

SENATE No. 688

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:

SENATE No. 688

By Ms. Creem, a petition (accompanied by bill, Senate, No. 688) of Cynthia S. Creem for legislation to establish the Massachusetts Uniform Trust Code. The Judiciary.

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:

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2 Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, are hereby repealed; Part 1 is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

7 SECTION 2. The General Laws are hereby amended by inserting after chapter
8 203D the 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
14 the Massachusetts Uniform Trust Code.

15 Section 102. [Scope.] This chapter applies to express trusts, charitable or non-
16 charitable, of a donative nature and trusts created pursuant to a judgment or decree that requires
17 the trust to 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
21 health, education, support, or maintenance.

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

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

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

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

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

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

36 (9) "Property" means anything that may be the subject of ownership, whether
37 real or personal, legal or equitable, or any interest therein.

38 (10) "Qualified beneficiary" means a beneficiary who, on the date the
39 beneficiary's qualification is determined:

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

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

44 (11) "Revocable," as applied to a trust, means revocable by the settlor without
45 the consent of the trustee or a person holding an adverse interest.

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

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

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

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

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

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

63 Section 104. [Knowledge.]

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

66 (1) has actual knowledge of it;

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

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

70 (b) An organization that conducts activities through employees has
71 notice or knowledge of a fact involving a trust only from the time the information was received

72 by an employee having responsibility to act for the trust, or would have been brought to the
73 employee's attention if the organization had exercised reasonable diligence. An organization
74 exercises reasonable diligence if it maintains reasonable routines for communicating significant
75 information to the employee having responsibility to act for the trust and there is reasonable
76 compliance with the routines. Reasonable diligence does not require an employee of the
77 organization to communicate information unless the communication is part of the individual's
78 regular duties or the individual knows a matter involving the trust would be materially affected
79 by the information.

80 Section 105. [Default And Mandatory Rules.]

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

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

85 (1) the requirements for creating a trust;

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

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

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

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

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

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

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

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

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

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

106 Section 107. [Reserved.]

107 Section 108. [Principal Place of Administration.]

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

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

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

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

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

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

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

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

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

127 and

128 (5) the date, not less than 60 days after the giving of the notice, by
129 which the qualified 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
131 place of administration terminates if a qualified beneficiary notifies the trustee of an objection to
132 the 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
135 person under this chapter must be accomplished in a manner reasonably suitable under the
136 circumstances and likely to result in receipt of the notice or document. Permissible methods of
137 notice or for sending a document include first-class mail, personal delivery, or delivery to the
138 person's last known place of residence or place of business.

139 (b) Notice required under this chapter or a document required to be sent under
140 this 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
143 may be waived by the person to be notified or sent the document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

185 Section 112. [Rules of Construction.]

186 The rules of construction that apply in the commonwealth to the interpretation
187 of and disposition of property by will also apply as appropriate to the interpretation of the terms
188 of a revocable trust and the disposition of the trust property. A "revocable trust", for purposes of
189 this section, means a trust that was (1) revocable by the settlor until the time of his or her death,
190 (2) created or amended by the settlor after the effective date of this act, and (3) was intended to

191 dispose of the settlor's property at death (whether under will or otherwise and whether the trust
192 was funded at the time of the settlor's death or not).

193 Section 113. [Qualification of Foreign Trustee.]

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

203 ARTICLE 2

204 JUDICIAL PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

234 Section 204. [Venue.]

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

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

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

255 shares or proportions in which it would be distributed under the provisions of the trust if the
256 absentee had died on that day.

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

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

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

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

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

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

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

272 ARTICLE 3

273 REPRESENTATION

274 Section 301. [Representation: Basic Effect.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

321 ARTICLE 4

322 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

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

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

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

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

329 Section 402. [Requirements For Creation.]

330 (a) A trust is created only if:

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

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

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

334 (A) a charitable trust;

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

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

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

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

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

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

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

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

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

352 (3) any trust property was located.

