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HOUSE . . . . . No. 3756

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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VII of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, are hereby repealed; Part 1 is changed to read, "Sections 7-101 to 7-105.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

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

SECTION 3. Section 7-502 of Article VII of said chapter 190B, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by striking the words "section 7-401" and inserting in place thereof the following:- "section 816 of chapter 203E"

14 SECTION 4. Section 3C of chapter 203, as inserted by chapter 430 of the acts of 2010, is
15 hereby repealed.

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

18 CHAPTER 203E

19 MASSACHUSETTS UNIFORM TRUST CODE

20 ARTICLE 1

21 GENERAL PROVISIONS AND DEFINITIONS

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

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

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

28 (1) "Action," with respect to an act of a trustee, includes a failure to act.

29 (2) "Ascertainable standard" means a standard relating to an individual's health,
30 education, support, or maintenance.

31 (3) "Beneficiary" means a person who has a present or future beneficial interest in a
32 trust, vested or contingent.

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

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

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

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

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

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

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

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

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

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

52 (12) "Settlor" means a person, including a testator, who creates, or contributes property
53 to, a trust. If more than one person creates or contributes property to a trust, each person is a
54 settlor of the portion of the trust property attributable to that person's contribution except to the
55 extent another person has the power to revoke or withdraw that portion.

56 (13) "Spendthrift provision" means a term of a trust which restrains transfer of a
57 beneficiary's interest.

58 (14) "State" means a state of the United States, the District of Columbia, Puerto Rico,
59 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
60 of the United States. The term includes an Indian tribe or band recognized by federal law or
61 formally acknowledged by a state.

62 (15) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's
63 provisions as expressed in the trust instrument or as may be established by other evidence that
64 would be admissible in a judicial proceeding.

65 (16) "Trust instrument" means an instrument that contains terms of the trust, including
66 any amendments thereto.

67 (17) "Trustee" includes an original, additional, and successor trustee, and a co-trustee.

68 Section 104. [Knowledge.]

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

70 (1) has actual knowledge of it;

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

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

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

84 Section 105. [Default And Mandatory Rules.]

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

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

88 (1) the requirements for creating a trust;

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

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

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

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

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

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

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

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

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

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

108 Section 107. [Reserved.]

109 Section 108. [Principal Place of Administration.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

152 (b) A charitable organization expressly designated to receive distributions under the
153 terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the

154 charitable organization, on the date the charitable organization's qualification is being
155 determined:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 Section 112. [Rules of Construction.]

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

192 Section 113. [Qualification of Foreign Trustee.]

193 A foreign corporate trustee is required to qualify as a foreign corporation doing business
194 in the commonwealth if it maintains the principal place of administration of any trust within the

195 commonwealth. A foreign co-trustee is not required to qualify in the commonwealth solely
196 because its co-trustee maintains the principal place of administration in the commonwealth.
197 Unless otherwise doing business in the commonwealth, local qualification by a foreign trustee,
198 corporate or individual, is not required in order for the trustee to receive distribution from a local
199 estate, to hold, invest in, manage or acquire property located in the commonwealth, or to
200 maintain litigation. Nothing in this section affects a determination of what other acts require
201 qualification as doing business in the commonwealth.

202 ARTICLE 2

203 JUDICIAL PROCEEDINGS

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

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

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

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

210 (d) A proceeding brought pursuant to this chapter in the probate and family court
211 department of the trial court to appoint or remove a trustee, to approve the resignation of a
212 trustee, to review and settle accounts of a trustee, or concerning any other matter relating to the
213 administration of a trust may be initiated by filing a petition and giving notice as provided in
214 section 109 to interested parties. A decree will be valid as to all who are given notice of the
215 proceeding even if fewer than all interested parties are notified.

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

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

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

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

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

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

237 Section 204. [Venue.]

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

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

253 (a) If a trustee holds trust property the disposition of which depends upon the death of an
254 absentee whose death has not otherwise been determined, on or after the day five years after the
255 date of the absentee's disappearance the trustee, or any person who would be interested in the
256 trust property were the absentee dead, may petition the court having jurisdiction of the trust for
257 an order that the trust property be disposed of to the persons to whom and in the shares or

258 proportions in which it would be distributed under the provisions of the trust if the absentee had
259 died on that day.

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

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

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

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

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

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

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

274 ARTICLE 3

275 REPRESENTATION

276 Section 301. [Representation: Basic Effect.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

322 ARTICLE 4

323 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

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

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

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

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

330 Section 402. [Requirements For Creation.]

331 (a) A trust is created only if:

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

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

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

335 (A) a charitable trust;

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

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

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

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

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

342 (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the
343 power is not exercised within a reasonable time, the power fails and the property subject to the
344 power passes to the persons who would have taken the property had the power not been
345 conferred.

