 by the trustee; or

1124 (5) an advance or loan by the trustee of money to the trust for a proper trust
1125 purpose.

1126 Section 803. Impartiality

1127 If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing,
1128 managing and distributing the trust property, giving due regard to the beneficiaries' respective
1129 interests.

1130 Section 804. Prudent administration

1131 A trustee shall administer the trust as a prudent person would, considering the purposes,
1132 terms and other circumstances of the trust. In satisfying this standard, the trustee shall exercise
1133 reasonable care, skill and caution.

1134 Section 805. Costs of administration

1135 In administering a trust, the trustee may incur only costs that are appropriate and
1136 reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

1137 Section 806. Trustee's skills

1138 A trustee who has special skills or expertise, or is named trustee in reliance upon the
1139 trustee's representation that the trustee has such special skills or expertise, shall have a duty to
1140 use such special skills or expertise.

1141 Section 807. Delegation by trustee

1142 (a) A trustee may delegate duties and powers if it is prudent to do so. The trustee shall
1143 exercise reasonable care, skill and caution in:

1144 (1) selecting an agent;

1145 (2) establishing the scope and terms of the delegation, consistent with the
1146 purposes and terms of the trust; and

1147 (3) periodically reviewing the agent's actions in order to monitor the agent's
1148 performance and compliance with the terms of the delegation.

1149 (b) In performing a delegated function, an agent shall owe a duty to the trust to exercise
1150 reasonable care to comply with the terms of the delegation.

1151 (c) A trustee who complies with subsection (a) shall not be liable to the beneficiaries or
1152 to the trust for an action of the agent to whom the function was delegated.

1153 (d) By accepting a delegation of powers or duties from the trustee of a trust that is
1154 subject to the laws of the commonwealth, an agent shall submit to the jurisdiction of the courts of
1155 the commonwealth.

1156 Section 808. Powers to direct

1157 (a) While a trust is revocable, the trustee may follow a direction of the settlor that is
1158 contrary to the terms of the trust.

1159 (b) If the terms of a trust confer upon a person, other than the settlor of a revocable trust,
1160 power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise
1161 of the power, unless the attempted exercise is manifestly contrary to the terms of the trust or the
1162 trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that
1163 the person holding the power owes to the beneficiaries of the trust.

1164 (c) A person who holds a power to direct is presumptively a fiduciary who is required to
1165 act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.
1166 The holder of a power to direct shall be liable for any loss that results from a breach of a
1167 fiduciary duty.

1168 Section 809. Control and protection of trust property

1169 A trustee shall take reasonable steps to take control of and protect the trust property.

1170 Section 810. Recordkeeping and identification of trust property

1171 (a) A trustee shall keep adequate records of the administration of the trust.

1172 (b) A trustee shall keep trust property separate from the trustee's own property.

1173 (c) A trustee may invest as a whole, the property of 2 or more separate trusts, if the
1174 trustee maintains records clearly indicating the respective interests.

1175 Section 811. Enforcement and defense of claims

1176 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims
1177 against the trust.

1178 Section 812. Collecting trust property

1179 A trustee shall take reasonable steps to compel a former trustee or other person to deliver
1180 trust property to the trustee and to redress a breach of trust known to the trustee to have been
1181 committed by a former trustee.

1182 Section 813. Duty to inform and report

1183 (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about
1184 the administration of the trust. Unless unreasonable under the circumstances, a trustee shall
1185 promptly respond to a qualified beneficiary's request for information related to the
1186 administration of the trust.

1187 (b) Within 30 days after acceptance of the trust or the trust becomes irrevocable,
1188 whichever is later, the trustee shall inform, in writing, the qualified beneficiaries of the trustee's
1189 name and address. The information shall be delivered or sent by ordinary first class mail.

