
A BILL FOR AN ACT

RELATING TO THE UNIFORM TRUST CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the Uniform Trust
2 Code is a national codification of the law of trusts, which
3 provides for greater clarity and uniformity in trust law and
4 interpretation. While there are currently a number of Hawai'i
5 statutes relating to trusts, the Uniform Trust Code serves to
6 update these laws and to bring them under one comprehensive
7 umbrella.

8 The legislature further finds that the Uniform Trust Code
9 will significantly reduce the time, complexity, and expense of
10 trust proceedings and, in certain instances, allow for
11 nonjudicial resolution of trust issues that currently require
12 court intervention. At the same time, the Uniform Trust Code
13 provides ready access to a judge if either a dispute arises
14 during the course of trust administration or the interested
15 parties desire judicial supervision. The Uniform Trust Code
16 also provides greater clarity and certainty in many areas of



1 trust law that are exceedingly thin or without precedent in
2 Hawaii.

3 The purpose of this Act is to enact the Uniform Trust Code
4 (2018 version) in the State, with appropriate amendments to
5 reflect Hawaii law and practice where relevant.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 **"CHAPTER**

10 **UNIFORM TRUST CODE**

11 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS**

12 § -101 **Short title.** This chapter may be cited as the
13 Uniform Trust Code.

14 § -102 **Scope.** This chapter applies to express trusts,
15 charitable or noncharitable, and trusts created pursuant to a
16 statute, judgment, or decree that requires the trust to be
17 administered in the manner of an express trust.

18 § -103 **Definitions.** As used in this chapter:

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



1 "Ascertainable standard" means a standard relating to an
2 individual's health, education, support, or maintenance within
3 the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the
4 Internal Revenue Code of 1986, as in effect on the effective
5 date of this chapter.

6 "Beneficiary" means a person who:

7 (1) Has a present or future beneficial interest in a
8 trust, vested or contingent; or

9 (2) In a capacity other than that of trustee, holds a
10 power of appointment over trust property.

11 "Charitable trust" means a trust, or portion of a trust,
12 created for a charitable purpose described in
13 section -405(a).

14 "Conservator" means a person appointed by the court to
15 administer the estate of a minor or adult individual.

16 "Court" means the circuit court in this State having
17 jurisdiction over all subject matter relating to trusts.

18 "Environmental law" means a federal, state, or local law,
19 rule, regulation, or ordinance relating to protection of the
20 environment.



1 "Guardian" means a person appointed by the court, a parent,
2 or a spouse to make decisions regarding the support, care,
3 education, health, and welfare of a minor or adult individual.
4 "Guardian" does not include a guardian ad litem.

5 "Incapacitated" means an individual who, for reasons other
6 than age, is unable to manage property and business affairs
7 effectively because of an impairment in the ability to receive
8 and evaluate information or to make or communicate decisions,
9 even with the use of appropriate and reasonably available
10 technological assistance or because of another physical, mental,
11 or health impairment, or because the individual is missing,
12 detained, or unable to return to the United States.

13 "Interested persons" includes beneficiaries and any others
14 having a property right in or claim against a trust estate that
15 may be affected by a judicial proceeding and fiduciaries and
16 other persons representing interested persons. The meaning as
17 it relates to particular persons may vary from time to time and
18 shall be determined according to the particular purposes of, and
19 matter involved in, any proceeding.

20 "Interests of the beneficiaries" means the beneficial
21 interests provided in the terms of the trust.



1 "Jurisdiction", with respect to a geographic area, includes
2 a state or country.

3 "Person" means an individual; corporation; business trust;
4 estate; trust; partnership; limited liability company;
5 association; joint venture; government; governmental
6 subdivision, agency, or instrumentality; public corporation; or
7 any other legal or commercial entity.

8 "Power of withdrawal" means a presently exercisable general
9 power of appointment other than a power:

10 (1) Exercisable by a trustee and limited by an
11 ascertainable standard; or

12 (2) Exercisable by another person only upon consent of the
13 trustee or a person holding an adverse interest.

14 "Property" means anything that may be the subject of
15 ownership, whether real or personal, legal or equitable, or any
16 interest therein.

17 "Qualified beneficiary" means a beneficiary who, on the
18 date the beneficiary's qualification is determined:

19 (1) Is a distributee or permissible distributee of trust
20 income or principal;



- 1 (2) Would be a distributee or permissible distributee of
2 trust income or principal if the interests of the
3 distributees described in paragraph (1) terminated on
4 that date without causing the trust to terminate; or
- 5 (3) Would be a distributee or permissible distributee of
6 trust income or principal if the trust terminated on
7 that date.

8 "Revocable", as applied to a trust, means revocable by the
9 settlor without the consent of the trustee or a person holding
10 an adverse interest.

11 "Settlor" means a person, including a testator, who
12 creates, or contributes property to, a trust. If more than one
13 person creates or contributes property to a trust, each person
14 is a settlor of the portion of the trust property attributable
15 to that person's contribution except to the extent another
16 person has the power to revoke or withdraw that portion.

17 "Spendthrift provision" means a term of a trust that
18 restrains both voluntary and involuntary transfer of a
19 beneficiary's interest.

20 "Spouse" includes individuals who are married to each other
21 and individuals who are reciprocal beneficiaries.



1 "State" means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, or any
3 territory or insular possession subject to the jurisdiction of
4 the United States. The term includes an Indian tribe or band
5 recognized by federal law or formally acknowledged by a state.

6 "Terms of a trust" means:

7 (1) Except as otherwise provided in paragraph (2), the
8 manifestation of the settlor's intent regarding a
9 trust's provisions as:

10 (A) Expressed in the trust instrument; or

11 (B) Established by other evidence that would be
12 admissible in a judicial proceeding; or

13 (2) The trust's provisions, as established, determined, or
14 amended by:

15 (A) A trustee or other person in accordance with
16 applicable law;

17 (B) A court order; or

18 (C) A nonjudicial settlement agreement under
19 section -111.



1 "Trust instrument" means an instrument executed by the
2 settlor that contains terms of the trust, including any
3 amendments thereto.

4 "Trustee" includes an original, additional, and successor
5 trustee, and a cotrustee.

6 § -104 Knowledge. (a) Subject to subsection (b), a
7 person has knowledge of a fact if the person:

8 (1) Has actual knowledge of it;

9 (2) Has received a notice or notification of it; or

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

12 (b) An organization that conducts activities through
13 employees has notice or knowledge of a fact involving a trust
14 only from the time the information was received by an employee
15 having responsibility to act for the trust, or would have been
16 brought to the employee's attention if the organization had
17 exercised reasonable diligence. An organization exercises
18 reasonable diligence if it maintains reasonable routines for
19 communicating significant information to the employee having
20 responsibility to act for the trust and there is reasonable
21 compliance with the routines. Reasonable diligence does not



1 require an employee of the organization to communicate
2 information unless the communication is part of the individual's
3 regular duties or the individual knows a matter involving the
4 trust would be materially affected by the information.

5 **§ -105 Default and mandatory rules.** (a) Except as
6 otherwise provided in the terms of the trust, this chapter
7 governs the duties and powers of a trustee, relations among
8 trustees, and the rights and interests of a beneficiary.

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

- 11 (1) The requirements for creating a trust;
- 12 (2) The duty of a trustee to act in good faith and in
13 accordance with the terms and purposes of the trust
14 and the interests of the beneficiaries;
- 15 (3) The requirement that a trust and its terms be for the
16 benefit of its beneficiaries as their interests are
17 defined by the terms of the trust and that the trust
18 have a purpose that is lawful, not contrary to public
19 policy, and possible to achieve;
- 20 (4) The power of the court to modify or terminate a trust
21 under sections -410 through -416;



- 1 (5) The effect of a spendthrift provision and the rights
2 of certain creditors and assignees to reach a trust as
3 provided in article 5;
- 4 (6) The power of the court under section -702 to
5 require, dispense with, or modify or terminate a bond;
- 6 (7) The power of the court under section -708(b) to
7 adjust a trustee's compensation, specified in the
8 terms of the trust, which is unreasonably low or high;
- 9 (8) The duty under section -813(c)(2) and (3) to notify
10 qualified beneficiaries of an irrevocable trust of the
11 existence of the trust, of the identity of the
12 trustee, and of their right to request trustee
13 reports;
- 14 (9) The duty under section -813(b) to respond to the
15 request of a qualified beneficiary of an irrevocable
16 trust for trustee reports and other information
17 reasonably related to the administration of a trust;
- 18 (10) The effect of an exculpatory term under
19 section -1008;
- 20 (11) The rights under sections -1010 through -1013 of
21 a person other than a trustee or beneficiary;



- 1 (12) Periods of limitation for commencing a judicial
2 proceeding;
- 3 (13) The power of the court to take action and exercise
4 jurisdiction as may be necessary in the interests of
5 justice; and
- 6 (14) The subject matter jurisdiction of the court and venue
7 for commencing a proceeding, as provided in
8 sections -203 and -204.
- 9 § -106 **Common law of trusts; principles of equity.** The
10 common law of trusts and principles of equity supplement this
11 chapter, except to the extent modified by this chapter or
12 another law of this State.
- 13 § -107 **Governing law.** The meaning and effect of the
14 terms of a trust are determined by:
- 15 (1) The law of the jurisdiction designated in the terms
16 unless the designation of that jurisdiction's law is
17 contrary to a strong public policy of the jurisdiction
18 having the most significant relationship to the matter
19 at issue; or
- 20 (2) In the absence of a controlling designation in the
21 terms of the trust, the law of the jurisdiction having



1 the most significant relationship to the matter at
2 issue.

3 § -108 **Principal place of administration.** (a) Without
4 precluding other means for establishing a sufficient connection
5 with the designated jurisdiction, terms of a trust designating
6 the principal place of administration are valid and controlling
7 if:

8 (1) A trustee's principal place of business is located in
9 or a trustee is a resident of the designated
10 jurisdiction; or

11 (2) All or part of the administration occurs in the
12 designated jurisdiction.

13 (b) A trustee is under a continuing duty to administer the
14 trust at a place appropriate to its purposes, its
15 administration, and the interests of the beneficiaries.

16 (c) Without precluding the right of the court to order,
17 approve, or disapprove a transfer, the trustee, in furtherance
18 of the duty prescribed by subsection (b), may transfer the
19 trust's principal place of administration to another state or to
20 a jurisdiction outside of the United States.



1 (d) The trustee shall notify the qualified beneficiaries
2 of a proposed transfer of a trust's principal place of
3 administration not less than sixty days before initiating the
4 transfer. The notice of proposed transfer shall include:

- 5 (1) The name of the jurisdiction to which the principal
6 place of administration is to be transferred;
- 7 (2) The address and telephone number at the new location
8 at which the trustee can be contacted;
- 9 (3) An explanation of the reasons for the proposed
10 transfer;
- 11 (4) The date on which the proposed transfer is anticipated
12 to occur; and
- 13 (5) The date, not less than sixty days after the giving of
14 the notice, by which the qualified beneficiary must
15 notify the trustee of an objection to the proposed
16 transfer.

17 (e) The authority of a trustee under this section to
18 transfer a trust's principal place of administration terminates
19 if a qualified beneficiary notifies the trustee of an objection
20 to the proposed transfer on or before the date specified in the
21 notice.



1 (f) In connection with a transfer of the trust's principal
2 place of administration, the trustee may transfer some or all of
3 the trust property to a successor trustee designated in the
4 terms of the trust or appointed pursuant to section -704.

5 § -109 **Methods and waiver of notice.** (a) Notice to a
6 person under this chapter or the sending of a document to a
7 person under this chapter shall be accomplished in a manner
8 reasonably suitable under the circumstances and likely to result
9 in receipt of the notice or document. Permissible methods of
10 notice or for sending a document include first-class mail,
11 personal delivery, delivery to the person's last known place of
12 residence or place of business, or a properly directed
13 electronic message.

