

SENATE No. 715

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to establish the Massachusetts Uniform Trust Code.

PETITION OF:

NAME:

Cynthia S. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 715

By Ms. Creem, a petition (accompanied by bill, Senate, No. 715) of Cynthia S. Creem for legislation to establish the Massachusetts Uniform Trust Code. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 688 OF 2011-2012.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Thirteen
—————

An Act to establish the Massachusetts Uniform Trust Code.

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

1 SECTION 1. Parts 1 through 4 of Article VII of chapter 190B of the General Laws, as
2 inserted by section 9 of chapter 521 of the Acts of 2008, are hereby repealed; Part 1 is changed to
3 read, “Sections 7-101 to 7-105. [Reserved.]”; Part 2 is changed to read, “Sections 7-201 to 7-
4 206. [Reserved.]”; Part 3 is changed to read, “Sections 7-301 to 7-311. [Reserved]”; Part 4 is
5 changed to read, “Section 7-401. [Reserved.]”; and the Table of Contents is changed in the same
6 manner.

7 SECTION 2. The General Laws are hereby amended by inserting after chapter 203D the
8 following chapter—

9 CHAPTER 203E

10 MASSACHUSETTS UNIFORM TRUST CODE

11 ARTICLE 1

12 GENERAL PROVISIONS AND DEFINITIONS

13 Section 101. [Short Title.] This chapter shall be known and may be cited as the
14 Massachusetts Uniform Trust Code.

15 Section 102. [Scope.] This chapter applies to express trusts, charitable or non-charitable,
16 of a donative nature and trusts created pursuant to a judgment or decree that requires the trust to
17 be administered in the manner of said express trusts.

18 Section 103. [Definitions.] In this chapter:

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

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

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

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

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

28 (6) “Interests of the beneficiaries” means the beneficial interests provided in the terms
29 of the trust.

30 (7) “Jurisdiction,” with respect to a geographic area, includes a state or country.

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

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

36 (10) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s
37 qualification is determined:

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

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

41 (11) “Revocable,” as applied to a trust, means revocable by the settlor without the
42 consent of the trustee or a person holding an adverse interest.

43 (12) “Settlor” means a person, including a testator, who creates, or contributes property
44 to, a trust. If more than one person creates or contributes property to a trust, each person is a

45 settlor of the portion of the trust property attributable to that person’s contribution except to the
46 extent another person has the power to revoke or withdraw that portion.

47 (13) “Spendthrift provision” means a term of a trust which restrains transfer of a
48 beneficiary’s interest.

49 (14) “State” means a state of the United States, the District of Columbia, Puerto Rico,
50 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
51 of the United States. The term includes an Indian tribe or band recognized by federal law or
52 formally acknowledged by a state.

53 (15) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s
54 provisions as expressed in the trust instrument or as may be established by other evidence that
55 would be admissible in a judicial proceeding.

56 (16) “Trust instrument” means an instrument that contains terms of the trust, including
57 any amendments thereto.

58 (17) “Trustee” includes an original, additional, and successor trustee, and a co-trustee.

59 Section 104. [Knowledge.]

60 (a) Subject to subsection (b), a person has knowledge of a fact if the person:

61 (1) has actual knowledge of it;

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

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

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

75 Section 105. [Default And Mandatory Rules.]

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

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

79 (1) the requirements for creating a trust;

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

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

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

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

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

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

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

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

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

96 Section 106. [Common Law of Trusts; Principles of Equity.] The common law of trusts
97 and principles of equity supplement this chapter, except to the extent modified by this chapter or
98 another statute of the commonwealth.

99 Section 107. [Reserved.]

100 Section 108. [Principal Place of Administration.]

101 (a) Without precluding other means for establishing a sufficient connection with the
102 designated jurisdiction, terms of a trust designating the principal place of administration are valid
103 and controlling if:

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

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

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

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

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

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

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

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

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

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

124 Section 109. [Methods and Waiver of Notice.]

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

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

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

135 (d) Notice of a judicial proceeding must be given as provided in the applicable rules of
136 civil procedure.