1190 (c) A trustee shall send an account to the distributees and permissible distributees of trust
1191 income or principal and to other qualified beneficiaries who request it, at least annually and at
1192 the termination of the trust. The account of trust income and principal may be formal or
1193 informal, but shall include information relating to the trust property, liabilities, receipts and
1194 disbursements, including the amount of the trustee's compensation, a listing of the trust assets
1195 and, if feasible, their respective market values.

1196 (d) A beneficiary may waive the right to a trustee's account of trust income or principal
1197 or other information otherwise required to be furnished under this section. A beneficiary, with
1198 respect to future accounts and other information, may withdraw a waiver previously given. A
1199 waiver of a trustee's account or other information shall not relieve the trustee from accountability
1200 and potential liability for matters that the account or other information would have disclosed.

1201 Section 814. Discretionary powers; tax savings

1202 (a) Notwithstanding the broad discretion granted to a trustee in the terms of the trust,
1203 including the use of such terms as "absolute", "sole" or "uncontrolled", the trustee shall exercise

1204 a discretionary power in good faith and in accordance with the terms and purposes of the trust
1205 and the interests of the beneficiaries.

1206 (b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a
1207 rule in this subsection shall not apply, the following rules shall apply:

1208 (1) a person other than a settlor, who is a beneficiary and trustee of a trust, that
1209 confers on the trustee a power to make discretionary distributions to or for the trustee's personal
1210 benefit may exercise the power only in accordance with an ascertainable standard; and

1211 (2) a trustee shall not exercise a power to make discretionary distributions to
1212 satisfy a legal obligation of support that the trustee personally owes another person.

1213 (c) A power that is limited or prohibited by subsection (b) may be exercised by a
1214 majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If
1215 the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary
1216 with authority to exercise the power.

1217 (d) Subsection (b) shall not apply to:

1218 (1) a power held by the settlor's spouse who is the trustee of a trust for which a
1219 marital deduction was previously allowed; or

1220 (2) any trust during any period that the trust may be revoked or amended by its
1221 settlor.

1222 Section 815. General powers of trustee

1223 (a) A trustee, without authorization by the court, may exercise:

1224 (1) powers conferred by the terms of the trust; or

1225 (2) except as limited by the terms of the trust:

1226 (i) all powers over the trust property which an unmarried competent

1227 owner has over individually owned property;

1228 (ii) any other powers appropriate to achieve the proper investment,

1229 management and distribution of the trust property; and

1230 (iii) any other powers conferred by this chapter.

1231 (b) The exercise of a power shall be subject to the fiduciary duties prescribed by this

1232 article.

1233 Section 816. Specific powers of trustee

1234 Without limiting the authority conferred by section 815, a trustee may:

1235 (1) collect trust property and accept or reject additions to the trust property from a

1236 settlor or any other person;

1237 (2) acquire or sell property, for cash or on credit, at public or private sale;

1238 (3) exchange, partition or otherwise change the character of trust property;

1239 (4) deposit trust money in an account in a regulated financial service institution;

1240 (5) borrow money, with or without security, and mortgage or pledge trust property for a

1241 period within or extending beyond the duration of the trust;

1242 (6) with respect to an interest in a proprietorship, partnership, limited liability company,
1243 business trust, corporation or other form of business or enterprise, continue the business or other
1244 enterprise and take any action that may be taken by shareholders, members or property owners,
1245 including merging, dissolving or otherwise changing the form of business organization or
1246 contributing additional capital;

1247 (7) with respect to stocks or other securities, exercise the rights of an absolute owner,
1248 including the right to:

1249 (i) vote, or give proxies to vote, with or without power of substitution or enter
1250 into or continue a voting trust agreement;

1251 (ii) hold a security in the name of a nominee or in other form without disclosure
1252 of the trust so that title may pass by delivery;

1253 (iii) pay calls, assessments and other sums chargeable or accruing against the
1254 securities and sell or exercise stock subscription or conversion rights; and

1255 (iv) deposit the securities with a depositary or other regulated financial service
1256 institution;