14 (b) Notice otherwise required under this chapter or a
15 document otherwise required to be sent under this chapter need
16 not be provided to a person whose identity or location is
17 unknown to and not reasonably ascertainable by the trustee.

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



1 (d) Notice of a judicial proceeding shall be given as
2 provided in the Hawaii probate rules.

3 § -110 Others treated as qualified beneficiaries. (a)

4 A charitable organization expressly designated to receive
5 distributions under the terms of a charitable trust has the
6 rights of a qualified beneficiary under this chapter if the
7 charitable organization, on the date the charitable
8 organization's qualification is being determined:

9 (1) Is a distributee or permissible distributee of trust
10 income or principal;

11 (2) Would be a distributee or permissible distributee of
12 trust income or principal upon the termination of the
13 interests of other distributees or permissible
14 distributees then receiving or eligible to receive
15 distributions; or

16 (3) Would be a distributee or permissible distributee of
17 trust income or principal if the trust terminated on
18 that date.

19 (b) A person appointed to enforce a trust created for the
20 care of an animal or another noncharitable purpose, as provided



1 in section -408 or -409, has the rights of a qualified
2 beneficiary under this chapter.

3 (c) The attorney general of this State has the rights of a
4 qualified beneficiary with respect to a charitable trust having
5 its principal place of administration in this State.

6 § -111 **Nonjudicial settlement agreements.** (a) Except
7 as otherwise provided in subsection (c), interested persons may
8 enter into a binding nonjudicial settlement agreement with
9 respect to any matter involving a trust.

10 (b) A nonjudicial settlement agreement is valid only to
11 the extent it does not violate a material purpose of the trust
12 and includes terms and conditions that could be properly
13 approved by the court under this chapter or other applicable
14 law.

15 (c) Matters that may be resolved by a nonjudicial
16 settlement agreement include, but are not limited to:

17 (1) The interpretation or construction of the terms of the
18 trust;

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



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

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

6 (5) Transfer of a trust's principal place of
7 administration; and

8 (6) Liability of a trustee for an action relating to the
9 trust.

10 (d) Any interested person may request the court to approve
11 a nonjudicial settlement agreement, to determine whether the
12 representation as provided in article 3 was adequate, and to
13 determine whether the agreement contains terms and conditions
14 that the court could have properly approved.

15 (e) For purposes of this section, "interested person"
16 means a person whose consent would be required in order to
17 achieve a binding settlement were the settlement to be approved
18 by the court.

19 § -112 Rules of construction. The rules of construction
20 that apply in this State to the interpretation of and
21 disposition of property by will also apply, as appropriate, to



1 the interpretation of the terms of a trust and the disposition
2 of the trust property.

3 § -113 Insurable interest of trustee. (a) A trustee of
4 a trust has an insurable interest in the life of an individual
5 insured under a life insurance policy that is owned by the
6 trustee of the trust acting in a fiduciary capacity or that
7 designates the trust itself as the owner if, on the date the
8 policy is issued:

9 (1) The insured is:

10 (A) A settlor of the trust; or

11 (B) An individual in whom a settlor of the trust has,
12 or would have had if living at the time the
13 policy was issued, an insurable interest; and

14 (2) The life insurance proceeds are primarily for the
15 benefit of one or more trust beneficiaries who have an
16 insurable interest in the life of the insured.

17 (b) This section applies to any trust existing before, on,
18 or after the effective date of this section, regardless of the
19 effective date of the governing instrument under which the trust
20 was created, but only as to a life insurance policy that is in



1 force and for which an insured is alive on or after the
2 effective date of this section.

3 (c) As used in this section, "settlor" means a person that
4 executes a trust instrument. The term includes a person for
5 whom a fiduciary or agent is acting.

6 **ARTICLE 2. JUDICIAL PROCEEDINGS**

7 § -201 Role of court in administration of trust. (a)

8 The court may intervene in the administration of a trust to the
9 extent its jurisdiction is invoked by an interested person or as
10 provided by law.

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

13 (c) A judicial proceeding involving a trust may relate to
14 any matter involving the internal affairs of trusts, including,
15 but not limited to, a proceeding to:

- 16 (1) Appoint or remove a trustee;
17 (2) Review or determine a trustee's compensation;
18 (3) Review a trustee's report or accounting or compel a
19 trustee to report or account;
20 (4) Ascertain beneficiaries;



1 (5) Determine any question arising in the administration
2 or distribution of any trust, including questions of
3 construction of trust terms;

4 (6) Request instructions to trustees; and

5 (7) Determine the existence or nonexistence of any
6 immunity, power, privilege, duty, or right.

7 (d) A judicial proceeding is initiated by filing a
8 petition in the court and giving notice pursuant to
9 section -109 to interested persons. The court may order
10 notification to additional persons.

11 **§ -202 Jurisdiction over trustee and beneficiary.** (a)

12 By accepting the trusteeship of a trust having its principal
13 place of administration in this State or by moving the principal
14 place of administration to this State, the trustee submits
15 personally to the jurisdiction of the courts of this State
16 regarding any matter involving the trust.

17 (b) With respect to their interests in the trust, the
18 beneficiaries of a trust having its principal place of
19 administration in this State are subject to the jurisdiction of
20 the courts of this State regarding any matter involving the
21 trust.



1 (c) By accepting a distribution from such a trust, the
2 recipient submits personally to the jurisdiction of the courts
3 of this State regarding any matter involving the trust.

4 (d) By accepting the delegation of a trust function from
5 the trustee of a trust having its principal place of
6 administration in this State, the agent submits to the
7 jurisdiction of the courts of this State regarding any matter
8 involving the trust.

9 (e) This section does not preclude other methods of
10 obtaining jurisdiction over a trustee, beneficiary, or other
11 person receiving property from the trust.

12 § -203 Subject matter jurisdiction. (a) The court has
13 exclusive jurisdiction of proceedings in this State concerning
14 the administration of a trust.

15 (b) The court has concurrent jurisdiction with other
16 courts of this State of actions and proceedings involving a
17 trust, including but not limited to:

- 18 (1) Proceedings to determine the existence or nonexistence
19 of trusts created other than by will;
- 20 (2) Actions by or against creditors or debtors of trusts;
- 21 and



1 (3) Other actions and proceedings involving trustees and
2 third parties.

3 § -204 Venue. (a) Except as otherwise provided in
4 subsection (b), venue for a judicial proceeding involving a
5 trust is in the judicial circuit of this State in which the
6 trust's principal place of administration is or will be located
7 and, if the trust is created by will and the estate is not yet
8 closed, in the judicial circuit in which the decedent's estate
9 is being administered.

10 (b) If a trust has no trustee, venue for a judicial
11 proceeding for the appointment of a trustee is in a judicial
12 circuit of this State in which a beneficiary resides, in a
13 judicial circuit in which any trust property is located, if the
14 trust is created by will, in the judicial circuit in which the
15 decedent's estate was or is being administered, or in the
16 judicial circuit where the nominated trustee resides or has its
17 principal place of business.

18 **ARTICLE 3. REPRESENTATION**

19 § -301 Representation; basic effect. (a) Notice to a
20 person who may represent and bind another person under this



1 article has the same effect as if notice were given directly to
2 the other person.

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

8 (c) Except as otherwise provided in sections -411 and
9 -602, a person who under this article may represent a settlor
10 who lacks capacity may receive notice and give a binding consent
11 on the settlor's behalf.

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

15 **§ -302 Representation by holder of power of appointment.**
16 To the extent there is no material conflict of interest between
17 the holder of a power of appointment and the persons represented
18 with respect to the particular question or dispute, the holder
19 may represent and bind persons whose interests, as permissible
20 appointees, takers in default, or otherwise, are subject to the
21 power.



1 § -303 Representation by fiduciaries and parents. To
2 the extent there is no conflict of interest between the
3 representative and the person represented or among those being
4 represented with respect to a particular question or dispute:

5 (1) A conservator may represent and bind the estate that
6 the conservator controls;

7 (2) A guardian may represent and bind the ward if a
8 conservator of the ward's estate has not been
9 appointed;

10 (3) An agent having authority to act with respect to the
11 particular question or dispute may represent and bind
12 the principal;

13 (4) A trustee may represent and bind the beneficiaries of
14 the trust;

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

17 (6) A parent may represent and bind the parent's minor or
18 unborn child if a conservator or guardian for the
19 child has not been appointed. The parent entitled to
20 represent and bind the child is determined in the
21 following order of priority:



- 1 (A) The parent who is a lineal descendant of a
- 2 settlor;
- 3 (B) The parent who is a beneficiary of the trust that
- 4 is the subject of the representation;
- 5 (C) The parent with legal custody of the child; and
- 6 (D) If one parent cannot be determined pursuant to
- 7 the preceding criteria and if a disagreement
- 8 arises between the parties seeking to represent
- 9 the same child, a guardian ad litem shall be
- 10 appointed to represent the minor child; and
- 11 (7) A qualified beneficiary may represent and bind any
- 12 beneficiary who may succeed to the qualified
- 13 beneficiary's interest under the terms of the trust or
- 14 pursuant to the exercise of a power of appointment.

15 **§ -304 Representation by person having substantially**
 16 **identical interest.** Unless otherwise represented, a minor,
 17 incapacitated, or unborn individual, or a person whose identity
 18 or location is unknown and not reasonably ascertainable may be
 19 represented by and bound by another having a substantially
 20 identical interest with respect to the particular question or
 21 dispute, but only to the extent that there is no material



1 conflict of interest between the representative and the person
2 represented.

3 **§ -305 Appointment of guardian ad litem.** (a) If the
4 court determines that an interest is not represented under this
5 article, or that the otherwise available representation might be
6 inadequate, the court may appoint a guardian ad litem to receive
7 notice, give consent, and otherwise represent, bind, and act on
8 behalf of a minor, incapacitated, or unborn individual, or a
9 person whose identity or location is unknown. A guardian ad
10 litem may be appointed to represent several persons or
11 interests.

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

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

19 **ARTICLE 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF**
20 **TRUST**



- 1 **§ -401 Methods of creating trust.** A trust may be
2 created by:
- 3 (1) Transfer of property to another person as trustee
4 during the settlor's lifetime or by will or other
5 disposition taking effect upon the settlor's death;
 - 6 (2) Declaration by the owner of property that the owner
7 holds identifiable property as trustee;
 - 8 (3) Exercise of a power of appointment in favor of a
9 trustee; or
 - 10 (4) A court pursuant to its statutory or equitable powers.
- 11 **§ -402 Requirements for creation.** (a) A trust is
12 created only if:
- 13 (1) The settlor has capacity to create a trust;
 - 14 (2) The settlor indicates an intention to create the
15 trust;
 - 16 (3) The trust has a definite beneficiary or is:
 - 17 (A) A charitable trust;
 - 18 (B) A trust for the care of an animal, as provided in
19 section -408; or
 - 20 (C) A trust for a noncharitable purpose, as provided
21 in section -409; and



1 (4) The trustee has duties to perform.

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

5 (c) A power in a trustee, or in another person under the
6 terms of the trust, to select a beneficiary from an indefinite
7 class is valid. If the power is not exercised within a
8 reasonable time, the power fails and the property subject to the
9 power passes to the persons who would have taken the property
10 had the power not been conferred.

11 (d) Notwithstanding subsection (a)(1), a trust created by
12 an agent under power of attorney is valid if:

13 (1) The trust is created by an agent of the settlor under
14 a power of attorney that specifically authorizes the
15 creation of a trust; and

16 (2) The settlor had capacity to create a trust at the time
17 the power of attorney was executed.

18 § -403 Trusts created in other jurisdictions. A trust
19 not created by will is validly created if its creation complies
20 with the law of the jurisdiction in which the trust instrument



1 was executed, or the law of the jurisdiction in which, at the
2 time of creation:

3 (1) The settlor was domiciled, had a place of abode, or
4 was a national;

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

6 (3) Any trust property was located.