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

355 Section 405. [Charitable Purposes; Enforcement.]

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

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

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

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

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

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

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

376 (b) A trust authorized by this section may be enforced by a person appointed in
377 the terms of the trust or, if no person is so appointed, by a person appointed by the court. A
378 person having an interest in the welfare of the animal may request the court to appoint a person
379 to enforce the trust or to remove a person appointed.

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

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

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

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

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

397 Section 410. [Modification or Termination of Trust; Proceedings for Approval
398 or Disapproval.]

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

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

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

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

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

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

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

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

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

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

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

434 Section 413. [Reserved.]

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

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

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

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

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

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

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

452 Section 416. [Reserved.]

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

457 ARTICLE 5

458 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

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

464 Section 502. [Spendthrift Provision.]

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

468 (b) A term of a trust providing that the interest of a beneficiary is held subject
469 to a “spendthrift trust,” or words of similar import, is sufficient to restrain both voluntary and
470 involuntary transfer of the beneficiary’s interest.

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

475 Section 503. [Reserved.]

476 Section 504. [Reserved.]

477 Section 505. [Creditor’s Claim Against Settlor.]

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

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

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

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

497 Section 506. [Overdue Distribution.]

498 (a) In this section, "mandatory distribution" means a distribution of income or
499 principal which the trustee is required to make to a beneficiary under the terms of the trust,
500 including a distribution upon termination of the trust. The term does not include a distribution
501 subject to the exercise of the trustee's discretion even if (1) the discretion is expressed in the

502 form of a standard of distribution, or (2) the terms of the trust authorizing a distribution couple
503 language of discretion with language of direction.

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

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

510 ARTICLE 6

511 REVOCABLE TRUSTS

512 Section 601. [Reserved.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

550 (2) 60 days after the trustee sent the person a copy of the trust
551 instrument and a notice informing the person of the trust's existence, of the trustee's name and
552 address, and of the time allowed for commencing a proceeding.

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

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

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

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

563 ARTICLE 7

564 OFFICE OF TRUSTEE

565 Section 701. [Accepting or Declining Trusteeship.]

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

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

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

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

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

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

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

584 Section 702. [Duty to Provide Bond.]

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

594 Section 703. [Co-Trustees.]

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

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

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

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

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

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

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

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

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

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

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

- 617 (1) a person designated as trustee rejects the trusteeship;
- 618 (2) a person designated as trustee cannot be identified or does not
619 exist;
- 620 (3) a trustee resigns;
- 621 (4) a trustee is disqualified or removed;
- 622 (5) a trustee dies; or
- 623 (6) a guardian or conservator is appointed for an individual serving
624 as trustee.

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

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

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

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

637 Section 705. [Resignation of Trustee.]

638 (a) A trustee may resign:

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

642 (2) with the approval of the court.

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

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

647 Section 706. [Removal of Trustee.]

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

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

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

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

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

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

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

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

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

668 Section 708. [Compensation of Trustee.]

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

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

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

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

677 Section 709. [Reimbursement of Expenses.]

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

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

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

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

686 ARTICLE 8

687 DUTIES AND POWERS OF TRUSTEE

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

691 Section 802. [Duty of Loyalty.]

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

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

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

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

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

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

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

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

710 (1) the trustee's spouse; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

750 Section 807. [Delegation by Trustee.]

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

753 (1) selecting an agent;
754 (2) establishing the scope and terms of the delegation, consistent
755 with the purposes and terms of the trust; and
756 (3) periodically reviewing the agent's actions in order to monitor the
757 agent's performance and compliance with the terms of the delegation.

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

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

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

765 Section 808. [Powers to Direct.]

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

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

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

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

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

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

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

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

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

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

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

790 (a) A trustee shall keep the qualified beneficiaries of the trust reasonably

791 informed about the administration of the trust. Unless unreasonable under the circumstances, a

792 trustee shall promptly respond to a qualified beneficiary's request for information related to the
793 administration of the trust.

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

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

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

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

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

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

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

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

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

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

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

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

831 Section 815. [General Powers of Trustee.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

943 Section 817. [Distribution upon Termination.]

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

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

952 to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts,
953 expenses, and taxes.