1257 (8) with respect to an interest in real property, construct or make ordinary or
1258 extraordinary repairs to, alterations to or improvements in, buildings or other structures,
1259 demolish improvements, raze existing or erect new party walls or buildings, subdivide or
1260 develop land, dedicate land to public use or grant public or private easements and make or vacate
1261 plats and adjust boundaries;

1262 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other
1263 arrangement for exploration and removal of natural resources, with or without the option to
1264 purchase or renew, for a period within or extending beyond the duration of the trust;

1265 (10) grant an option involving a sale, lease or other disposition of trust property or
1266 acquire an option for the acquisition of property, including an option exercisable beyond the
1267 duration of the trust, and exercise an option so acquired;

1268 (11) insure the property of the trust against damage or loss and insure the trustee, the
1269 trustee's agents and beneficiaries against liability arising from the administration of the trust;

1270 (12) abandon or decline to administer property of no value or of insufficient value to
1271 justify its collection or continued administration;

1272 (13) with respect to possible liability for violation of environmental law:

1273 (i) inspect or investigate property the trustee holds or has been asked to hold, or
1274 property owned or operated by an organization in which the trustee holds or has been asked to
1275 hold an interest, for the purpose of determining the application of environmental law with respect
1276 to the property;

1277 (ii) take action to prevent, abate or otherwise remedy any actual or potential
1278 violation of any environmental law affecting property held directly or indirectly by the trustee,
1279 whether taken before or after the assertion of a claim or the initiation of governmental
1280 enforcement;

1281 (iii) decline to accept property into trust or disclaim any power with respect to
1282 property that is or may be burdened with liability for violation of environmental law;

1283 (iv) compromise claims against the trust which may be asserted for an alleged
1284 violation of environmental law; and

1285 (v) pay the expense of any inspection, review, abatement or remedial action to
1286 comply with environmental law;

1287 (14) pay or contest any claim, settle a claim by or against the trust and release, in whole
1288 or in part, a claim belonging to the trust;

1289 (15) pay taxes, assessments, compensation of the trustee and of employees and agents of
1290 the trust and other expenses incurred in the administration of the trust;

1291 (16) exercise elections with respect to federal, state and local taxes;

1292 (17) select a mode of payment under any employee benefit or retirement plan, annuity or
1293 life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to
1294 indemnification for expenses and against liabilities and take appropriate action to collect the
1295 proceeds;

1296 (18) make loans out of trust property, including loans to a beneficiary on terms and
1297 conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee
1298 has a lien on future distributions for repayment of those loans;

1299 (19) pledge trust property to guarantee loans made by others to the beneficiary;

1300 (20) appoint a trustee to act in another jurisdiction with respect to trust property located
1301 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
1302 appointing trustee, require that the appointed trustee furnish security and remove any trustee so
1303 appointed;

1304 (21) pay an amount distributable to a beneficiary who is under a legal disability or who
1305 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
1306 applying it for the beneficiary's benefit, or by:

1307 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a
1308 conservator, the beneficiary's guardian;

1309 (ii) paying it to the beneficiary's custodian under chapter 201A or custodial
1310 trustee under part 5 of Article VII of chapter 190B and, for that purpose, creating a custodianship
1311 or custodial trust;

1312 (iii) if the trustee does not know of a conservator, guardian, custodian or
1313 custodial trustee, paying it to an adult relative or other person having legal or physical care or
1314 custody of the beneficiary, to be expended on the beneficiary's behalf; or

1315 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the
1316 beneficiary's continuing right to withdraw the distribution;

1317 (22) on distribution of trust property or the division or termination of a trust, make
1318 distributions in divided or undivided interests, allocate particular assets in proportionate or
1319 disproportionate shares, value the trust property for those purposes and adjust for resulting
1320 differences in valuation;

1321 (23) resolve a dispute concerning the interpretation of the trust or its administration by
1322 mediation, arbitration or other procedure for alternative dispute resolution;