7 Unless otherwise provided in the trust instrument, these
8 provisions shall also apply to trust amendments.

9 § -404 **Trust purposes.** A trust may be created only to
10 the extent its purposes are lawful, not contrary to public
11 policy, and possible to achieve. A trust and its terms shall be
12 for the benefit of its beneficiaries, subject to the provisions
13 of the trust.

14 § -405 **Charitable purposes; enforcement.** (a) A
15 charitable trust may be created for the relief of poverty, the
16 advancement of education or religion, the promotion of health,
17 governmental or municipal purposes, or other purposes the
18 achievement of which is beneficial to the community.

19 (b) If the terms of a charitable trust do not indicate or
20 otherwise provide for selection of a particular charitable
21 purpose or beneficiary, the trustee or such other person



1 authorized by the terms of the trust or, if none, the court may
2 select one or more charitable purposes or beneficiaries. The
3 selection shall be consistent with the settlor's intention to
4 the extent it can be ascertained.

5 (c) The settlor of a charitable trust, the trustee, a
6 designated beneficiary, if any, or the attorney general may
7 maintain a proceeding to enforce the trust.

8 § -406 **Creation of trust induced by fraud, duress, or**
9 **undue influence.** A trust is void to the extent its creation was
10 induced by fraud, duress, or undue influence.

11 § -407 **Evidence of oral trust.** (a) Except as required
12 by law other than this chapter, a trust need not be evidenced by
13 a trust instrument, but the creation of an oral trust and its
14 terms, including any amendments thereto, may be established only
15 by clear and convincing evidence.

16 (b) Except as required by law other than this chapter, a
17 trust need not be evidenced by a trust instrument, but the
18 establishment of a missing trust and its terms may be
19 established by clear and convincing evidence. In the absence of
20 clear and convincing evidence to establish the existence or
21 terms and provisions of a missing trust, the existence of or the



1 terms and provisions of a missing trust may be established by
2 court order; provided that, in the circumstances and upon
3 appropriate notice, it would be fair and equitable to do so.
4 This section does not preclude a court from ordering relief
5 otherwise allowed by law.

6 **§ -408 Trust for care of animal.** (a) A trust for the
7 care of one or more designated domestic or pet animals shall be
8 valid. The trust terminates when no living animal is covered by
9 the trust. A governing instrument shall be liberally construed
10 to bring the transfer within this section, to presume against
11 the precatory or honorary nature of its disposition, and to
12 carry out the general intent of the transferor. Extrinsic
13 evidence shall be admissible in determining the transferor's
14 intent.

15 (b) A trust for the care of one or more designated
16 domestic or pet animals shall be subject to the following
17 provisions:

18 (1) Except as expressly provided otherwise in the
19 instrument creating the trust, and notwithstanding
20 section -816, no portion of the principal or income
21 of the trust may be converted to the use of the



1 trustee or to a use contrary to the trust's purposes
2 or for the benefit of a covered animal;

3 (2) Upon termination, the trustee shall transfer the
4 unexpended trust property in the following order:

5 (A) As directed in the trust instrument;

6 (B) If there is no direction in the trust instrument
7 and if the trust was created in a non-residuary
8 clause in the transferor's will, then under the
9 residuary clause in the transferor's will; and

10 (C) If no taker is produced by the application of
11 subparagraph (A) or (B), then to the transferor's
12 heirs, determined according to section 560:2-711;

13 (3) A trust authorized by this section may be enforced by
14 a person appointed in the terms of the trust or, if no
15 person is so appointed, by a person appointed by the
16 court. A person having an interest in the welfare of
17 the animal may request the court to appoint a person
18 to enforce the trust or to remove a person appointed;

19 (4) Except as ordered by the court or required by the
20 trust instrument, no filing, report, registration,
21 periodic accounting, separate maintenance of funds,



1 appointment, or fee shall be required by reason of the
2 existence of the fiduciary relationship of the
3 trustee;

4 (5) The court may reduce the amount of the property
5 transferred if it determines that the amount
6 substantially exceeds the amount required for the
7 intended use and the court finds that there will be no
8 substantial adverse impact in the care, maintenance,
9 health, or appearance of the designated domestic or
10 pet animal; provided that the amount of the reduction,
11 if any, shall pass as unexpended trust property under
12 paragraph (2);

13 (6) If a trustee is not designated or no designated
14 trustee is willing and able to serve, the court shall
15 name a trustee. The court may order the transfer of
16 the property to another trustee if the transfer is
17 necessary to ensure that the intended use is carried
18 out and if a successor is not designated in the trust
19 instrument or if no designated successor trustee
20 agrees to serve and is able to serve. The court may
21 also make other orders and determinations as are



1 advisable to carry out the intent of the transferor
2 and the purpose of this section; and

3 (7) The trust is exempt from the operation of chapter 525
4 of the Uniform Statutory Rule Against Perpetuities.

5 § -409 **Noncharitable trust without ascertainable**

6 **beneficiary.** Except as otherwise provided in section -408 or
7 by other law, the following rules apply:

8 (1) A trust may be created for a noncharitable purpose
9 without a definite or definitely ascertainable
10 beneficiary or for a noncharitable but otherwise valid
11 purpose to be selected by the trustee;

12 (2) A trust authorized by this section may be enforced by
13 a person appointed in the terms of the trust or, if no
14 person is so appointed, by a person appointed by the
15 court; and

16 (3) Property of a trust authorized by this section may be
17 applied only to its intended use, except to the extent
18 the court determines that the value of the trust
19 property exceeds the amount required for the intended
20 use; provided that, except as otherwise provided in
21 the terms of the trust, property not required for the



1 intended use shall be distributed to the settlor, if
 2 then living, otherwise pursuant to the terms of the
 3 settlor's will, or, if none, to the settlor's
 4 successors in interest.

5 **§ -410 Modification or termination of trust; proceedings**
 6 **for approval or disapproval.** (a) In addition to the methods of
 7 termination prescribed by sections -411 through -414, a
 8 trust terminates to the extent the trust is revoked or expires
 9 pursuant to its terms, no purpose of the trust remains to be
 10 achieved, or the purposes of the trust have become unlawful,
 11 contrary to public policy, or impossible to achieve.

12 (b) A proceeding to approve or disapprove a proposed
 13 modification or termination under sections -411
 14 through -416, or trust combination or division under
 15 section -417, may be commenced by a trustee or beneficiary,
 16 and a proceeding to approve or disapprove a proposed
 17 modification or termination under section -411 may be
 18 commenced by the settlor. The settlor of a charitable trust may
 19 maintain a proceeding to modify the trust under section -413.

20 **§ -411 Modification or termination of noncharitable**
 21 **irrevocable trust by consent.** (a) A noncharitable irrevocable



1 trust may be modified or terminated upon consent of the settlor
2 and all beneficiaries, even if the modification or termination
3 is inconsistent with a material purpose of the trust. A
4 settlor's power to consent to a trust's modification or
5 termination may be exercised by an agent under a power of
6 attorney only to the extent expressly authorized by the power of
7 attorney or the terms of the trust; by the settlor's conservator
8 with the approval of the court supervising the conservatorship
9 if an agent is not so authorized; or by the settlor's guardian
10 with the approval of the court supervising the guardianship if
11 an agent is not so authorized and a conservator has not been
12 appointed. This subsection does not apply to irrevocable trusts
13 created before or to revocable trusts that become irrevocable
14 before the effective date of this chapter.

15 (b) A noncharitable irrevocable trust may be terminated
16 upon consent of all of the beneficiaries if the court concludes
17 that continuance of the trust is not necessary to achieve any
18 material purpose of the trust. A noncharitable irrevocable
19 trust may be modified upon consent of all of the beneficiaries
20 if the court concludes that modification is not inconsistent
21 with a material purpose of the trust.



1 (c) It is a question of fact whether a spendthrift
2 provision constitutes a material purpose of the trust.

3 (d) Upon termination of a trust under subsection (a) or
4 (b), the trustee shall distribute the trust property as agreed
5 to by the beneficiaries.

6 (e) If not all of the beneficiaries consent to a proposed
7 modification or termination of the trust under subsection (a) or
8 (b), the modification or termination may be approved by the
9 court if the court is satisfied that:

10 (1) If all of the beneficiaries had consented, the trust
11 could have been modified or terminated under this
12 section; and

13 (2) The interests of a beneficiary who does not consent
14 will be adequately protected.

15 **§ -412 Modification or termination because of**
16 **unanticipated circumstances or inability to administer trust**
17 **effectively.** (a) The court may modify the administrative or
18 dispositive terms of a trust or terminate the trust if, because
19 of circumstances not anticipated by the settlor, modification or
20 termination will further the purposes of the trust. To the



1 extent practicable, the modification shall be made in accordance
2 with the settlor's probable intention.

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

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

10 § -413 **Cy pres.** (a) Except as otherwise provided in
11 subsection (b), if a particular charitable purpose becomes
12 unlawful, impracticable, impossible to achieve, or wasteful:

- 13 (1) The trust does not fail, in whole or in part;
- 14 (2) The trust property does not revert to the settlor or
15 the settlor's successors in interest; and
- 16 (3) The court may apply cy pres to modify or terminate the
17 trust by directing that the trust property be applied
18 or distributed, in whole or in part, in a manner
19 consistent with the settlor's charitable purposes.

20 (b) Subsection (a) shall not apply if the document
21 creating the charitable interest expressly provides for an



1 alternate disposition of the charitable interest if the
2 charitable purpose becomes unlawful, impracticable, impossible
3 to achieve, or wasteful. A general residuary disposition by
4 trust shall not be considered an express provision for an
5 alternate disposition. In addition, if the alternative plan is
6 also a charitable trust and that trust fails, the intention
7 shown in the original plan shall prevail in the application of
8 this section.

9 (c) In every cy pres proceeding, the attorney general
10 shall be notified and given an opportunity to be heard.

11 **§ -414 Modification or termination of uneconomic trust.**

12 (a) After notice to the qualified beneficiaries, the trustee of
13 a trust consisting of trust property having a total value of
14 less than \$100,000 may terminate the trust if the trustee
15 concludes that the value of the trust property is insufficient
16 to justify the cost of administration.

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



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

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

6 § -415 **Reformation to correct mistakes.** The court may
7 reform the terms of a trust, even if unambiguous, to conform the
8 terms to the settlor's intention if it is proved by clear and
9 convincing evidence what the settlor's intention was and that
10 the terms of the trust were affected by a mistake of fact or
11 law, whether in expression or inducement.

12 § -416 **Modification to achieve settlor's tax objectives.**
13 To achieve the settlor's tax objectives, the court may modify
14 the terms of a trust in a manner that is not contrary to the
15 settlor's probable intention. The court may provide that the
16 modification has retroactive effect.

17 § -417 **Combination and division of trusts.** After notice
18 to the qualified beneficiaries, a trustee may combine two or
19 more trusts into a single trust or divide a trust into two or
20 more separate trusts, if the result does not impair rights of
21 any beneficiary or adversely affect achievement of the purposes



1 of the trust. Two or more trusts may be combined into a single
 2 trust if the interests of each beneficiary in the trust
 3 resulting from the combination are substantially the same as the
 4 combined interests of the beneficiary in the trusts prior to the
 5 combination. The terms of each new trust created by a division
 6 under this section shall provide, in the aggregate, for the same
 7 succession of interests and beneficiaries as are provided in the
 8 original trust.

9 **ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY**

10 **TRUSTS**

11 **§ -501 Rights of beneficiary's creditor or assignee.** To
 12 the extent a beneficiary's interest is not subject to a
 13 spendthrift provision, the court may authorize a creditor or
 14 assignee of the beneficiary to reach the beneficiary's interest
 15 by attachment of present or future distributions to or for the
 16 benefit of the beneficiary or other means. The court may limit
 17 the award to relief as is appropriate under the circumstances.

18 **§ -502 Spendthrift provision.** (a) A spendthrift
 19 provision is valid only if it restrains both voluntary and
 20 involuntary transfer of a beneficiary's interest.