137 Section 110. [Others Treated as Qualified Beneficiaries.]

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

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

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

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

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

151 Section 111. [Non-judicial Settlement Agreements.]

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

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

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

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

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

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

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

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

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

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

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

173 Section 112. [Rules of Construction.]

174 The rules of construction that apply in the commonwealth to the interpretation of and
175 disposition of property by will also apply as appropriate to the interpretation of the terms of a
176 revocable trust and the disposition of the trust property. A “revocable trust”, for purposes of this
177 section, means a trust that was (1) revocable by the settlor until the time of his or her death, (2)
178 created or amended by the settlor after the effective date of this act, and (3) was intended to
179 dispose of the settlor’s property at death (whether under will or otherwise and whether the trust
180 was funded at the time of the settlor’s death or not).

181 Section 113. [Qualification of Foreign Trustee.]

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

191 ARTICLE 2

192 JUDICIAL PROCEEDINGS

193 Section 201. [Role of Court in Administration of Trust.]

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

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

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

199 Section 202. [Jurisdiction Over Trustee and Beneficiary.]

200 (a) By accepting the trusteeship of a trust having its principal place of administration in
201 the commonwealth or by moving the principal place of administration to the commonwealth, the

202 trustee submits personally to the jurisdiction of the courts of the commonwealth regarding any
203 matter involving the trust.

204 (b) With respect to their interests in the trust, the beneficiaries of a trust having its
205 principal place of administration in the commonwealth are subject to the jurisdiction of the
206 courts of the commonwealth regarding any matter involving the trust. By accepting a
207 distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of
208 the commonwealth regarding any matter involving the trust.

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

211 Section 203. [Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts.]

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

220 Section 204. [Venue.]

221 A trust shall be subject to the jurisdiction of the probate and family court department of
222 the trial court of the commonwealth for the county in which is located its principal place of
223 administration. The principal place of administration of a testamentary trust shall be deemed to
224 be the location of the court of the commonwealth in which the will creating the trust was granted
225 informal or formal probate. Unless otherwise designated in the trust instrument, the principal
226 place of administration of an inter vivos trust is the trustee's usual place of business where the
227 records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such
228 place of business. In the case of co-trustees, the principal place of administration, if not
229 otherwise designated in the trust instrument, is (1) the usual place of business of the corporate
230 trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of
231 the individual trustee who is a professional fiduciary if there is but one such person and no
232 corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-
233 trustees as agreed upon by them.

234 Section 205. [Petition for Transfers of Trust Property Whose Disposition Depends upon
235 the Death of an Absentee.]

236 (a) If a trustee holds trust property the disposition of which depends upon the death of an
237 absentee whose death has not otherwise been determined, on or after the day five years after the
238 date of the absentee's disappearance the trustee, or any person who would be interested in the
239 trust property were the absentee dead, may petition the court having jurisdiction of the trust for
240 an order that the trust property be disposed of to the persons to whom and in the shares or
241 proportions in which it would be distributed under the provisions of the trust if the absentee had
242 died on that day.

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

246 (1) by inserting in one or more suitable periodicals a notice requesting information from
247 any person having knowledge of the whereabouts of the absentee;

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

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

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

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

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

257 ARTICLE 3

258 REPRESENTATION

259 Section 301. [Representation: Basic Effect.]

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

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

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

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

270 Section 302. [Representation by Holder of General Testamentary Power of
271 Appointment.] To the extent there is no conflict of interest between the holder of a general
272 testamentary power of appointment and the persons represented with respect to the particular
273 question or dispute, the holder may represent and bind persons whose interests, as permissible
274 appointees, takers in default, or otherwise, are subject to the power.

275 Section 303. [Representation by Fiduciaries and Parents.] To the extent there is no
276 conflict of interest between the representative and the person represented or among those being
277 represented with respect to a particular question or dispute:

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

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

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

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

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

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

288 Section 304. [Representation by Person Having Substantially Identical Interest.] Unless
289 otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or
290 location is unknown and not reasonably ascertainable, may be represented by and bound by
291 another having a substantially identical interest with respect to the particular question or dispute,
292 but only to the extent there is no conflict of interest between the representative and the person
293 represented.

294 Section 305. [Appointment of Guardian ad Litem.]

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

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

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

305 ARTICLE 4

306 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

307 Section 401. [Methods Of Creating Trust.] A trust may be created by:

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

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

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

313 Section 402. [Requirements For Creation.]

314 (a) A trust is created only if:

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

316 2) the settlor indicates an intention to create the trust;

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

318 (A) a charitable trust;

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

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

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

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

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

325 (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the
326 power is not exercised within a reasonable time, the power fails and the property subject to the

327 power passes to the persons who would have taken the property had the power not been
328 conferred.