954 ARTICLE 9

955 [RESERVED]

956 ARTICLE 10

957 LIABILITY OF TRUSTEES AND RIGHTS OF

958 PERSONS DEALING WITH TRUSTEE

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

960 (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a
961 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,
966 restoring property, or other means;

967 (4) order a trustee to account;

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

- 970 (6) suspend the trustee;
- 971 (7) remove the trustee as provided in section 7-308 of chapter 190B;
- 972 (8) reduce or deny compensation to the trustee;
- 973 (9) subject to section 1012, void an act of the trustee, impose a lien
- 974 or a constructive trust on trust property, or trace trust property wrongfully disposed of and
- 975 recover the property or its 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

982 against a trustee for breach of trust is barred as to any beneficiary who has received a final

983 account or other statement fully disclosing the matter and showing termination of the trust

984 relationship between the trustee and the beneficiary unless a proceeding to assert the claim is

985 commenced 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
993 beneficiary may not commence a proceeding against a trustee for breach of trust more than three
994 years after the date the beneficiary or a representative of the beneficiary knew or reasonably
995 should have known of 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
997 trustee for 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
1002 reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a
1003 beneficiary for a breach of trust to the extent the breach resulted from the reliance.

1004 Section 1007. [Event Affecting Administration or Distribution.] If the
1005 happening of an event or change of status, including, but not limited to: birth, adoption,
1006 marriage, divorce, performance of educational requirements, or death, affects the administration
1007 or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening
1008 of the event or change of status is not liable for a loss resulting from the trustee's lack of
1009 knowledge.

1010 Section 1008. [Exculpation of Trustee.]

1011 (a) A term of a trust relieving a trustee of liability for breach of trust is
1012 unenforceable to the extent that it:

1013 (1) relieves the trustee of liability for breach of trust committed in
1014 bad faith or with reckless indifference to the purposes of the trust or the interests of the
1015 beneficiaries; or

1016 (2) was inserted as the result of an abuse by the trustee of a fiduciary
1017 or confidential relationship to the settlor.

1018 (b) An exculpatory term drafted or caused to be drafted by the trustee may be
1019 invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that its
1020 existence and contents were adequately communicated to the settlor.

1021 Section 1009. [Beneficiary's Consent, Release, or Ratification.] A trustee is not liable to
1022 a beneficiary for breach of trust if the beneficiary, while having capacity, in writing, consented to
1023 the conduct constituting the breach, released the trustee from liability for the breach, or ratified
1024 the transaction constituting the breach, unless:

1025 (1) the consent, release, or ratification of the beneficiary was induced
1026 by improper conduct of the trustee; or

1027 (2) at the time of the consent, release, or ratification, the beneficiary
1028 did not know of the material facts relating to the breach.

1029 Section 1010. [Limitation on Personal Liability of Trustee.]

1030 (a) Except as otherwise provided in the contract, a trustee is not personally
1031 liable on a contract properly entered into in the trustee's fiduciary capacity in the course of
1032 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

1033 (b) A trustee is personally liable for torts committed in the course of
1034 administering a trust, or for obligations arising from ownership or control of trust property,
1035 including liability for violation of environmental law, only if the trustee is personally at fault.

1036 (c) A claim based on a contract entered into by a trustee in the trustee's
1037 fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a
1038 tort committed in the course of administering a trust, may be asserted in a judicial proceeding
1039 against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally
1040 liable for the claim.

1041 Section 1011. [Interest as General Partner.]

1042 (a) Except as otherwise provided in subsection (c) or unless personal liability
1043 is imposed in the contract, a trustee who holds an interest as a general partner in a general or
1044 limited partnership is not personally liable on a contract entered into by the partnership after the
1045 trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a
1046 statement previously filed pursuant to chapter 108A or chapter 109.

1047 (b) Except as otherwise provided in subsection (c), a trustee who holds an
1048 interest as a general partner is not personally liable for torts committed by the partnership or for
1049 obligations arising from ownership or control of the interest unless the trustee is personally at
1050 fault.

1051 (c) The immunity provided by this section does not apply if an interest in the
1052 partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's
1053 spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of
1054 them.