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

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

10 § -503 Exceptions to spendthrift provision. (a) A
11 spendthrift provision is unenforceable against:

12 (1) A beneficiary's child who has a judgment or court
13 order against the beneficiary for support or
14 maintenance; and

15 (2) A claim of this State or the United States to the
16 extent a law of this State or federal law so provides.

17 (b) A claimant against which a spendthrift provision
18 cannot be enforced may obtain from a court an order attaching
19 present or future distributions to or for the benefit of the
20 beneficiary. The court may limit the award to relief as is
21 appropriate under the circumstances.



1 § -504 Discretionary trusts; effect of standard. (a)

2 Except as otherwise provided in subsection (b), whether or not a
3 trust contains a spendthrift provision, a creditor of a
4 beneficiary shall not compel a distribution that is subject to
5 the trustee's discretion, even if:

6 (1) The discretion is expressed in the form of a standard
7 of distribution; or

8 (2) The trustee has abused the discretion.

9 (b) To the extent a trustee has not complied with a
10 standard of distribution or has abused a discretion:

11 (1) A distribution may be ordered by the court to satisfy
12 a judgment or court order against the beneficiary for
13 support or maintenance of the beneficiary's child; and

14 (2) The court shall direct the trustee to pay to or for
15 the benefit of the beneficiary's child, such amount as
16 is equitable under the circumstances but not more than
17 the amount the trustee would have been required to
18 distribute to or for the benefit of the beneficiary
19 had the trustee complied with the standard or not
20 abused the discretion.



1 (c) This section does not limit the right of a beneficiary
2 to maintain a judicial proceeding against a trustee for an abuse
3 of discretion or failure to comply with a standard for
4 distribution.

5 (d) If the trustee's or cotrustee's discretion to make
6 distributions for the trustee's or cotrustee's own benefit is
7 limited by an ascertainable standard, a creditor may not reach
8 or compel distribution of the beneficial interest except to the
9 extent the interest would be subject to the creditor's claim
10 were the beneficiary not acting as trustee or cotrustee.

11 § -505 **Creditor's claim against settlor.** (a) Whether
12 or not the terms of a trust contain a spendthrift provision, the
13 following rules apply:

- 14 (1) During the lifetime of the settlor, the property of a
15 revocable trust is subject to claims of the settlor's
16 creditors;
- 17 (2) Except as provided in chapter 554G, with respect to an
18 irrevocable trust, a creditor or assignee of the
19 settlor may reach the maximum amount that can be
20 distributed to or for the settlor's benefit. If a
21 trust has more than one settlor, the amount the



1 creditor or assignee of a particular settlor may reach
2 shall not exceed the settlor's interest in the portion
3 of the trust attributable to that settlor's
4 contribution; and

5 (3) After the death of a settlor, and subject to the
6 settlor's right to direct the source from which
7 liabilities will be paid, the property of a trust that
8 was revocable at the settlor's death is subject to
9 claims of the settlor's creditors, costs of
10 administration of the settlor's estate, the expenses
11 of the settlor's funeral and disposal of remains, and
12 statutory allowances to a surviving spouse or
13 reciprocal beneficiary and children to the extent the
14 settlor's probate estate is inadequate to satisfy
15 those claims, costs, expenses, and allowances.

16 (b) For purposes of this section:

17 (1) During the period the power may be exercised, the
18 holder of a power of withdrawal is treated in the same
19 manner as the settlor of a revocable trust to the
20 extent of the property subject to the power; and



1 (2) Upon the lapse, release, or waiver of the power, the
2 holder is treated as the settlor of the trust only to
3 the extent the value of the property affected by the
4 lapse, release, or waiver exceeds the greater of the
5 amount specified in section 2041(b)(2) or 2514(e) of
6 the Internal Revenue Code of 1986, or section 2503(b)
7 of the Internal Revenue Code of 1986, in each case as
8 in effect on the effective date of this chapter.

9 (c) This section shall not apply to trusts created under
10 chapter 554G.

11 **§ -506 Overdue distribution.** (a) Whether or not a
12 trust contains a spendthrift provision, a creditor or assignee
13 of a beneficiary may reach a mandatory distribution of income or
14 principal, including a distribution upon termination of the
15 trust, if the trustee has not made the distribution to the
16 beneficiary within a reasonable time after the designated
17 distribution date.

18 (b) As used in this section, "mandatory distribution"
19 means a distribution of income or principal that the trustee is
20 required to make to a beneficiary under the terms of the trust,
21 including a distribution upon termination of the trust. The



1 term does not include a distribution subject to the exercise of
2 the trustee's discretion even if:

3 (1) The discretion is expressed in the form of a standard
4 of distribution; or

5 (2) The terms of the trust authorizing a distribution
6 couple language of discretion with language of
7 direction.

8 § -507 Personal obligations of trustee. Trust property
9 is not subject to personal obligations of the trustee, even if
10 the trustee becomes insolvent or bankrupt.

11 **ARTICLE 6. REVOCABLE TRUSTS**

12 § -601 Capacity of settlor of revocable trust. The
13 capacity required to create or add property to a revocable trust
14 is the same as that required to make a will. Unless otherwise
15 altered by the terms of the trust pursuant to
16 section -602(c), the capacity required to amend, revoke, or
17 direct the actions of the trustee of a revocable trust is also
18 the same as that required to make a will.

19 § -602 Revocation or amendment of revocable trust. (a)
20 Unless the terms of a trust expressly provide that the trust is
21 irrevocable, the settlor may revoke or amend the trust. This



1 subsection does not apply to a trust created under an instrument
2 executed before the effective date of this chapter.

3 (b) Unless the terms of a trust expressly provide
4 otherwise, if a revocable trust is created or funded by more
5 than one settlor:

6 (1) To the extent the trust consists of community
7 property, the trust may be revoked by either spouse
8 acting alone, but may be amended only by joint action
9 of both spouses;

10 (2) To the extent the trust consists of property other
11 than community property, each settlor may revoke or
12 amend the trust with regard to the portion of the
13 trust property attributable to that settlor's
14 contribution; and

15 (3) Upon the revocation or amendment of the trust by fewer
16 than all of the settlors, the trustee shall promptly
17 notify the other settlors of the revocation or
18 amendment.

19 (c) The settlor may revoke or amend a revocable trust by
20 substantial compliance with a method provided in the terms of
21 the trust (including requiring a higher level of capacity to



1 amend or revoke) or, if the terms of the trust do not provide a
2 method of amendment or revocation, by any written and signed
3 method manifesting clear and convincing evidence of the
4 settlor's intent.

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

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

11 (f) A conservator of the settlor may exercise a settlor's
12 powers with respect to revocation, amendment, or distribution of
13 trust property only with the approval of the court supervising
14 the conservatorship.

15 (g) A trustee who does not have actual knowledge that a
16 trust has been revoked or amended is not liable to the settlor
17 or settlor's successors in interest for distributions made and
18 other actions taken on the assumption that the trust had not
19 been amended or revoked.

20 § -603 Settlor's powers; powers of withdrawal. (a)

21 While the settlor of a revocable trust is alive, rights of the



1 beneficiaries are subject to the control of the settlor, the
2 duties of the trustee are owed exclusively to the settlor, and
3 beneficiaries other than the settlor have no right to receive
4 notice, information, or reports under section -813.

5 (b) The rights of the beneficiaries with respect to
6 property that is subject to a power of withdrawal are subject to
7 the control of the holder of the power during the period that
8 the power may be exercised, and the duties of the trustee are
9 owed exclusively to the holder of a power of withdrawal with
10 respect to the property that is subject to the power.

11 § -604 Limitation on action contesting validity of
12 revocable trust; distribution of trust property. (a) A person
13 may commence a judicial proceeding after the settlor's death to
14 contest the validity of a trust that was revocable at the
15 settlor's death within the earlier of:

- 16 (1) Five years after the settlor's death; or
17 (2) Ninety days after the trustee sent the person a copy
18 of the trust instrument and a notice informing the
19 person of the trust's existence, of the trustee's name
20 and address, and of the time allowed for commencing a
21 proceeding.



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

- 6 (1) The trustee has actual knowledge of a pending judicial
7 proceeding contesting the validity of the trust; or
- 8 (2) A potential contestant has notified the trustee of a
9 possible judicial proceeding to contest the trust and
10 a judicial proceeding is commenced within sixty days
11 after the contestant sent the notification.

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

14 **ARTICLE 7. OFFICE OF TRUSTEE**

15 **§ -701 Accepting or declining trusteeship.** (a) Except
16 as otherwise provided in subsection (c), a person designated as
17 trustee accepts the trusteeship:

- 18 (1) By substantially complying with a method of acceptance
19 provided in the terms of the trust; or
- 20 (2) If the terms of the trust do not provide a method of
21 acceptance or the method provided in the terms of the



1 trust is not expressly made exclusive, by knowingly
2 accepting delivery of the trust property, knowingly
3 exercising powers or performing duties as trustee, or
4 otherwise indicating acceptance of the trusteeship.

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

10 (c) A person designated as trustee, without accepting the
11 trusteeship, may:

12 (1) Act to preserve the trust property if, within a
13 reasonable time after acting, the person sends a
14 rejection of the trusteeship to the settlor or, if the
15 settlor is dead or lacks capacity, to the designated
16 cotrustee, or, if none, to the successor trustee, or,
17 if none or unknown, to a qualified beneficiary; and

18 (2) Inspect or investigate trust property to determine
19 potential liability under environmental or other law
20 or for any other purpose.



1 § -702 **Trustee's bond.** (a) A trustee shall give bond
2 to secure performance of the trustee's duties only if the court
3 finds that a bond is needed to protect the interests of the
4 beneficiaries or is required by the terms of the trust and the
5 court has not dispensed with the requirement.

6 (b) The court may specify the amount of a bond, its
7 liabilities, and whether sureties are necessary. The court may
8 modify or terminate a bond at any time.

9 (c) A bank or trust company qualified under chapter 412 to
10 do trust business in this State need not give bond, even if
11 required by the terms of the trust.

12 § -703 **Cotrustees.** (a) Cotrustees who are unable to
13 reach a unanimous decision after consultation among all the
14 cotrustees may act by majority decision.

15 (b) If a vacancy occurs in a cotrusteeship, the remaining
16 cotrustee or cotrustees may act for the trust.

17 (c) Subject to the settlor's powers to direct under
18 section -808, a cotrustee shall participate in the
19 performance of a trustee's function unless the cotrustee is
20 unavailable to perform the function because of absence, illness,
21 disqualification under other law, or other temporary incapacity,



1 or the cotrustee has properly delegated the performance of the
2 function to another trustee.

3 (d) If a cotrustee is unavailable to perform duties
4 because of absence, illness, disqualification under other law,
5 or other temporary incapacity, and prompt action is necessary to
6 achieve the purposes of the trust or to avoid injury to the
7 trust property, the remaining cotrustee or a majority of the
8 remaining cotrustees may act for the trust.

9 (e) A cotrustee who has a conflict of interest in
10 performing any duty shall notify the other cotrustee or
11 cotrustees of the conflict and may recuse itself from the
12 transaction and the remaining cotrustee or a majority of the
13 remaining cotrustees may act for the trust.

14 (f) A trustee may not delegate to a cotrustee the
15 performance of a function the settlor intended the trustees to
16 perform jointly. A trustee may revoke a delegation previously
17 made.

18 (g) Except as otherwise provided in subsection (h), a
19 trustee who does not join in an action of another trustee is not
20 liable for the action.



1 (h) Subject to the settlor's powers to direct under
2 section -808, each trustee shall exercise reasonable care to:

3 (1) Prevent a cotrustee from committing a serious breach
4 of trust; and

5 (2) Compel a cotrustee to redress a serious breach of
6 trust.

7 (i) A dissenting trustee who joins in an action at the
8 direction of the majority of the trustees and who notified the
9 cotrustee or cotrustees in writing of the dissent at or before
10 the time of the action is not liable for the action unless the
11 action is a serious breach of trust.