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

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

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

351 (3) any trust property was located.

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

354 Section 405. [Charitable Purposes; Enforcement.]

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

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

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

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

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

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

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

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

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

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

384 (1) as directed in the trust instrument;

385 (2) to the settlor, if living;

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

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

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

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

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

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

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

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

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

413 (3) Property of a trust authorized by this section may be applied only to its intended use,
414 except to the extent the court determines that the value of the trust property exceeds the amount

415 required for the intended use. Except as otherwise provided in the terms of the trust, property
416 not required for the intended use must be distributed to the settlor, if then living, otherwise to the
417 settlor's successors in interest.

418 Section 410. [Modification or Termination of Trust; Proceedings for Approval or
419 Disapproval.]

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

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

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

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

434 (b) A non-charitable irrevocable trust may be terminated upon consent of all of the
435 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any

436 material purpose of the trust. A non-charitable irrevocable trust may be modified upon consent of
437 all of the beneficiaries if the court concludes that modification is not inconsistent with a material
438 purpose of the trust.

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

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

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

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

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

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

453 Section 413. [Reserved.]

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

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

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

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

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

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

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

470 Section 416. [Reserved.]

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

475 ARTICLE 5

476 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

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

482 Section 502. [Spendthrift Provision.]

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

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

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

493 Section 503. [Reserved.]

494 Section 504. [Reserved.]

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

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

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

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

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

514 Section 506. [Overdue Distribution.]

515 (a) In this section, "mandatory distribution" means a distribution of income or principal
516 which the trustee is required to make to a beneficiary under the terms of the trust, including a
517 distribution upon termination of the trust. The term does not include a distribution subject to the

518 exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard
519 of distribution, or (2) the terms of the trust authorizing a distribution couple language of
520 discretion with language of direction.

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

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

527 ARTICLE 6

528 REVOCABLE TRUSTS

529 Section 601. [Reserved.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

566 (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice
567 informing the person of the trust's existence, of the trustee's name and address, and of the time
568 allowed for commencing a proceeding.

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

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

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

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

579 ARTICLE 7

580 OFFICE OF TRUSTEE

581 Section 701. [Accepting or Declining Trusteeship.]

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

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

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

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

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

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

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

598 Section 702. [Duty to Provide Bond.]

599 In the case of a testamentary trust, a trustee shall furnish a bond for the performance of
600 the trustee's fiduciary duties and a surety shall be required unless waived by the terms of the
601 trust, or found by the probate and family court department of the trial court to be not necessary to
602 protect the interests of the beneficiaries. On petition of the trustee or other interested person the
603 probate court may excuse a requirement of bond, reduce the amount of the bond, release the
604 surety, or permit the substitution of another bond with the same or different sureties. When the
605 instrument creating the trust exempts the trustee from furnishing a bond or limits the amount
606 thereof, or the probate court determines that the bond is insufficient, the probate court may if it
607 concludes that a bond is necessary or that a bond of a larger amount is necessary, require the
608 furnishing of such bond. The terms and conditions of the bond shall be as set forth in section 3-
609 606 of chapter 190B.

610 Section 703. [Co-Trustees.]

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

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

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

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

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

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

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

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

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

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

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

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

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

635 (3) a trustee resigns;

636 (4) a trustee is disqualified or removed;

637 (5) a trustee dies; or

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

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

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

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

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

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

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

649 Section 705. [Resignation of Trustee.]

650 (a) A trustee may resign:

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

654 (2) with the approval of the court.

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

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

659 Section 706. [Removal of Trustee.]

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

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

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

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

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

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

671 all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable
672 co-trustee or successor trustee is available.

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

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

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

680 Section 708. [Compensation of Trustee.]

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

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

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

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

689 Section 709. [Reimbursement of Expenses.]

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

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

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

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

697 ARTICLE 8

698 DUTIES AND POWERS OF TRUSTEE

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

702 Section 802. [Duty of Loyalty.]

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

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

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

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

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

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

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

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

720 (1) the trustee's spouse; or

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

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

725 (e) An investment by a trustee in securities of an investment company or investment trust
726 to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not
727 presumed to be affected by a conflict between personal and fiduciary interests if the investment
728 otherwise complies with the prudent investor rule of chapter 203C. In addition to its
729 compensation for acting as trustee, the trustee may be compensated by the investment company
730 or investment trust for providing those services out of fees charged to the trust. If the trustee

731 receives compensation from the investment company or investment trust for providing
732 investment advisory or investment management services, the trustee must at least annually notify
733 the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate
734 and method by which that compensation was determined.