1323 (24) prosecute or defend an action, claim or judicial proceeding in any jurisdiction to
1324 protect trust property and the trustee in the performance of the trustee's duties;

1325 (25) sign and deliver contracts and other instruments that are useful to achieve or
1326 facilitate the exercise of the trustee's powers;

1327 (26) establish or continue title-holding entities, including so-called "nominee trusts", for
1328 the purposes of holding legal title to any portion or all of the trust property without the need to
1329 record or make public the terms of the trust; and

1330 (27) on termination of the trust, exercise the powers appropriate to wind up the
1331 administration of the trust and distribute the trust property to the persons entitled to it.

1332 Section 817. Distribution upon termination

1333 (a) Upon termination or partial termination of a trust, the trustee may send to the
1334 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed
1335 distribution shall terminate if the beneficiary does not notify the trustee of an objection within 30
1336 days after the proposal was sent, but only if the proposal: (i) informed the beneficiary of the right
1337 to object and of the time allowed for objection; and (ii) provided the beneficiary with sufficient
1338 material facts to enable the beneficiary to evaluate the proposal.

1339 (b) Upon the occurrence of an event terminating or partially terminating a trust, the
1340 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,
1341 subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses
1342 and taxes.

1343 ARTICLE 9 [Reserved]

1344 ARTICLE 10

1345 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH
1346 TRUSTEE

1347 Section 1001. Remedies for breach of trust

1348 (a) A violation by a trustee of a duty the trustee owes to a beneficiary shall be a breach of
1349 trust.

1350 (b) To remedy a breach of trust that has occurred or may occur, the court may:

1351 (1) compel the trustee to perform the trustee's duties;

1352 (2) enjoin the trustee from committing a breach of trust;

1353 (3) compel the trustee to redress a breach of trust by paying money, restoring
1354 property or other means;

1355 (4) order a trustee to account;

1356 (5) appoint a special fiduciary to take possession of the trust property and
1357 administer the trust;

1358 (6) suspend the trustee;

1359 (7) remove the trustee;

1360 (8) reduce or deny compensation to the trustee;

1361 (9) subject to section 1012, void an act of the trustee, impose a lien or a
1362 constructive trust on trust property or trace trust property wrongfully disposed of and recover the
1363 property or its proceeds; or

1364 (10) order any other appropriate relief.

1365 Section 1002. [Reserved]

1366 Section 1003. [Reserved]

1367 Section 1004. [Reserved]

1368 Section 1005. Limitation of action against trustee

1369 (a) Unless previously barred by adjudication, consent or limitation, any claim against a
1370 trustee for breach of trust shall be barred as to any beneficiary who has received a final account
1371 or other statement fully disclosing the matter and showing termination of the trust relationship
1372 between the trustee and the beneficiary, unless a proceeding to assert the claim is commenced
1373 within 6 months after receipt of the final account or statement. Any claim against a trustee for
1374 breach of trust shall be barred in any event and notwithstanding lack of full disclosure, against a
1375 trustee who has issued a final account or statement received by the beneficiary and has informed
1376 the beneficiary of the location and availability of records for examination by the beneficiary after
1377 3 years. A beneficiary is deemed to have received a final account or statement if, being an adult,
1378 it is received by the beneficiary personally or if, being a minor or disabled person, it is received
1379 by the beneficiary's representative as described in article 3.

1380 (b) Where a claim is not barred by subsection (a), a beneficiary may not commence a
1381 proceeding against a trustee for breach of trust more than 3 years after the date the beneficiary or
1382 a representative of the beneficiary knew or reasonably should have known of the existence of a
1383 potential claim for breach of trust.

1384 (c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for
1385 breach of trust must be commenced within 5 years after the first to occur of:

1386 (1) the removal, resignation or death of the trustee;

1387 (2) the termination of the beneficiary's interest in the trust; or

1388 (3) the termination of the trust.