12 **§ -704 Vacancy in trusteeship; appointment of successor.**

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

14 (1) A person designated as trustee rejects the
15 trusteeship;

16 (2) A person designated as trustee cannot be identified,
17 cannot be located, or does not exist;

18 (3) A trustee resigns;

19 (4) A trustee is disqualified, incapacitated, or removed;

20 (5) A trustee dies; or



1 (6) A guardian or conservator is appointed for an
2 individual serving as trustee.

3 (b) If one or more cotrustees remain in office, a vacancy
4 in a trusteeship need not be filled. A vacancy in a trusteeship
5 shall be filled if the trust has no remaining trustee.

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

9 (1) By a person designated in the terms of the trust to
10 act as successor trustee or a person named in the
11 trust who has authority to appoint a successor
12 trustee;

13 (2) By a person selected by unanimous agreement of the
14 qualified beneficiaries; or

15 (3) By a person appointed by the court.

16 (d) A vacancy in a trusteeship of a charitable trust that
17 is required to be filled shall be filled in the following order
18 of priority:

19 (1) By a person designated in the terms of the trust to
20 act as successor trustee or a person named in the



1 trust who has authority to appoint a successor
 2 trustee;

3 (2) By a person selected by the charitable organizations
 4 expressly designated to receive distributions under
 5 the terms of the trust if the attorney general concurs
 6 in the selection; or

7 (3) By a person appointed by the court.

8 (e) Whether or not a vacancy in a trusteeship exists or is
 9 required to be filled, the court may appoint an additional
 10 trustee or special fiduciary whenever the court considers the
 11 appointment necessary for the administration of the trust.

12 § -705 Resignation of trustee. (a) A trustee may
 13 resign:

14 (1) For a revocable trust, upon at least thirty days'
 15 notice to the settlor, if living (or if incapacitated,
 16 to the settlor's duly appointed agent or conservator,
 17 if any), and all cotrustees or, if none, to the
 18 designated successor trustee or trustees;

19 (2) For an irrevocable trust, upon at least thirty days'
 20 notice to the qualified beneficiaries, the settlor, if



1 living, and all cotrustees or, if none, to the
2 designated successor trustee or trustees; or

3 (3) With the approval of the court.

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

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

11 (d) A trustee may seek release and discharge directly from
12 the beneficiaries or the court.

13 § -706 Removal of trustee. (a) For an irrevocable
14 trust, a cotrustee or a qualified beneficiary, or in the case of
15 a charitable trust, the attorney general, may request the court
16 to remove a trustee, or a trustee may be removed by the court on
17 its own initiative. In the case of an irrevocable trust in
18 which the settlor has a retained interest, the settlor, the
19 settlor's conservator or guardian, or the settlor's duly
20 authorized agent under a durable power of attorney may also
21 request the court to remove a trustee.



1 (b) For a revocable trust, the settlor, the settlor's
2 conservator or guardian, the settlor's duly authorized agent
3 under a durable power of attorney, or a cotrustee may request
4 the court to remove a trustee, or a trustee may be removed by
5 the court on its own initiative.

6 (c) The court may remove a trustee if:

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

8 (2) Lack of cooperation among cotrustees substantially
9 impairs the administration of the trust;

10 (3) Because of unfitness, unwillingness, persistent
11 failure of the trustee to administer the trust
12 effectively, or any other reason, the court determines
13 removal of the trustee best serves the interests of
14 the beneficiaries; or

15 (4) Removal of the trustee best serves the interests of
16 all beneficiaries and:

17 (A) There has been a substantial change of
18 circumstances or removal is requested by all of
19 the qualified beneficiaries;

20 (B) Removal is not inconsistent with a material
21 purpose of the trust; and



1 (C) A suitable cotrustee or successor trustee is
2 available.

3 (d) Pending a final decision on a request to remove a
4 trustee, or in lieu of or in addition to removing a trustee, the
5 court may order appropriate relief under section -1001(b) as
6 may be necessary to protect the trust property or the interests
7 of the beneficiaries.

8 § -707 **Delivery of property by former trustee.** (a)

9 Unless a cotrustee remains in office or the court otherwise
10 orders, and until the trust property is delivered to a successor
11 trustee, or other person entitled to it, a trustee who has
12 resigned or been removed has the duties of a trustee and the
13 powers necessary to protect the trust property.

14 (b) A trustee who has resigned or been removed shall,
15 within a reasonable time, deliver the trust property within the
16 trustee's possession to the cotrustee, successor trustee, or
17 other person entitled to it.

18 § -708 **Compensation of trustee.** (a) A trustee's

19 compensation shall be as set forth in sections 607-18 and
20 607-20, as appropriate.



1 (b) On petition of an interested person, after notice to
2 all interested persons, the court may review the propriety of
3 employment of any person by a trustee, including any attorney,
4 auditor, investment advisor, or other specialized agent or
5 assistant, the reasonableness of the compensation of any person
6 so employed, the reasonableness of the determination of trust
7 estate value or income made by the trustee for the purpose of
8 computing the fee allowed by sections 607-18 and 607-20, and the
9 reasonableness of any additional compensation for special
10 services under sections 607-18 and 607-20. Any person who has
11 received excessive compensation from a trust may be ordered to
12 make appropriate refunds.

13 § -709 Reimbursement of expenses. (a) A trustee or
14 designated trustee who acts in good faith is entitled to
15 reimbursement out of the trust property, with interest as
16 appropriate, for:

17 (1) Expenses that were properly incurred in the
18 administration of the trust, including the defense or
19 prosecution of any action, whether successful or not,
20 unless the trustee is determined to have willfully or
21 wantonly committed a material breach of trust; or



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

4 (b) An advance by the trustee or designated trustee of
5 money for the protection of the trust gives rise to a lien
6 against trust property to secure reimbursement with reasonable
7 interest.

8 **ARTICLE 8. DUTIES AND POWERS OF TRUSTEE**

9 **§ -801 Duty to administer trust.** Upon acceptance of a
10 trusteeship, the trustee shall administer the trust in good
11 faith, in accordance with its terms and purposes and the
12 interests of the beneficiaries, and in accordance with this
13 chapter.

14 **§ -802 Duty of loyalty.** (a) A trustee shall administer
15 the trust solely in the interests of the beneficiaries.

16 (b) Subject to the rights of persons dealing with or
17 assisting the trustee as provided in section -1012, a sale,
18 encumbrance, or other transaction involving the investment or
19 management of trust property entered into by the trustee for the
20 trustee's own personal account or which is otherwise affected by
21 a conflict between the trustee's fiduciary and personal



1 interests is voidable by a beneficiary affected by the
2 transaction unless:

- 3 (1) The transaction was authorized by the terms of the
4 trust;
- 5 (2) The transaction was approved by the court;
- 6 (3) The beneficiary did not commence a judicial proceeding
7 within the time allowed by section -1005;
- 8 (4) The beneficiary consented to the trustee's conduct,
9 ratified the transaction, or released the trustee in
10 compliance with section -1009; or
- 11 (5) The transaction involves a contract entered into or
12 claim acquired by the trustee before the person became
13 or contemplated becoming a trustee.

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

- 18 (1) The trustee's spouse, or the trustee's spouse's
19 descendants, siblings, or ancestors, and their
20 spouses;



- 1 (2) The trustee's descendants, siblings, ancestors, or
- 2 their spouses;
- 3 (3) An agent or attorney of the trustee;
- 4 (4) A corporation or other person or enterprise in which
- 5 the trustee has such a substantial interest that it
- 6 might affect the trustee's best judgment; or
- 7 (5) A corporation or other person or enterprise which has
- 8 such a substantial interest in the trustee that it
- 9 might affect the trustee's best judgment.
- 10 (d) A transaction not concerning trust property in which
- 11 the trustee engages in the trustee's individual capacity
- 12 involves a conflict between personal and fiduciary interests if
- 13 the transaction concerns an opportunity properly belonging to
- 14 the trust.
- 15 (e) An investment by a trustee in securities of an
- 16 investment company or investment trust to which the trustee or
- 17 its affiliate provides services in a capacity other than as
- 18 trustee is not presumed to be affected by a conflict between
- 19 personal and fiduciary interests if the investment otherwise
- 20 complies with the prudent investor rule of article 9. In
- 21 addition to its compensation for acting as trustee, the trustee



1 or its affiliate may be compensated by the investment company or
2 investment trust for providing those services out of fees
3 charged to the trust. If the trustee or its affiliate receives
4 compensation from the investment company or investment trust for
5 providing investment advisory or investment management services,
6 the trustee must at least annually notify the persons entitled
7 under section -813 to receive a copy of the trustee's annual
8 report of the rate and method by which that compensation was
9 determined.

10 (f) In voting shares of stock or in exercising powers of
11 control over similar interests in other forms of business
12 entities, the trustee shall act in the best interests of the
13 beneficiaries. If the trust is the sole owner of a corporation
14 or another form of a business entity, the trustee shall elect or
15 appoint directors or other managers who will manage the
16 corporation or business entity in the best interests of the
17 beneficiaries.

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



- 1 (1) An agreement between a trustee and a beneficiary
- 2 relating to the appointment or compensation of the
- 3 trustee;
- 4 (2) Payment of reasonable compensation to the trustee;
- 5 (3) A transaction between a trust and another trust,
- 6 decedent's estate, or conservatorship of which the
- 7 trustee is a fiduciary or in which a beneficiary has
- 8 an interest;
- 9 (4) A deposit of trust money in a regulated
- 10 financial-service institution operated by the trustee;
- 11 or
- 12 (5) An advance by the trustee of money for the protection
- 13 of the trust.
- 14 (h) The court may appoint a special fiduciary to make a
- 15 decision with respect to any proposed transaction that might
- 16 violate this section if entered into by the trustee.
- 17 § -803 **Impartiality.** If a trust has two or more
- 18 beneficiaries, the trustee shall act impartially in investing,
- 19 managing, and distributing the trust property, giving due regard
- 20 to the beneficiaries' respective interests.



1 **§ -804 Prudent administration.** A trustee shall
2 administer the trust as a prudent person would, by considering
3 the purposes, terms, distributional requirements, and other
4 circumstances of the trust. In satisfying this standard, the
5 trustee shall exercise reasonable care, skill, and caution.

6 **§ -805 Costs of administration.** In administering a
7 trust, the trustee may incur only costs that are reasonable in
8 relation to the trust property, the purposes of the trust, and
9 the skills of the trustee.

10 **§ -806 Trustee's skills.** A trustee who has special
11 skills or expertise or is named trustee in reliance upon the
12 trustee's representation that the trustee has special skills or
13 expertise shall use those special skills or expertise.

14 **§ -807 Delegation by trustee.** (a) A trustee may
15 delegate duties and powers that a prudent trustee of comparable
16 skills could properly delegate under the circumstances. The
17 trustee shall exercise reasonable care, skill, and caution in:

- 18 (1) Selecting an agent;
- 19 (2) Establishing the scope and terms of the delegation,
20 consistent with the purposes and terms of the trust;
- 21 and



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

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

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

10 (d) By accepting a delegation of powers or duties from the
11 trustee of a trust that is subject to the law of this State, an
12 agent submits to the jurisdiction of the courts of this State,
13 even if the agency agreement provides otherwise, and the agent
14 may be made a party to any action or proceeding if the issues
15 relate to a decision, action, or inaction of the agent.

16 (e) Upon petition of a qualified beneficiary, after notice
17 to all qualified beneficiaries, the trustee, and the agent of
18 the trustee, the court may review the employment of any agent by
19 the trustee and the reasonableness of the agent's compensation.
20 Any agent who is found to have received excess compensation from
21 a trust may be ordered to make appropriate refunds.



1 § -808 Powers to direct. (a) While a trust is
2 revocable and the settlor has capacity, the trustee may follow a
3 written direction of the settlor that is contrary to the terms
4 of the trust.

5 (b) The terms of a trust may confer upon a trustee or
6 other person a power to direct the modification or termination
7 of the trust.