1055 (d) If the trustee of a revocable trust holds an interest as a general partner, the
1056 settlor is personally liable for contracts and other obligations of the partnership as if the settlor
1057 were a general partner.

1058 Section 1012. [Protection of Person Dealing with Trustee.]

1059 (a) A person other than a beneficiary who in good faith assists a trustee, or
1060 who in good faith and for value deals with a trustee, without knowledge that the trustee is
1061 exceeding or improperly exercising the trustee's powers is protected from liability as if the
1062 trustee properly exercised the power.

1063 (b) A person other than a beneficiary who in good faith deals with a trustee is
1064 not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

1065 (c) A person who in good faith delivers assets to a trustee need not ensure their
1066 proper application.

1067 (d) A person other than a beneficiary who in good faith assists a former trustee,
1068 or who in good faith and for value deals with a former trustee, without knowledge that the
1069 trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

1070 (e) Comparable protective provisions of other laws relating to commercial
1071 transactions or transfer of securities by fiduciaries prevail over the protection provided by this
1072 section.

1073 Section 1013. [Certification of Trust.]

1074 (a) Instead of furnishing a copy of the trust instrument to a person other than a
1075 beneficiary, the trustee may furnish to the person a certification of trust containing the following
1076 information:

1077 (1) that the trust exists and the date the trust instrument was
1078 executed;

1079 (2) the identity of the settlor;

1080 (3) the identity and address of the currently acting trustee;

1081 (4) the powers of the trustee;

1082 (5) the revocability or irrevocability of the trust and the identity of
1083 any person holding a power to revoke the trust;

1084 (6) the authority of co-trustees to sign or otherwise authenticate and
1085 whether all or less than all are required in order to exercise powers of the trustee;

1086 (7) the trust's taxpayer identification number; and

1087 (8) the manner of taking title to trust property.

1088 (b) A certification of trust may be signed or otherwise authenticated by any
1089 trustee.

1090 (c) A certification of trust must state that the trust has not been revoked,
1091 modified, or amended in any manner that would cause the representations contained in the
1092 certification of trust to be incorrect.

1093 (d) A certification of trust need not contain the dispositive terms of a trust.

1094 (e) A recipient of a certification of trust may require the trustee to furnish
1095 copies of those excerpts from the original trust instrument and later amendments which designate
1096 the trustee and confer upon the trustee the power to act in the pending transaction.

1097 (f) A person who acts in reliance upon a certification of trust without
1098 knowledge that the representations contained therein are incorrect is not liable to any person for
1099 so acting and may assume without inquiry the existence of the facts contained in the certification.
1100 Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or
1101 part of the trust instrument is held by the person relying upon the certification.

1102 (g) A person who in good faith enters into a transaction in reliance upon a
1103 certification of trust may enforce the transaction against the trust property as if the
1104 representations contained in the certification were correct.

1105 (h) A person making a demand for the trust instrument in addition to a
1106 certification of trust or excerpts is liable for damages if the court determines that the person did
1107 not act in good faith in demanding the trust instrument.

1108 (i) This section does not limit the right of a person to obtain a copy of the trust
1109 instrument in a judicial proceeding concerning the trust.

1110 SECTION 3. (a) Except as otherwise provided in this act, on the effective date
1111 of this act:

1112 (1) this act shall apply to all trusts created before, on, or after the
1113 effective date;

1114 (2) this act shall apply to all judicial proceedings concerning trusts
1115 commenced on or after the effective date;

1116 (3) this chapter shall apply to judicial proceedings concerning trusts
1117 commenced before the effective date unless the court finds that application of a particular
1118 provision of this chapter would substantially interfere with the effective conduct of the judicial
1119 proceedings or prejudice the rights of the parties, in which case the particular provision of this
1120 act shall not apply and the superseded law shall apply;

1121 (4) an act done before the effective date shall not be affected by this
1122 act.

1123 (b) If a right is acquired, extinguished, or barred upon the expiration of a
1124 prescribed period that has commenced to run under any other statute before the effective date of
1125 this act, that statute shall continue to apply to the right even if it has been superseded.

1126 SECTION 4. This act shall take effect on _____, 20__.