1389 Section 1006. Reliance on trust instrument

1390 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the
1391 trust instrument shall not be liable to a beneficiary for a breach of trust to the extent the breach
1392 resulted from the reliance.

1393 Section 1007. Event affecting administration or distribution

1394 If the happening of an event or change of status, including, but not limited to: birth,
1395 adoption, marriage, divorce, performance of educational requirements or death affects the
1396 administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain
1397 the happening of the event or change of status shall not be liable for a loss resulting from the
1398 trustee's lack of knowledge.

1399 Section 1008. Exculpation of trustee

1400 (a) A term of a trust relieving a trustee of liability for breach of trust shall be
1401 unenforceable to the extent that it:

1402 (1) relieves the trustee of liability for breach of trust committed in bad faith or
1403 with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

1404 (2) was inserted as the result of an abuse by the trustee of a fiduciary or
1405 confidential relationship to the settlor.

1406 (b) An exculpatory term drafted or caused to be drafted by the trustee may be invalid as
1407 an abuse of a fiduciary or confidential relationship unless the trustee proves that its existence and
1408 contents were adequately communicated to the settlor.

1409 Section 1009. Beneficiary's consent, release or ratification

1410 A trustee shall not be liable to a beneficiary for breach of trust if the beneficiary, while
1411 having capacity, in writing, consented to the conduct constituting the breach, released the trustee
1412 from liability for the breach or ratified the transaction constituting the breach, unless:

1413 (1) the consent, release or ratification of the beneficiary was induced by improper
1414 conduct of the trustee; or

1415 (2) at the time of the consent, release or ratification, the beneficiary did not know of the
1416 material facts relating to the breach.

1417 Section 1010. Limitation on personal liability of trustee

1418 (a) Except as otherwise provided in the contract, a trustee shall not be personally liable
1419 on a contract properly entered into in the trustee's fiduciary capacity in the course of
1420 administering the trust if the trustee, in the contract, disclosed the fiduciary capacity.

1421 (b) A trustee shall be personally liable for torts committed in the course of administering
1422 a trust or for obligations arising from ownership or control of trust property, including liability
1423 for violation of environmental law, only if the trustee is personally at fault.

1424 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary
1425 capacity, on an obligation arising from ownership or control of trust property or on a tort
1426 committed in the course of administering a trust, may be asserted in a judicial proceeding against
1427 the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for
1428 the claim.

1429 Section 1011. Interest as general partner

1430 (a) Except as otherwise provided in subsection (c) or unless personal liability is imposed
1431 in the contract, a trustee who holds an interest as a general partner, in a general or limited
1432 partnership, shall not be personally liable on a contract entered into by the partnership after the
1433 trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a
1434 statement previously filed under chapter 108A or chapter 109.

1435 (b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a
1436 general partner shall not be personally liable for torts committed by the partnership or for
1437 obligations arising from ownership or control of the interest unless the trustee is personally at
1438 fault.

1439 (c) The immunity provided by this section shall not apply if an interest in the partnership
1440 is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or 1
1441 or more of the trustee's descendants, siblings or parents, or the spouse of any of them.

1442 (d) If the trustee of a revocable trust holds an interest as a general partner, the settlor
1443 shall be personally liable for contracts and other obligations of the partnership as if the settlor
1444 were a general partner.

1445 Section 1012. Protection of person dealing with trustee

1446 (a) A person other than a beneficiary who in good faith assists a trustee or who in good
1447 faith and for value deals with a trustee, without knowledge that the trustee is exceeding or
1448 improperly exercising the trustee's powers shall be protected from liability as if the trustee
1449 properly exercised the power.

1450 (b) A person other than a beneficiary who in good faith deals with a trustee shall not be
1451 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

1452 (c) A person who in good faith delivers assets to a trustee need not ensure their proper
1453 application.