8 (c) Whenever the terms of a trust direct that an advisor,
9 rather than the trustee, shall have authority for certain
10 fiduciary actions, the standard of care and performance for
11 actions that are within the scope of the advisor's authority
12 under the terms of a trust shall be as follows:

13 (1) Where one or more persons are given authority by the
14 terms of a trust and accept this authority to direct,
15 consent to, or disapprove a trustee's actual or
16 proposed investment decisions, distribution decisions,
17 or any other decision of the trustee, those persons
18 shall be considered to be advisors and shall have the
19 duties and obligations of fiduciaries when exercising
20 the given authority, unless the trust provides
21 otherwise;



- 1 (2) If a trust provides that a trustee is to follow the
2 direction of an advisor and the trustee acts in
3 accordance with the advisor's direction, then, except
4 in cases of wilful misconduct or gross negligence on
5 the part of the trustee so directed, the trustee shall
6 not be liable for any loss resulting directly or
7 indirectly from any such act;
- 8 (3) If a trust provides that a trustee is to make
9 decisions with the consent of an advisor, then, except
10 in cases of wilful misconduct or gross negligence on
11 the part of the trustee, the trustee shall not be
12 liable for any loss resulting directly or indirectly
13 from any act taken or omitted as a result of the
14 advisor's failure to provide consent after having been
15 requested to do so by the trustee; and
- 16 (4) Whenever a trust provides that a trustee is to follow
17 the direction of an advisor with respect to investment
18 decisions, distribution decisions, or any other
19 decision of the trustee, then, except to the extent
20 that the terms of the trust provide otherwise, the
21 trustee shall have no duty to:



- 1 (A) Monitor the conduct of the advisor;
- 2 (B) Provide advice to the advisor or consult with the
3 advisor; or
- 4 (C) Communicate with, warn, or apprise any
5 beneficiary or third party concerning instances
6 in which the trustee would or might have
7 exercised the trustee's own discretion in a
8 manner different from the manner directed by the
9 advisor.

10 Absent clear and convincing evidence to the contrary, the
11 actions of the trustee pertaining to matters within the scope of
12 the advisor's authority, such as confirming that the advisor's
13 directions have been carried out and recording and reporting
14 actions taken at the advisor's direction, shall be presumed to
15 be administrative actions taken by the trustee solely to allow
16 the trustee to perform the duties assigned to the trustee under
17 the trust, and the administrative actions shall not be deemed to
18 constitute an undertaking by the trustee to monitor the advisor
19 or otherwise participate in actions within the scope of the
20 advisor's authority.



1 (d) A person, other than a beneficiary, who holds a power
2 to direct is presumptively a fiduciary who, as such, is required
3 to act in good faith with regard to the purposes of the trust
4 and the interests of the beneficiaries. The holder of a power
5 to direct is liable for any loss that results from breach of a
6 fiduciary duty.

7 (e) For purposes of this section:

8 "Advisor" includes a protector that has been granted powers
9 and authority by the terms of a trust, including:

- 10 (1) The power to remove and appoint trustees, advisors,
11 trust committee members, and other protectors;
- 12 (2) The power to modify or amend the trust to achieve a
13 favorable tax status or to facilitate the efficient
14 administration of the trust; and
- 15 (3) The power to modify, expand, or restrict the terms of
16 a power of appointment granted to a beneficiary by the
17 trust.

18 "Investment decision" means the retention, purchase, sale,
19 exchange, tender, or other transaction affecting the ownership
20 of or rights in any investment, or the valuation of nonpublicly
21 traded investments.



1 **§ -809 Control and protection of trust property.** A
2 trustee shall take reasonable steps to take control of and
3 protect the trust property.

4 **§ -810 Recordkeeping and identification of trust**
5 **property.** (a) A trustee shall keep adequate records of the
6 administration of the trust.

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

9 (c) Except as otherwise provided in subsection (d), a
10 trustee shall cause the trust property to be designated so that
11 the interest of the trust, to the extent feasible, appears in
12 records maintained by a party other than a trustee or
13 beneficiary.

14 (d) If the trustee maintains records clearly indicating
15 the respective interests, a trustee may invest as a whole the
16 property of two or more separate trusts.

17 **§ -811 Enforcement and defense of claims.** (a) A
18 trustee shall take reasonable steps to enforce claims of the
19 trust and to defend claims against the trust.



1 (b) A trustee may abandon or assign to one or more of the
2 beneficiaries of the trust any claim that it believes is not
3 prudent to enforce.

4 § -812 Collecting trust property. (a) A trustee shall
5 take reasonable steps to compel a former trustee or other person
6 to deliver trust property to the trustee and to redress a breach
7 of trust known to the trustee to have been committed by a former
8 trustee or other person, unless the beneficiaries consent to,
9 release, or ratify the actions of the former trustee or other
10 person under section -1009.

11 (b) In addition to any other legal or equitable remedies,
12 a person who receives a distribution from a trust is liable to
13 return the distribution to the extent that the trustee or a
14 court subsequently determines that the person was not entitled
15 to the distribution.

16 § -813 Duty to inform and report. (a) During the
17 lifetime of the settlor of a revocable trust, whether or not the
18 settlor has capacity to revoke the trust, the trustee's duties
19 under this section are owed exclusively to the settlor. If the
20 settlor lacks capacity to revoke the trust, a trustee may
21 satisfy the trustee's duties under this section by providing



1 information and reports to any one or more of the following in
2 the order of preference listed:

- 3 (1) The person or persons designated by the settlor in the
4 trust to receive information and reports on the
5 settlor's behalf;
- 6 (2) The settlor's conservator;
- 7 (3) The settlor's guardian;
- 8 (4) The settlor's agent under durable power of attorney;
9 or
- 10 (5) The settlor's spouse; provided that the spouse is a
11 beneficiary under the trust.

12 If the settlor lacks capacity to revoke the trust and there
13 are no persons listed in this subsection to whom the trustee may
14 provide information and reports, the trustee shall satisfy its
15 duties under this section by providing information and reports
16 to the qualified beneficiaries.

17 (b) After the settlor's death, a trustee shall keep the
18 qualified beneficiaries of the trust reasonably informed about
19 the administration of the trust and of the material facts
20 necessary for them to protect their interests. Unless
21 unreasonable under the circumstances, a trustee shall promptly



1 respond to a qualified beneficiary's request for information
2 related to the administration of the trust.

3 (c) After the settlor's death, a trustee:

4 (1) Upon request of a qualified beneficiary, shall
5 promptly furnish to the qualified beneficiary a copy
6 of the trust instrument;

7 (2) Within sixty days after accepting a trusteeship, shall
8 notify the qualified beneficiaries of the acceptance
9 and of the trustee's name, address, and telephone
10 number;

11 (3) Within sixty days after the date the trustee acquires
12 knowledge of the creation of an irrevocable trust or
13 the date the trustee acquires knowledge that a
14 formerly revocable trust has become irrevocable,
15 whether by the death of the settlor or otherwise,
16 shall notify the qualified beneficiaries of the
17 trust's existence, of the identity of the settlor or
18 settlors, of the right to request a copy of the trust
19 instrument, and of the right to a trustee's report as
20 provided in subsection (d); and



1 (4) Shall notify the qualified beneficiaries in advance of
2 any change in the method or rate of the trustee's
3 compensation.

4 (d) A trustee shall send to the distributees or
5 permissible distributees of trust income or principal and other
6 qualified beneficiaries who request it, at least annually and at
7 the termination of the trust, a report of the trust property,
8 liabilities, receipts, and disbursements, including the source
9 and amount of the trustee's compensation, a listing of the trust
10 assets and, if feasible, their respective market values. Upon a
11 vacancy in a trusteeship, unless a cotrustee remains in office,
12 a report shall be sent to the qualified beneficiaries by the
13 former trustee. A personal representative, conservator, or
14 guardian may send the qualified beneficiaries a report on behalf
15 of a deceased or incapacitated trustee.

16 (e) A qualified beneficiary may waive the right to a
17 trustee's report or other information otherwise required to be
18 furnished under this section. A qualified beneficiary, with
19 respect to future reports and other information, may withdraw a
20 waiver previously given.



1 (f) A trustee may charge a reasonable fee to a qualified
2 beneficiary for providing information under this section.

3 (g) Every trustee acting under appointment of any court or
4 under any appointment requiring the approval of any court shall,
5 except in cases where the prior trustee, if any, was not
6 required by statute or the instrument creating the trust or
7 appointing the trustee to file such an account, file annually
8 with the court having jurisdiction thereof an account showing in
9 detail all receipts and disbursements, together with a full and
10 detailed inventory of all property in the trustee's possession
11 or under the trustee's control; provided that the court, in
12 cases in which it deems it advisable in the interests of the
13 beneficiaries, may permit the accounts to be filed biennially or
14 triennially instead of annually or, if they are filed annually,
15 may permit them to accumulate to be passed upon biennially or
16 triennially; and provided further that the court on its own
17 examination or that of its clerk shall, without reference to a
18 master, pass upon the accounts in cases in which the annual
19 income does not exceed \$1,000, except in the case of a final
20 account when the court may refer the same to a master,
21 irrespective of the amount of the annual income, if for any



1 reason it is deemed proper or necessary. If any trustee fails
2 to file an account as required in this section, the clerk of the
3 court in which the trustee is required to file the account shall
4 notify the trustee promptly of the failure, and if the trustee
5 fails to file the account within thirty days after the
6 notification, the trustee shall be cited to appear before the
7 court and be required to show cause why the trustee should not
8 be punished for contempt of court as provided by section
9 710-1077, and the trustee shall be subject to all of the
10 penalties provided in that section. The court may also, in its
11 discretion, remove the trustee.

12 (h) Unless otherwise required by the instrument creating
13 the trust, nothing in this section shall be construed to require
14 the filing of an annual account either by a trustee or trustees
15 appointed by the court as additional trustee or trustees to
16 serve with or in the place and stead of a trustee or trustees
17 appointed in the instrument creating a trust or by a trustee
18 whose appointment is made in accordance with or pursuant to the
19 instrument creating the trust where the appointment has been
20 confirmed by any court in proceedings brought to secure the
21 confirmation or approval thereof.



- 1 (i) Subsection (c)(2) and (3) shall not apply to:
- 2 (1) A trustee who accepts a trusteeship before the
- 3 effective date of this chapter;
- 4 (2) An irrevocable trust created before the effective date
- 5 of this chapter; or
- 6 (3) A revocable trust that becomes irrevocable before the
- 7 effective date of this chapter.

8 **§ -814 Discretionary powers; tax savings. (a)**

9 Notwithstanding the breadth of discretion granted to a trustee

10 in the terms of the trust, including the use of such terms as

11 "absolute", "sole", or "uncontrolled", the trustee shall

12 exercise a discretionary power in good faith and in accordance

13 with the terms and purposes of the trust and the interests of

14 the beneficiaries.

15 (b) Subject to subsection (d), and unless the terms of the

16 trust expressly indicate that a rule in this subsection does not

17 apply:

- 18 (1) A person other than a settlor who is a beneficiary and
- 19 trustee of a trust that confers on the trustee a power
- 20 to make discretionary distributions to or for the



1 trustee's personal benefit may exercise the power only
2 in accordance with an ascertainable standard; and

3 (2) A trustee may not exercise a power to make
4 discretionary distributions to satisfy a legal
5 obligation of support that the trustee personally owes
6 another person.

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

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

14 (1) A power held by the settlor's spouse who is the
15 trustee of a trust for which a marital deduction, as
16 defined in section 2056(b)(5) or 2523(e) of the
17 Internal Revenue Code of 1986, as in effect on the
18 effective date of this chapter was previously allowed;

19 (2) Any trust during any period that the trust may be
20 revoked or amended by its settlor; or



1 (3) A trust if contributions to the trust qualify for the
2 annual exclusion under section 2503(c) of the Internal
3 Revenue Code of 1986, as in effect on the effective
4 date of this chapter.