329 Section 403. [Trusts Created in Other Jurisdictions.] A trust not created by will is
330 validly created if its creation complies with the law of the jurisdiction in which the trust
331 instrument was executed, or the law of the jurisdiction in which, at the time of creation:

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

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

334 (3) any trust property was located.

335 Section 404. [Trust Purposes.] A trust may be created only to the extent its purposes are
336 lawful and not contrary to public policy.

337 Section 405. [Charitable Purposes; Enforcement.]

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

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

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

347 Section 406. [Creation of Trust Induced By Fraud, Duress, or Undue Influence.] A trust
348 is void to the extent its creation was induced by fraud, duress, or undue influence.

349 Section 407. [Evidence of Oral Trust.] Except as required by a statute other than this
350 chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and
351 its terms may be established only by clear and convincing evidence.

352 Section 408. [Trust for Care of Animal.]

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

357 (b) A trust authorized by this section may be enforced by a person appointed in the terms
358 of the trust or, if no person is so appointed, by a person appointed by the court. A person having

359 an interest in the welfare of the animal may request the court to appoint a person to enforce the
360 trust or to remove a person appointed.

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

366 Section 409. [Non-charitable Trust Without Ascertainable Beneficiary.] Except as
367 otherwise provided in section 408 or by another statute, the following rules apply:

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

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

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

378 Section 410. [Modification or Termination of Trust; Proceedings for Approval or
379 Disapproval.]

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

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

388 Section 411. [Modification or Termination of Non-charitable Irrevocable Trust by
389 Consent.]

390 (a) If, upon petition, the court finds that the settlor and all beneficiaries consent to the
391 modification or termination of a non-charitable irrevocable trust, the court may approve the

392 modification or termination even if the modification or termination is inconsistent with a
393 material purpose of the trust.

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

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

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

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

405 Section 412. [Modification or Termination Because of Unanticipated Circumstances or
406 Inability to Administer Trust Effectively.]

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

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

413 Section 413. [Reserved.]

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

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

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

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

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

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

426 Section 415. [Reformation to Correct Mistakes.] The court may reform the terms of a
427 trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear
428 and convincing evidence that the settlor's intent or the terms of the trust were affected by a
429 mistake of fact or law, whether in expression or inducement.

430 Section 416. [Reserved.]

431 Section 417. [Combination and Division of Trusts.] After notice to the qualified
432 beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into
433 two or more separate trusts, if the result does not impair rights of any beneficiary or adversely
434 affect achievement of the purposes of the trust.

435 ARTICLE 5

436 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

437 Section 501. [Rights of Beneficiary's Creditor or Assignee.] To the extent a
438 beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor
439 or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or
440 future distributions to or for the benefit of the beneficiary or other means. The court may limit
441 the award to such relief as is appropriate under the circumstances.

442 Section 502. [Spendthrift Provision.]

443 (a) A spendthrift provision in any instrument executed after the effective date of this
444 chapter is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's
445 interest.

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

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

453 Section 503. [Reserved.]

454 Section 504. [Reserved.]

455 Section 505. [Creditor's Claim Against Settlor.]

456 (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules
457 apply:

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

460 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach
461 the maximum amount that can be distributed to or for the settlor's benefit and, if a trust has more
462 than one settlor, the amount the creditor or assignee of a particular settlor may reach may not
463 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
464 Trust property shall not be considered distributable to or for the settlor's benefit solely because
465 the trustee is authorized by the terms of the trust to reimburse the settlor for any tax on trust
466 income or capital gain that is payable by the settlor under the law imposing such tax; no creditor
467 or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based
468 on the discretionary authority described in this sentence.

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

474 Section 506. [Overdue Distribution.]

475 (a) In this section, "mandatory distribution" means a distribution of income or principal
476 which the trustee is required to make to a beneficiary under the terms of the trust, including a
477 distribution upon termination of the trust. The term does not include a distribution subject to the
478 exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard
479 of distribution, or (2) the terms of the trust authorizing a distribution couple language of
480 discretion with language of direction.