1454 (d) A person other than a beneficiary who in good faith assists a former trustee or who in
1455 good faith and for value deals with a former trustee, without knowledge that the trusteeship has
1456 terminated shall be protected from liability as if the former trustee were still a trustee.

1457 (e) Comparable protective provisions of other laws relating to commercial transactions
1458 or transfer of securities by fiduciaries shall prevail over the protection provided by this section.

1459 Section 1013. Certification of trust

1460 (a) Instead of furnishing a copy of the trust instrument to a person other than a
1461 beneficiary, the trustee may furnish to the person a certification of trust containing the following
1462 information:

1463 (1) that the trust exists and the date the trust instrument was executed;

1464 (2) the identity of the settlor;

1465 (3) the identity and address of the currently acting trustee;

1466 (4) the powers of the trustee;

1467 (5) the revocability or irrevocability of the trust and the identity of any person
1468 holding a power to revoke the trust;

1469 (6) the authority of co-trustees to sign or otherwise authenticate and whether all
1470 or less than all are required in order to exercise powers of the trustee;

1471 (7) the trust's taxpayer identification number; and

1472 (8) the manner of taking title to trust property.

1473 (b) A certification of trust may be signed or otherwise authenticated by any trustee.

1474 (c) A certification of trust shall state that the trust has not been revoked, modified or
1475 amended in any manner that would cause the representations contained in the certification of
1476 trust to be incorrect.

1477 (d) A certification of trust need not contain the dispositive terms of a trust.

1478 (e) A recipient of a certification of trust may require the trustee to furnish copies of those
1479 excerpts from the original trust instrument and later amendments which designate the trustee and
1480 confer upon the trustee the power to act in the pending transaction.

1481 (f) A person who acts in reliance upon a certification of trust without knowledge that the
1482 representations contained in the certification are incorrect shall not be liable to any person for so
1483 acting and may assume without inquiry the existence of the facts contained in the certification.

1484 Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or
1485 part of the trust instrument is held by the person relying upon the certification.

1486 (g) A person who in good faith enters into a transaction in reliance upon a certification of
1487 trust may enforce the transaction against the trust property as if the representations contained in
1488 the certification were correct.

1489 (h) A person making a demand for the trust instrument, in addition to a certification of
1490 trust or excerpts, shall be liable for damages if the court determines that the person did not act in
1491 good faith in demanding the trust instrument.

1492 (i) This section shall not limit the right of a person to obtain a copy of the trust
1493 instrument in a judicial proceeding concerning the trust.

1494 SECTION 55. Section 7 of chapter 210 of the General Laws is hereby repealed.

1495 SECTION 56. Section 8 of chapter 210 of the General Laws is hereby repealed.

1496 SECTION 57. Section 21 of chapter 246 of the General Laws is hereby repealed.

1497 SECTION 58. Chapter 262 of the General Laws is hereby amended by striking out
1498 section 40, as appearing in the 2010 Official Edition, and inserting the place thereof the
1499 following section:-

1500 Section 40. The fees of the registers of the probate and family court, shall be as follows:

1501 for the filing of an amended or substituted account, for a petition for the allowance of an
1502 account, $75;

1503 for the filing of an account, including a common trust fund account, if the gross value
1504 accounted for in Schedule A of the account is $1,000 or less, no fee; if the gross value is more
1505 than $1,000 but not more than $10,000, $75; provided, however, that the fees shall not exceed
1506 $170 regardless of the time covered by the account; if the gross value is $10,000 or more but not
1507 more than $100,000, $100 for each year or fraction thereof covered by the account; if the gross
1508 value is more than $100,000 but not more than $500,000, $150 for each year or fraction thereof
1509 covered by the account; if the gross value is more than $500,000 but not more than $1,000,000,
1510 $200 for each year or fraction thereof covered by the account; if the gross value is more than
1511 $1,000,000 but not more than $2,000,000, $400 for each year or fraction thereof covered by the
1512 account; if the gross value is more than $2,000,000 but not more than $5,000,000, $750 for each
1513 year or fraction thereof covered by the account; if the gross value is more than $5,000,000 but
1514 not more than $7,500,000, $1500 for each year or fraction thereof covered by the account; if the
1515 gross value is more than $7,500,000 but not more than $10,000,000, $2500 for each year or
1516 fraction thereof covered by the account; if the gross value is more than $10,000,000, $3500 for
1517 each year or fraction thereof covered by the account;