5 § -815 **General powers of trustee.** (a) A trustee,
6 without authorization by the court, may exercise:

7 (1) Powers conferred by the terms of the trust; and

8 (2) Except as limited by the terms of the trust:

9 (A) All powers over the trust property that an
10 unmarried competent owner has over individually
11 owned property;

12 (B) Any other powers appropriate to achieve the
13 proper investment, management, and distribution
14 of the trust property; and

15 (C) Any other powers conferred by this chapter.

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

18 § -816 **Specific powers of trustee.** Without limiting the
19 authority conferred by section -815, a trustee may:

20 (1) Collect trust property, accept or reject additions to
21 the trust property from a settlor or any other person,



- 1 and retain trust property, even if the trustee has a
2 personal interest in the property, until in the
3 judgment of the trustee, disposition of the property
4 should be made;
- 5 (2) Invest and reinvest trust assets and acquire or sell
6 property for cash or on credit at a public or private
7 sale;
- 8 (3) Exchange, partition, or otherwise change the character
9 of trust property;
- 10 (4) Deposit trust money in an account in a regulated
11 financial services institution, including a financial
12 institution operated by the trustee, if the deposit is
13 adequately insured or secured;
- 14 (5) Borrow money, with or without security, including from
15 a corporate trustee's lending department, and mortgage
16 or pledge trust property for a period within or
17 extending beyond the duration of the trust; or advance
18 money for the protection of the trust and for all
19 expenses, losses, and liabilities sustained in the
20 administration of the trust or because of the holding
21 or ownership of any trust assets;



- 1 (6) With respect to an interest in a proprietorship,
2 partnership, limited liability company, business
3 trust, corporation, or other form of business or
4 enterprise, continue the business or other enterprise
5 and take any action that may be taken by shareholders,
6 members, or property owners, including merging,
7 dissolving, or otherwise changing the form of business
8 organization or contributing additional capital;
- 9 (7) With respect to stocks or other securities, exercise
10 the rights of an absolute owner, including the right
11 to:
- 12 (A) Vote, or give proxies to vote, with or without
13 power of substitution, or enter into or continue
14 a voting trust agreement;
- 15 (B) Hold a security in the name of a nominee or in
16 other form without disclosure of the trust so
17 that title may pass by delivery;
- 18 (C) Pay calls, assessments, and other sums chargeable
19 or accruing against the securities and sell or
20 exercise stock option, subscription, conversion,
21 or other rights; and



- 1 (D) Deposit the securities with a depository or other
2 regulated financial services institution;
- 3 (8) With respect to an interest in real property,
4 construct, or make ordinary or extraordinary repairs
5 to, alterations to, or improvements in, buildings or
6 other structures, demolish improvements, raze existing
7 or erect new party walls or buildings, subdivide or
8 develop land, dedicate land to public use, with or
9 without consideration, or grant public or private
10 easements, and make or vacate plats and adjust
11 boundaries;
- 12 (9) Enter into a lease for any purpose as lessor or
13 lessee, including a lease or other arrangement for
14 exploration and removal of natural resources, with or
15 without the option to purchase or renew, for a period
16 within or extending beyond the duration of the trust;
- 17 (10) Grant an option involving a sale, lease, or other
18 disposition of trust property or acquire an option for
19 the acquisition of property, including an option
20 exercisable beyond the duration of the trust, and
21 exercise an option so acquired;



- 1 (11) Insure the property of the trust against damage or
2 loss and insure the trustee, the trustee's agents, and
3 beneficiaries against liability arising from the
4 administration of the trust;
- 5 (12) Abandon or decline to administer property of no value
6 or of insufficient value to justify its collection or
7 continued administration;
- 8 (13) With respect to possible liability for violation of
9 environmental law:
- 10 (A) Inspect or investigate property the trustee holds
11 or has been asked to hold, or property owned or
12 operated by an organization in which the trustee
13 holds or has been asked to hold an interest, for
14 the purpose of determining the application of
15 environmental law with respect to the property;
- 16 (B) Take action to prevent, abate, or otherwise
17 remedy any actual or potential violation of any
18 environmental law affecting property held
19 directly or indirectly by the trustee, whether
20 taken before or after the assertion of a claim or
21 the initiation of governmental enforcement;



- 1 (C) Decline to accept property into trust or disclaim
- 2 any power with respect to property that is or may
- 3 be burdened with liability for violation of
- 4 environmental law;
- 5 (D) Compromise claims against the trust that may be
- 6 asserted for an alleged violation of
- 7 environmental law; and
- 8 (E) Pay the expense of any inspection, review,
- 9 abatement, or remedial action to comply with
- 10 environmental law;
- 11 (14) Pay or contest any claim, settle a claim by or against
- 12 the trust, and release, in whole or in part, a claim
- 13 belonging to the trust;
- 14 (15) Pay taxes, assessments, compensation of the trustee
- 15 and of employees and agents of the trust, and other
- 16 expenses incurred in the administration of the trust;
- 17 (16) Exercise elections with respect to federal, state, and
- 18 local taxes;
- 19 (17) Select a mode of payment under any employee benefit or
- 20 retirement plan, annuity, or life insurance payable to
- 21 the trustee, exercise rights thereunder, including



1 exercise of the right to indemnification for expenses
2 and against liabilities, and take appropriate action
3 to collect the proceeds;

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

9 (19) Pledge trust property to guarantee loans made by
10 others to the beneficiary or to an entity in which the
11 trust or beneficiary has an ownership interest;
12 provided, however, that this power shall not apply to
13 any beneficiary whose interest is subject to a
14 spendthrift provision;

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



- 1 (21) Pay an amount distributable to a beneficiary who is
2 under a legal disability or who the trustee reasonably
3 believes is incapacitated, by paying it directly to
4 the beneficiary or applying it for the beneficiary's
5 benefit, or by:
- 6 (A) Paying it to the beneficiary's conservator or, if
7 the beneficiary does not have a conservator, the
8 beneficiary's guardian;
- 9 (B) Paying it to the beneficiary's custodian under
10 chapter 553A, the Uniform Transfers to Minors
11 Act, or custodial trustee under chapter 554B, the
12 Uniform Custodial Trust Act, and, for that
13 purpose, creating a custodianship or custodial
14 trust;
- 15 (C) If the trustee does not know of a conservator,
16 guardian, custodian, or custodial trustee, paying
17 it to an adult relative or other person having
18 legal or physical care or custody of the
19 beneficiary, to be expended on the beneficiary's
20 behalf;



- 1 (D) Managing it as a separate fund on the
- 2 beneficiary's behalf, subject to the
- 3 beneficiary's continuing right to withdraw the
- 4 distribution; or
- 5 (E) Creating or funding a plan under section 529 of
- 6 the Internal Revenue Code of 1986, in effect on
- 7 July 1, 2003, for the beneficiary's benefit;
- 8 (22) On distribution of trust property or the division or
- 9 termination of a trust, make distributions in divided
- 10 or undivided interests, allocate particular assets in
- 11 proportionate or disproportionate shares, value the
- 12 trust property for those purposes, and adjust for
- 13 resulting differences in valuation;
- 14 (23) Resolve a dispute concerning the interpretation of the
- 15 trust or its administration by mediation, arbitration,
- 16 or other procedure for alternative dispute resolution;
- 17 (24) Prosecute or defend an action, claim, or judicial
- 18 proceeding in any jurisdiction to protect trust
- 19 property and the trustee in the performance of the
- 20 trustee's duties, including petitioning the court for



- 1 approval of accounts and termination and discharge of
2 the trustee;
- 3 (25) Sign and deliver contracts and other instruments that
4 are useful to achieve or facilitate the exercise of
5 the trustee's powers;
- 6 (26) On termination of the trust, exercise the powers
7 appropriate to wind up the administration of the trust
8 and distribute the trust property to the persons
9 entitled to it;
- 10 (27) Divide, sever, or separate a single trust into two or
11 more separate trusts or merge two or more separate
12 trusts into a single trust for administration or tax
13 purposes, including the allocation of the generation-
14 skipping transfer exemption; provided the terms of the
15 new trust provide, in the aggregate, for the same
16 succession of interests and beneficiaries as are
17 provided in the original trust; and
- 18 (28) Employ persons, including attorneys, auditors,
19 investment advisors, or agents, even if they are
20 associated with the trustee, to advise or assist the
21 trustee in performance of the trustee's administrative



1 duties; act without independent investigation upon
2 their recommendations; and instead of acting
3 personally, employ one or more agents to perform any
4 act of administration, whether or not discretionary.

5 § -817 Distribution upon termination. (a) Upon
6 termination or partial termination of a trust, the trustee may
7 send to the beneficiaries a proposal for distribution. The
8 right of any beneficiary to object to the proposed distribution
9 terminates if the beneficiary does not notify the trustee of an
10 objection within sixty days after the proposal was sent but only
11 if the proposal informed the beneficiary of the right to object
12 and of the time allowed for objection.

13 (b) Upon the occurrence of an event terminating or
14 partially terminating a trust, the trustee shall proceed
15 expeditiously to distribute the trust property to the persons
16 entitled to it, subject to the right of the trustee to retain a
17 reasonable reserve for the payment of debts, expenses, and
18 taxes.

19 (c) A release by a beneficiary of a trustee from liability
20 for breach of trust is invalid to the extent:

21 (1) It was induced by improper conduct of the trustee; or



1 (2) The trustee failed to adequately disclose to the
 2 beneficiary, at the time of the release, the material
 3 facts relating to the breach or sufficient information
 4 to enable the beneficiary to know of a potential claim
 5 or to inquire into the existence of a breach or
 6 potential claim.

7 (d) A person who receives a distribution from a trust that
 8 has terminated is liable to return the distribution to the
 9 extent that it is subsequently determined that the person was
 10 not entitled to the distribution.

11 **ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT**

12 § -901 Prudent investor rule. (a) Except as otherwise
 13 provided in subsection (b), a trustee who invests and manages
 14 trust assets owes a duty to the beneficiaries of the trust to
 15 comply with the prudent investor rule set forth in this article.

16 (b) The prudent investor rule, a default rule, may be
 17 expanded, restricted, eliminated, or otherwise altered by the
 18 provisions of a trust. A trustee is not liable to a beneficiary
 19 to the extent that the trustee acted in reasonable reliance on
 20 the provisions of the trust.



1 § -902 Standard of care; portfolio strategy; risk and
2 return objectives. (a) A trustee shall invest and manage trust
3 assets as a prudent investor would by considering the purposes,
4 terms, distribution requirements, and other circumstances of the
5 trust. In satisfying this standard, the trustee shall exercise
6 reasonable care, skill, and caution.

7 (b) A trustee's investment and management decisions
8 respecting individual assets shall be evaluated not in
9 isolation, but in the context of the trust portfolio as a whole
10 and as a part of an overall investment strategy having risk and
11 return objectives reasonably suited to the trust.

12 (c) Among circumstances that a trustee shall consider in
13 investing and managing trust assets are such of the following as
14 are relevant to the trust or its beneficiaries:

- 15 (1) General economic conditions;
16 (2) The possible effect of inflation or deflation;
17 (3) The expected tax consequences of investment decisions
18 or strategies;
19 (4) The role that each investment or course of action
20 plays within the overall trust portfolio, which may
21 include financial assets, interests in closely held



- 1 enterprises, tangible and intangible personal
2 property, and real property;
- 3 (5) The expected total return from income and the
4 appreciation of capital;
- 5 (6) Other resources of the beneficiaries;
- 6 (7) Needs for liquidity, regularity of income, and
7 preservation or appreciation of capital; and
- 8 (8) An asset's special relationship or special value, if
9 any, to the purposes of the trust or to one or more of
10 the beneficiaries.
- 11 (d) A trustee shall make a reasonable effort to verify
12 facts relevant to the investment and management of trust assets.
- 13 (e) A trustee may invest in any kind of property or type
14 of investment consistent with the standards of this chapter.
- 15 **§ -903 Diversification.** A trustee shall diversify the
16 investments of the trust unless the trustee reasonably
17 determines that, because of special circumstances or directives
18 of the trust, the purposes of the trust are better served
19 without diversifying.
- 20 **§ -904 Duties at inception of trusteeship.** Within a
21 reasonable time after accepting a trusteeship or receiving trust



1 assets, a trustee shall review the trust assets and make and
2 implement decisions concerning the retention and disposition of
3 assets in order to bring the trust portfolio into compliance
4 with the purposes, terms, distribution requirements, and other
5 circumstances of the trust and with the requirements of this
6 article.