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

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

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

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

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

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

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

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

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

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

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

758 Section 807. [Delegation by Trustee.]

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

761 (1) selecting an agent;

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

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

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

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

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

773 Section 808. [Powers to Direct.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

836 Section 815. [General Powers of Trustee.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

868 (D) deposit the securities with a depositary or other regulated financial-service
869 institution;

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

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

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

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

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

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

886 (A) inspect or investigate property the trustee holds or has been asked to hold, or
887 property owned or operated by an organization in which the trustee holds or has been asked to

888 hold an interest, for the purpose of determining the application of environmental law with respect
889 to the property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

944 Section 817. [Distribution upon Termination.]

945 (a) Upon termination or partial termination of a trust, the trustee may send to the
946 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed
947 distribution terminates if the beneficiary does not notify the trustee of an objection within 30
948 days after the proposal was sent but only if the proposal (i) informed the beneficiary of the right

949 to object and of the time allowed for objection and (ii) provided the beneficiary with sufficient
950 material facts to enable the beneficiary to evaluate the proposal.

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

955 ARTICLE 9

956 [RESERVED]

957 ARTICLE 10

958 LIABILITY OF TRUSTEES AND RIGHTS OF

959 PERSONS DEALING WITH TRUSTEE

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

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

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

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

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

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

967 (4) order a trustee to account;

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

970 (6) suspend the trustee;

971 (7) remove the trustee;

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

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

976 (10) order any other appropriate relief.

977 Section 1002. [Reserved.]

978 Section 1003. [Reserved.]

979 Section 1004. [Reserved.]

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

981 (a) Unless previously barred by adjudication, consent or limitation, any claim against a
982 trustee for breach of trust is barred as to any beneficiary who has received a final account or
983 other statement fully disclosing the matter and showing termination of the trust relationship
984 between the trustee and the beneficiary unless a proceeding to assert the claim is commenced
985 within six months after receipt of the final account or statement. In any event and
986 notwithstanding lack of full disclosure a trustee who has issued a final account or statement
987 received by the beneficiary and has informed the beneficiary of the location and availability of

988 records for examination by the beneficiary is protected after three years. A beneficiary is
989 deemed to have received a final account or statement if, being an adult, it is received by the
990 beneficiary personally or if, being a minor or disabled person, it is received by the beneficiary's
991 representative as described in article 3.

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

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

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

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

1000 (3) the termination of the trust.

1001 Section 1006. [Reliance on Trust Instrument.] A trustee who acts in reasonable reliance
1002 on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a
1003 breach of trust to the extent the breach resulted from the reliance.

1004 Section 1007. [Event Affecting Administration or Distribution.] If the happening of an
1005 event or change of status, including, but not limited to: birth, adoption, marriage, divorce,
1006 performance of educational requirements, or death, affects the administration or distribution of a
1007 trust, a trustee who has exercised reasonable care to ascertain the happening of the event or
1008 change of status is not liable for a loss resulting from the trustee's lack of knowledge.

1009 Section 1008. [Exculpation of Trustee.]

1010 (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to
1011 the extent that it:

1012 (1) relieves the trustee of liability for breach of trust committed in bad faith or with
1013 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

1014 (2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential
1015 relationship to the settlor.

1016 (b) An exculpatory term drafted or caused to be drafted by the trustee may be invalid as
1017 an abuse of a fiduciary or confidential relationship unless the trustee proves that its existence and
1018 contents were adequately communicated to the settlor.

1019 Section 1009. [Beneficiary's Consent, Release, or Ratification.] A trustee is not liable to
1020 a beneficiary for breach of trust if the beneficiary, while having capacity, in writing, consented to
1021 the conduct constituting the breach, released the trustee from liability for the breach, or ratified
1022 the transaction constituting the breach, unless:

1023 (1) the consent, release, or ratification of the beneficiary was induced by improper
1024 conduct of the trustee; or

1025 (2) at the time of the consent, release, or ratification, the beneficiary did not know of the
1026 material facts relating to the breach.

1027 Section 1010. [Limitation on Personal Liability of Trustee.]

1028 (a) Except as otherwise provided in the contract, a trustee is not personally liable on a
1029 contract properly entered into in the trustee's fiduciary capacity in the course of administering
1030 the trust if the trustee in the contract disclosed the fiduciary capacity.

1031 (b) A trustee is personally liable for torts committed in the course of administering a
1032 trust, or for obligations arising from ownership or control of trust property, including liability for
1033 violation of environmental law, only if the trustee is personally at fault.

1034 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary
1035 capacity, on an obligation arising from ownership or control of trust property, or on a tort
1036 committed in the course of administering a trust, may be asserted in a judicial proceeding against
1037 the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for
1038 the claim.