1518 for the filing of petition for adoption, $100;

1519 for the filing of a subsequent bond, demand for sureties, for the filing of a petition for
1520 new bond, discharge of surety, modification of bond, reduction of bond, $75;

1521 for the filing of a motion for change of name, in divorce actions during nisi period, $100;

1522 for the filing of a petition for change of name, $150;

1523 for the filing of a foreign conservator sworn statement, $75;

1524 for the removal of a fiduciary, $100;

1525 for the filing of a petition to expand, modify or limit the powers of a conservator, $150;

1526 for the filing of a petition for the appointment of a conservator or for single transaction,
1527 $240;

1528 for the issuance of a contempt summons, $5;

1529 for the entry of an action seeking the post-judgment removal of a child from the
1530 commonwealth, $50;

1531 for the filing of a complaint for alimony, enforcement of foreign alimony decree, separate
1532 support, $100;

1533 for the filing of an action to convey land as if sole, $150;

1534 for marriage of a minor and marriage without delay, $180;

1535 for the filing of a complaint for affirmation of marriage, annulment, divorce, $200;

1536 for the filing of an action for modification relative to child support, custody and
1537 visitation, except for those actions filed by the IV-D agency for which there is no filing fee, $50;

1538 for the filing of a complaint to establish paternity or for custody-support-visitation,
1539 except for those actions filed by the IV-D agency for which there is no filing fee, $100;

1540 for the filing of a complaint to modify a foreign custody or support decree pursuant to
1541 section 29 of chapter 208, except for those complaints filed by the IV-D agency for which there
1542 is no filing fee, $100;

1543 for the filing of an action for the modification of a judgment relative to all non-child
1544 related issues, $150;

1545 for the issuance of an injunction or temporary restraining order, $100;

1546 for the filing of a complaint in equity related to adoption, separate support or the custody
1547 or support of minors, $100;

1548 for the filing of a complaint in equity, except such as relates to adoption, separate support
1549 or the custody or support of minors, $240;

1550 for the filing of a petition to partition, to terminate a trust, for specific performance, for
1551 filing a complaint to correct birth record, to restrain a personal representative, to terminate a
1552 trust, $240;

1553 for the issuance of a subsequent letter, $25;

1554 for care of a burial lot, erection of monument, $60;

1555 for the filing of a petition to render an inventory or account, petition for approval of a
1556 compromise, determination of value, order of complete settlement, for the filing of a closing
1557 statement, foreign personal representative sworn statement, small estate closing statement, $75;

1558 for the filing of a will for safekeeping, $75; provided, however, that no additional fee
1559 shall be charged for filing a will in substitution of a will previously filed and withdrawn;

1560 for the filing of a petition for public administration, for formal removal of personal
1561 representative, $100;

1562 for the filing of a petition for counsel fees, to vacate a formal order, for a general probate
1563 petition, for a general petition, except such as relates to custody or support of minors, for a
1564 representation of insolvency, $150;

1565 for the filing of a petition to appoint a receiver of the estate of an absentee, for leave to
1566 deposit certain funds, for statement of voluntary administration, $200;

1567 for the filing of a declaration of common trust fund, $400;

1568 for the filing of a petition to appoint a special personal representative, to appoint a
1569 trustee, for a general trust petition, for a formal probate of will, adjudication of intestacy and
1570 appointment of personal representative, for formal appointment of successor personal
1571 representative, for supervised administration, for an informal probate of will and/or appointment
1572 of personal representative, for informal appointment of successor personal representative, $400;