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

485 Section 507. [Personal Obligations of Trustee.] Trust property is not subject to personal
486 obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

487 ARTICLE 6

488 REVOCABLE TRUSTS

489 Section 601. [Reserved.]

490 Section 602. [Revocation or Amendment of Revocable Trust.]

491 (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor
492 may revoke or amend the trust. This subsection does not apply to a trust created under an
493 instrument executed before the effective date of this chapter.

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

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

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

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

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

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

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

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

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

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

514 Section 603. [Settlor's Powers; Powers of Withdrawal.]

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

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

521 Section 604. [Limitation on Action Contesting Validity of Revocable Trust; Distribution
522 of Trust Property.]

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

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

526 (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice
527 informing the person of the trust's existence, of the trustee's name and address, and of the time
528 allowed for commencing a proceeding.

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

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

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

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

539 ARTICLE 7

540 OFFICE OF TRUSTEE

541 Section 701. [Accepting or Declining Trusteeship.]

542 (a) Except as otherwise provided in subsection (c), a person designated as trustee accepts
543 the trusteeship:

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

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

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

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

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

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

558 Section 702. [Duty to Provide Bond.]

559 In the case of a testamentary trust, a trustee shall furnish a bond for the performance of
560 the trustee's fiduciary duties and a surety shall be required unless waived by the terms of the
561 trust, or found by the court to be not necessary to protect the interests of the beneficiaries. On
562 petition of the trustee or other interested person the court may excuse a requirement of bond,
563 reduce the amount of the bond, release the surety, or permit the substitution of another bond with
564 the same or different sureties. When the instrument creating the trust exempts the trustee from
565 furnishing a bond or limits the amount thereof, or the court determines that the bond is
566 insufficient, the court may if it concludes that a bond be necessary or that a bond of a larger
567 amount is necessary, require the furnishing of such bond.

568 Section 703. [Co-Trustees.]

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

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

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

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

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

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

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

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

586 (g) The provisions of this section permitting trustees to act in certain circumstances by
587 majority rather than unanimity shall not apply with respect to trusts established under
588 instruments executed before the effective date of this act.

589 Section 704. [Vacancy in Trusteeship; Appointment of Successor.]

590 (a) A vacancy in a trusteeship occurs if:

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

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

593 (3) a trustee resigns;

594 (4) a trustee is disqualified or removed;

595 (5) a trustee dies; or

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

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

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

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

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

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

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

607 Section 705. [Resignation of Trustee.]

608 (a) A trustee may resign:

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

612 (2) with the approval of the court.

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

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

617 Section 706. [Removal of Trustee.]

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

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

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

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

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

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

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

634 Section 707. [Delivery of Property by Former Trustee.]

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

638 Section 708. [Compensation of Trustee.]

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

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

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

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

647 Section 709. [Reimbursement of Expenses.]

648 (a) A trustee is entitled to be reimbursed out of the trust property, with interest as
649 appropriate, for:

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

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

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

655 ARTICLE 8

656 DUTIES AND POWERS OF TRUSTEE

657 Section 801. [Duty to Administer Trust.] Upon acceptance of a trusteeship, the trustee
658 shall administer the trust in good faith, in accordance with its terms and purposes and the
659 interests of the beneficiaries, and in accordance with this chapter.

660 Section 802. [Duty of Loyalty.]

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

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

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

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

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

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

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

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

678 (1) the trustee's spouse; or

679 (2) the trustee's descendants, siblings, parents, or their spouses.

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

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

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

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

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

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

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

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

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

704 Section 803. [Impartiality.] If a trust has two or more beneficiaries, the trustee shall act
705 impartially in investing, managing, and distributing the trust property, giving due regard to the
706 beneficiaries' respective interests.

707 Section 804. [Prudent Administration.] A trustee shall administer the trust as a prudent
708 person would, considering the purposes, terms, and other circumstances of the trust. In
709 satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

710 Section 805. [Costs of Administration.] In administering a trust, the trustee may incur
711 only costs that are appropriate and reasonable in relation to the trust property, the purposes of the
712 trust, and the skills of the trustee.

713 Section 806. [Trustee's Skills.] A trustee who has special skills or expertise, or is named
714 trustee in reliance upon the trustee's representation that the trustee has such special skills or
715 expertise, shall have a duty to use such special skills or expertise.