1039 Section 1011. [Interest as General Partner.]

1040 (a) Except as otherwise provided in subsection (c) or unless personal liability is imposed
1041 in the contract, a trustee who holds an interest as a general partner in a general or limited
1042 partnership is not personally liable on a contract entered into by the partnership after the trust's
1043 acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement
1044 previously filed pursuant to chapter 108A or chapter 109.

1045 (b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a
1046 general partner is not personally liable for torts committed by the partnership or for obligations
1047 arising from ownership or control of the interest unless the trustee is personally at fault.

1048 (c) The immunity provided by this section does not apply if an interest in the partnership
1049 is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or
1050 one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

1051 (d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is
1052 personally liable for contracts and other obligations of the partnership as if the settlor were a
1053 general partner.

1054 Section 1012. [Protection of Person Dealing with Trustee.]

1055 (a) A person other than a beneficiary who in good faith assists a trustee, or who in good
1056 faith and for value deals with a trustee, without knowledge that the trustee is exceeding or
1057 improperly exercising the trustee's powers is protected from liability as if the trustee properly
1058 exercised the power.

1059 (b) A person other than a beneficiary who in good faith deals with a trustee is not
1060 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

1061 (c) A person who in good faith delivers assets to a trustee need not ensure their proper
1062 application.

1063 (d) A person other than a beneficiary who in good faith assists a former trustee, or who
1064 in good faith and for value deals with a former trustee, without knowledge that the trusteeship
1065 has terminated is protected from liability as if the former trustee were still a trustee.

1066 (e) Comparable protective provisions of other laws relating to commercial transactions
1067 or transfer of securities by fiduciaries prevail over the protection provided by this section.

1068 Section 1013. [Certification of Trust.]

1069 (a) Instead of furnishing a copy of the trust instrument to a person other than a
1070 beneficiary, the trustee may furnish to the person a certification of trust containing the following
1071 information:

1072 (1) that the trust exists and the date the trust instrument was executed;

1073 (2) the identity of the settlor;

1074 (3) the identity and address of the currently acting trustee;

1075 (4) the powers of the trustee;

1076 (5) the revocability or irrevocability of the trust and the identity of any person holding a
1077 power to revoke the trust;

1078 (6) the authority of co-trustees to sign or otherwise authenticate and whether all or less
1079 than all are required in order to exercise powers of the trustee;

1080 (7) the trust's taxpayer identification number; and

1081 (8) the manner of taking title to trust property.

1082 (b) A certification of trust may be signed or otherwise authenticated by any trustee.

1083 (c) A certification of trust must state that the trust has not been revoked, modified, or
1084 amended in any manner that would cause the representations contained in the certification of
1085 trust to be incorrect.

1086 (d) A certification of trust need not contain the dispositive terms of a trust.

1087 (e) A recipient of a certification of trust may require the trustee to furnish copies of those
1088 excerpts from the original trust instrument and later amendments which designate the trustee and
1089 confer upon the trustee the power to act in the pending transaction.

1090 (f) A person who acts in reliance upon a certification of trust without knowledge that the
1091 representations contained therein are incorrect is not liable to any person for so acting and may
1092 assume without inquiry the existence of the facts contained in the certification. Knowledge of
1093 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust
1094 instrument is held by the person relying upon the certification.

1095 (g) A person who in good faith enters into a transaction in reliance upon a certification of
1096 trust may enforce the transaction against the trust property as if the representations contained in
1097 the certification were correct.

1098 (h) A person making a demand for the trust instrument in addition to a certification of
1099 trust or excerpts is liable for damages if the court determines that the person did not act in good
1100 faith in demanding the trust instrument.

1101 (i) This section does not limit the right of a person to obtain a copy of the trust
1102 instrument in a judicial proceeding concerning the trust.

1103 SECTION 6. (a) Except as otherwise provided in this act, on the effective date of this
1104 act:

1105 (1) this act shall apply to all trusts created before, on, or after the effective date;

1106 (2) this act shall apply to all judicial proceedings concerning trusts commenced on or
1107 after the effective date;

1108 (3) this chapter shall apply to judicial proceedings concerning trusts commenced before
1109 the effective date unless the court finds that application of a particular provision of this chapter
1110 would substantially interfere with the effective conduct of the judicial proceedings or prejudice
1111 the rights of the parties, in which case the particular provision of this act shall not apply and the
1112 superseded law shall apply;

1113 (4) an act done before the effective date shall not be affected by this act.

1114 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed
1115 period that has commenced to run under any other statute before the effective date of this act,
1116 that statute shall continue to apply to the right even if it has been superseded.

1117 SECTION 7. This act shall take effect on January 2, 2012.