1573 for the filing of a petition for leave to lease real estate, for leave to mortgage real estate,
1574 $75;

1575 for the filing of a petition or application for sale of real or personal estate by any
1576 fiduciary if the gross value accounted for is $100,000 or less, $100; if the gross value is more
1577 than $100,000 but not more than $250,000, $250; if the gross value is more than $250,000 but
1578 not more than $500,000, $500; if the gross value is more than $500,000 but not more than
1579 $1,000,000, $750; if the gross value is more than $1,000,000, $1000; and

1580 for the amendment of record except such as relates to separate support or the custody or
1581 support of minors, $60;

1582 Notwithstanding the provisions of this section, no fee shall be charged for the issuance of
1583 a temporary restraining order against a spouse related to a complaint for divorce or separate
1584 support, for the filing of a complaint for support of spouse or child pursuant to section 32F of
1585 chapter 209, for the filing of a complaint for abuse protection, for the filing of a petition for
1586 disabled abuse, elderly abuse, dispense with consent to adoption, the appointment of a guardian,
1587 the resignation or termination of a guardian or conservator, the resignation of any fiduciary, to
1588 expand, modify or limit the powers of a guardian, grandparent visitation, payment of deposits,
1589 for leave to bring suit on a bond or for registration of foreign custody decree.

1590 SECTION 59. Section 5 of chapter 521 of the acts of 2008 is hereby repealed.

1591 SECTION 60. Section 15 of chapter 521 of the acts of 2008 is hereby repealed.

1592 SECTION 61. Said chapter 521 is hereby further amended by inserting after section 27
1593 the following section:-

1594 Section 27A. Section 3 of chapter 203A of the General Laws is hereby amended by
1595 striking out the third sentence and inserting in place thereof the following sentence:- A
1596 proceeding for the allowance of an account brought pursuant to this chapter in the probate and
1597 family court department of the trial court may be initiated by filing a petition and giving notice
1598 as provided under sections 1-401 and 1-403 of chapter 190B and section 1-404 of said chapter
1599 190B shall apply to such proceeding.

1600 SECTION 62. Section 39 of chapter 521 of the acts of 2008 is hereby repealed.

1601 SECTION 63. (a) Except as otherwise provided in this act:

1602 (1) this act shall apply to all trusts created before, on or after the effective date of
1603 this act;

1604 (2) this act shall apply to all judicial proceedings concerning trusts commenced
1605 on or after the effective date;

1606 (3) an action taken before the effective date of this act shall not be affected by
1607 this act.

1608 (b) If a right is acquired, extinguished or barred upon the expiration of a prescribed
1609 period that has commenced to run under any other statute before the effective date of this act,
1610 that statute shall continue to apply to the right even if it has been superseded.

1611 SECTION 64. Subsection (h) of section 408 of chapter 203E of the General Laws shall
1612 not apply to a trust created under an instrument executed before the effective date of this act.

1613 SECTION 65. Subsection (a) of section 502 of said chapter 203E shall not apply to
1614 spendthrift provisions in a trust created under an instrument executed before the effective date of
1615 this act.

1616 SECTION 66. Subsection (a) of section 602 of said chapter 203E shall not apply to trust
1617 instruments executed before the effective date of this act.

1618 SECTION 67. Subsection (a) of section 703 of said chapter 203E shall not apply to trust
1619 instruments executed before the effective date of this act.

1620 SECTION 68. Subsection (c) of section 5-504 of chapter 190B of the General Laws shall
1621 apply to transactions under powers of attorney occurring before, on or after the effective date of

1622 this act, except with respect to a transaction that has been invalidated by a final decision of a

1623 court of competent jurisdiction prior to such effective date.

1624 SECTION 69. This act shall take effect on March 31, 2012.