716 Section 807. [Delegation by Trustee.]

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

719 (1) selecting an agent;

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

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

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

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

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

731 Section 808. [Powers to Direct.]

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

734 (b) If the terms of a trust confer upon a person other than the settlor of a revocable trust
735 power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise

736 of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the
737 trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that
738 the person holding the power owes to the beneficiaries of the trust.

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

743 Section 809. [Control and Protection of Trust Property.] A trustee shall take reasonable
744 steps to take control of and protect the trust property.

745 Section 810. [Recordkeeping and Identification of Trust Property.]

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

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

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

750 Section 811. [Enforcement and Defense of Claims.] A trustee shall take reasonable steps
751 to enforce claims of the trust and to defend claims against the trust.

752 Section 812. [Collecting Trust Property.] A trustee shall take reasonable steps to compel
753 a former trustee or other person to deliver trust property to the trustee, and to redress a breach of
754 trust known to the trustee to have been committed by a former trustee.

755 Section 813. [Duty to Inform and Report.]

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

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

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

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

774 Section 814. [Discretionary Powers; Tax Savings.]

775 (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust,
776 including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise
777 a discretionary power in good faith and in accordance with the terms and purposes of the trust
778 and the interests of the beneficiaries.

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

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

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

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

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

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

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

795 Section 815. [General Powers of Trustee.]

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

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

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

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

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

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

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

805 Section 816. [Specific Powers of Trustee.] Without limiting the authority conferred by
806 section 815, a trustee may:

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

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

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

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

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

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

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

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

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

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

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

829 (8) with respect to an interest in real property, construct, or make ordinary or
830 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
831 demolish improvements, raze existing or erect new party walls or buildings, subdivide or

832 develop land, dedicate land to public use or grant public or private easements, and make or
833 vacate plats and adjust boundaries;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

903 Section 817. [Distribution upon Termination.]

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

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

914 ARTICLE 9

915 [RESERVED]

916 ARTICLE 10

917 LIABILITY OF TRUSTEES AND RIGHTS OF

918 PERSONS DEALING WITH TRUSTEE

919 Section 1001. [Remedies for Breach of Trust.]

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

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

922 (1) compel the trustee to perform the trustee’s duties;

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

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

- 926 (4) order a trustee to account;
- 927 (5) appoint a special fiduciary to take possession of the trust property and administer
928 the trust;
- 929 (6) suspend the trustee;
- 930 (7) remove the trustee as provided in section 7-308 of chapter 190B;
- 931 (8) reduce or deny compensation to the trustee;
- 932 (9) subject to section 1012, void an act of the trustee, impose a lien or a constructive
933 trust on trust property, or trace trust property wrongfully disposed of and recover the property or
934 its proceeds; or
- 935 (10) order any other appropriate relief.

936 Section 1002. [Reserved.]

937 Section 1003. [Reserved.]

938 Section 1004. [Reserved.]

939 Section 1005. [Limitation of Action Against Trustee.]

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

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

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

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

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

959 (3) the termination of the trust.

960 Section 1006. [Reliance on Trust Instrument.] A trustee who acts in reasonable reliance
961 on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a
962 breach of trust to the extent the breach resulted from the reliance.

963 Section 1007. [Event Affecting Administration or Distribution.] If the happening of an
964 event or change of status, including, but not limited to: birth, adoption, marriage, divorce,
965 performance of educational requirements, or death, affects the administration or distribution of a
966 trust, a trustee who has exercised reasonable care to ascertain the happening of the event or
967 change of status is not liable for a loss resulting from the trustee's lack of knowledge.

968 Section 1008. [Exculpation of Trustee.]

969 (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to
970 the extent that it:

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

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

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

978 Section 1009. [Beneficiary's Consent, Release, or Ratification.] A trustee is not liable to
979 a beneficiary for breach of trust if the beneficiary, while having capacity, in writing, consented to
980 the conduct constituting the breach, released the trustee from liability for the breach, or ratified
981 the transaction constituting the breach, unless:

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

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

986 Section 1010. [Limitation on Personal Liability of Trustee.]

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

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

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

998 Section 1011. [Interest as General Partner.]

999 (a) Except as otherwise provided in subsection (c) or unless personal liability is imposed
1000 in the contract, a trustee who holds an interest as a general partner in a general or limited
1001 partnership is not personally liable on a contract entered into by the partnership after the trust's
1002 acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement
1003 previously filed pursuant to chapter 108A or chapter 109.

1004 (b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a
1005 general partner is not personally liable for torts committed by the partnership or for obligations
1006 arising from ownership or control of the interest unless the trustee is personally at fault.

1007 (c) The immunity provided by this section does not apply if an interest in the partnership
1008 is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or
1009 one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

1010 (d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is
1011 personally liable for contracts and other obligations of the partnership as if the settlor were a
1012 general partner.

1013 Section 1012. [Protection of Person Dealing with Trustee.]

1014 (a) A person other than a beneficiary who in good faith assists a trustee, or who in good
1015 faith and for value deals with a trustee, without knowledge that the trustee is exceeding or
1016 improperly exercising the trustee's powers is protected from liability as if the trustee properly
1017 exercised the power.

1018 (b) A person other than a beneficiary who in good faith deals with a trustee is not
1019 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

1020 (c) A person who in good faith delivers assets to a trustee need not ensure their proper
1021 application.

1022 (d) A person other than a beneficiary who in good faith assists a former trustee, or who
1023 in good faith and for value deals with a former trustee, without knowledge that the trusteeship
1024 has terminated is protected from liability as if the former trustee were still a trustee.

1025 (e) Comparable protective provisions of other laws relating to commercial transactions
1026 or transfer of securities by fiduciaries prevail over the protection provided by this section.

1027 Section 1013. [Certification of Trust.]

1028 (a) Instead of furnishing a copy of the trust instrument to a person other than a
1029 beneficiary, the trustee may furnish to the person a certification of trust containing the following
1030 information:

1031 (1) that the trust exists and the date the trust instrument was executed;

1032 (2) the identity of the settlor;

1033 (3) the identity and address of the currently acting trustee;

1034 (4) the powers of the trustee;

1035 (5) the revocability or irrevocability of the trust and the identity of any person holding
1036 a power to revoke the trust;

1037 (6) the authority of co-trustees to sign or otherwise authenticate and whether all or
1038 less than all are required in order to exercise powers of the trustee;

1039 (7) the trust's taxpayer identification number; and

1040 (8) the manner of taking title to trust property.

1041 (b) A certification of trust may be signed or otherwise authenticated by any trustee.

1042 (c) A certification of trust must state that the trust has not been revoked, modified, or
1043 amended in any manner that would cause the representations contained in the certification of
1044 trust to be incorrect.

1045 (d) A certification of trust need not contain the dispositive terms of a trust.

1046 (e) A recipient of a certification of trust may require the trustee to furnish copies of those
1047 excerpts from the original trust instrument and later amendments which designate the trustee and
1048 confer upon the trustee the power to act in the pending transaction.

1049 (f) A person who acts in reliance upon a certification of trust without knowledge that the
1050 representations contained therein are incorrect is not liable to any person for so acting and may
1051 assume without inquiry the existence of the facts contained in the certification. Knowledge of

1052 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust
1053 instrument is held by the person relying upon the certification.

1054 (g) A person who in good faith enters into a transaction in reliance upon a certification of
1055 trust may enforce the transaction against the trust property as if the representations contained in
1056 the certification were correct.

1057 (h) A person making a demand for the trust instrument in addition to a certification of
1058 trust or excerpts is liable for damages if the court determines that the person did not act in good
1059 faith in demanding the trust instrument.

1060 (i) This section does not limit the right of a person to obtain a copy of the trust
1061 instrument in a judicial proceeding concerning the trust.

1062 SECTION 3. (a) Except as otherwise provided in this act, on the effective date of this
1063 act:

1064 (1) this act shall apply to all trusts created before, on, or after the effective date;

1065 (2) this act shall apply to all judicial proceedings concerning trusts commenced on or
1066 after the effective date;

1067 (3) this chapter shall apply to judicial proceedings concerning trusts commenced
1068 before the effective date unless the court finds that application of a particular provision of this
1069 chapter would substantially interfere with the effective conduct of the judicial proceedings or
1070 prejudice the rights of the parties, in which case the particular provision of this act shall not
1071 apply and the superseded law shall apply;

1072 (4) an act done before the effective date shall not be affected by this act.

1073 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed
1074 period that has commenced to run under any other statute before the effective date of this act,
1075 that statute shall continue to apply to the right even if it has been superseded.

1076 SECTION 4. This act shall take effect on _____, 20__.