7 § -905 **Reviewing compliance.** Compliance with the
8 prudent investor rule is determined in light of the facts and
9 circumstances existing at the time of a trustee's decision or
10 action and not by hindsight.

11 § -906 **Language invoking standard of article.** The
12 following terms or comparable language in the provisions of a
13 trust, unless otherwise limited or modified, authorizes any
14 investment or strategy permitted under this article:
15 "authorized investments"; "investments permissible by law for
16 investment of trust funds"; "legal investments"; "prudent
17 investor rule"; "prudent man rule"; "prudent person rule";
18 "prudent trustee rule"; and "using the judgment and care under
19 the circumstances then prevailing that persons of prudence,
20 discretion, and intelligence exercise in the management of their
21 own affairs, not in regard to speculation but in regard to the



1 permanent disposition of their funds, considering the probable
2 income as well as the probable safety of their capital."

3 **ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING**
4 **WITH TRUSTEE**

5 **§ -1001 Remedies for breach of trust.** (a) A violation
6 by a trustee of a duty the trustee owes to a beneficiary is a
7 breach of trust. A breach of trust may occur by reason of an
8 action or by reason of a failure to act.

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

- 11 (1) Compel the trustee to perform the trustee's duties;
- 12 (2) Enjoin the trustee from committing a breach of trust;
- 13 (3) Compel the trustee to redress a breach of trust by
- 14 paying money, restoring property, or other means;
- 15 (4) Order a trustee to account;
- 16 (5) Appoint a special fiduciary to take possession of the
- 17 trust property and administer the trust;
- 18 (6) Suspend the trustee;
- 19 (7) Remove the trustee as provided in section -706;
- 20 (8) Reduce or deny compensation to the trustee;



1 (9) Subject to section -1012, void an act of the
 2 trustee, impose a lien or a constructive trust on
 3 trust property, or trace trust property wrongfully
 4 disposed of and recover the property or its proceeds;

5 (10) Order that the trustee, not the trust, shall bear the
 6 trustee's attorney's fees and those incurred by other
 7 parties to the trust; or

8 (11) Order any other appropriate relief, including, but not
 9 limited to, punitive damages.

10 (c) The court, for cause shown, may relieve a trustee from
 11 liability for any breach of trust or wholly or partly excuse a
 12 trustee who has acted honestly and reasonably from liability for
 13 a breach of trust.

14 § -1002 Damages for breach of trust. (a) A trustee who
 15 commits a breach of trust is liable to the beneficiaries
 16 affected for the greater of:

17 (1) The amount required to restore the value of the trust
 18 property and trust distributions to what they would
 19 have been had the breach not occurred; or

20 (2) The profit the trustee made by reason of the breach.



1 (b) Except as otherwise provided in this subsection, if
2 more than one trustee is liable to the beneficiaries for a
3 breach of trust, a trustee is entitled to contribution from the
4 other trustee or trustees. In determining the amount of
5 contribution, the court shall consider the degree of fault of
6 each trustee and whether any trustee or trustees acted in bad
7 faith or with reckless indifference to the purposes of the trust
8 or the interests of the beneficiaries. A trustee who received a
9 benefit from the breach of trust is not entitled to contribution
10 from another trustee to the extent of the benefit received.

11 § -1003 **No damages in absence of breach.** Absent a
12 breach of trust, a trustee is not liable to a beneficiary for a
13 loss or depreciation in the value of trust property or for not
14 having made a profit.

15 § -1004 **Attorney's fees and costs.** (a) In a judicial
16 proceeding involving the administration, interpretation, or
17 validity of a trust, the court may award reasonable attorney's
18 fees, costs, and expenses to any party to the trust who has
19 acted in the best interest of the trust as a whole, to be paid
20 by another party or from the trust that is the subject of the
21 controversy.



1 (b) If a trustee, a nominated trustee, or a beneficiary,
2 if a trustee or a nominated trustee refuses to act, defends or
3 prosecutes any proceeding regarding the validity of a trust in
4 good faith, whether successful or not, that person is entitled
5 to receive from the trust reasonable costs, expenses, and
6 disbursements, including reasonable attorney's fees, whether or
7 not counsel has been retained on a contingency fee basis.

8 § -1005 Limitation of action against trustee. (a) A
9 beneficiary may not commence a proceeding against a trustee for
10 breach of trust more than one year after the date the
11 beneficiary or a representative of the beneficiary, as described
12 in article 3, was sent a report that adequately disclosed the
13 existence of a potential claim for breach of trust and informed
14 the beneficiary of the time allowed for commencing a proceeding.

15 (b) A report adequately discloses the existence of a
16 potential claim for breach of trust if it provides sufficient
17 information so that the beneficiary or representative knows or
18 has reason to know of the potential claim or should have
19 inquired into its existence.

20 (c) If subsection (a) does not apply, a judicial
21 proceeding by a beneficiary against a trustee for breach of



1 trust shall be commenced within three years after the first to
2 occur of:

- 3 (1) The removal or resignation of the trustee;
- 4 (2) The termination of the beneficiary's interest in the
5 trust; or
- 6 (3) The termination of the trust.

7 (d) If subsection (a) does not apply, a judicial
8 proceeding by a beneficiary against a deceased trustee for
9 breach of trust shall be commenced within the time frames set
10 forth in section 560:3-803(a).

11 § -1006 **Reliance on trust instrument.** A trustee who
12 acts in reasonable reliance on the terms of the trust as
13 expressed in the trust instrument is not liable to a beneficiary
14 for a breach of trust to the extent the breach resulted from the
15 reliance.

16 § -1007 **Event affecting administration or distribution.**
17 If the happening of an event, including marriage, divorce,
18 performance of educational requirements, or attainment of a
19 specific age, birth, or death, affects the administration or
20 distribution of a trust, a trustee who has exercised reasonable



1 care to ascertain the happening of the event is not liable for a
2 loss resulting from the trustee's lack of knowledge.

3 § -1008 **Exculpation of trustee.** A term of a trust
4 relieving a trustee of liability for breach of trust is
5 unenforceable to the extent that it:

6 (1) Relieves the trustee of liability for breach of trust
7 committed in bad faith or with reckless indifference
8 to the purposes of the trust or the interests of the
9 beneficiaries; or

10 (2) Was inserted as the result of an abuse by the trustee
11 of either a fiduciary or confidential relationship to
12 the settlor.

13 § -1009 **Beneficiary's consent, release, or ratification.**

14 A trustee is not liable to a beneficiary for breach of trust if
15 the beneficiary or the representative of the beneficiary, as
16 described in article 3, consented to the conduct constituting
17 the breach, released the trustee from liability for the breach,
18 or ratified the transaction constituting the breach, unless:

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



1 (2) At the time of the consent, release, or ratification,
2 the beneficiary did not know of the beneficiary's
3 rights or of the material facts relating to the
4 breach.

5 § -1010 Limitation on personal liability of trustee.

6 (a) Except as otherwise provided in the contract, a trustee is
7 not personally liable on a contract properly entered into in the
8 trustee's fiduciary capacity in the course of administering the
9 trust if the trustee in the contract disclosed the fiduciary
10 capacity.

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

16 (c) A claim based on a contract entered into by a trustee
17 in the trustee's fiduciary capacity, on an obligation arising
18 from ownership or control of trust property, or on a tort
19 committed in the course of administering a trust, may be
20 asserted in a judicial proceeding against the trustee in the



1 trustee's fiduciary capacity, whether or not the trustee is
2 personally liable for the claim.

3 (d) Any judgment obtained against the trustee in the
4 trustee's fiduciary capacity may be collected against the trust
5 estate. The questions of liability as between the trust estate
6 and the trustee personally may be determined in a proceeding for
7 accounting, surcharge, or indemnification or other appropriate
8 proceeding.

9 § -1011 Interest as general partner. (a) Unless
10 personal liability is imposed in the contract, a trustee who
11 holds an interest as a general partner in a general or limited
12 partnership is not personally liable on a contract entered into
13 by the partnership after the trust's acquisition of the interest
14 if the fiduciary capacity was disclosed in the contract or in a
15 statement previously filed pursuant to chapter 425, part IV, the
16 Uniform Partnership Act, or chapter 425E, Uniform Limited
17 Partnership Act.

18 (b) A trustee who holds an interest as a general partner
19 is not personally liable for torts committed by the partnership
20 or for obligations arising from ownership or control of the
21 interest unless the trustee is personally at fault.



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

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

10 § -1012 Protection of person dealing with trustee. (a)
11 A person, other than a beneficiary, who in good faith assists a
12 trustee or who in good faith and for value deals with a trustee,
13 without actual knowledge that the trustee is exceeding or
14 improperly exercising the trustee's powers, is protected from
15 liability as if the trustee properly exercised the power.

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

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



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

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

10 § -1013 Certification of trust. (a) Instead of
11 furnishing a copy of the trust instrument to a person other than
12 a beneficiary, the trustee may furnish to the person a
13 certification of trust containing the following information:

- 14 (1) That the trust exists, the date the trust instrument
15 was executed, and the name of the trust;
16 (2) The identity of the settlor;
17 (3) The identity and address of the currently acting
18 trustee;
19 (4) The powers of the trustee;



1 (5) The revocability or irrevocability of the trust and
2 the identity of any person holding a power to revoke
3 the trust;

4 (6) The authority of cotrustees to sign or otherwise
5 authenticate and whether all or less than all are
6 required in order to exercise powers of the trustee;
7 and

8 (7) If an action is to be undertaken through an agent,
9 that delegation of the action to an agent is not
10 prohibited by the trust instrument.

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

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

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

19 (e) A recipient of a certification of trust may require
20 the trustee to furnish copies of those excerpts from the
21 original trust instrument and later amendments that designate



1 the trustee and confer upon the trustee the power to act in the
2 pending transaction.

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

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

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

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



1 **ARTICLE 11. MISCELLANEOUS PROVISIONS**

2 **§ -1101 Uniformity of application and construction.** In
3 applying and construing this Uniform Act, consideration shall be
4 given to the need to promote uniformity of the law with respect
5 to its subject matter among states that enact it.

6 **§ -1102 Electronic records and signatures.** The
7 provisions of this chapter governing the legal effect, validity,
8 or enforceability of electronic records or electronic signatures
9 and of contracts formed or performed with the use of those
10 records or signatures conform to the requirements of section 102
11 of the Electronic Signatures in Global and National Commerce Act
12 (15 U.S.C. § 7002) and supersede, modify, and limit the
13 requirements of the Electronic Signatures in Global and National
14 Commerce Act.

15 **§ -1103 Severability clause.** If any provision of this
16 chapter or its application to any person or circumstances is
17 held invalid, the invalidity does not affect other provisions or
18 applications of this chapter that can be given effect without
19 the invalid provision or application, and to this end the
20 provisions of this chapter are severable.



1 § -1104 Application to existing relationships. (a)

2 Except as otherwise provided in this chapter, on the effective
3 date of this chapter:

4 (1) This chapter applies to all trusts created before, on,
5 or after its effective date;

6 (2) This chapter applies to all judicial proceedings
7 concerning trusts commenced on or after its effective
8 date;

9 (3) This chapter applies to judicial proceedings
10 concerning trusts commenced before its effective date
11 unless the court finds that application of a
12 particular provision of this chapter would
13 substantially interfere with the effective conduct of
14 the judicial proceedings or prejudice the rights of
15 the parties, in which case the particular provision of
16 this chapter does not apply and the superseded law
17 applies;

18 (4) Any rule of construction or presumption provided in
19 this chapter applies to trust instruments executed
20 before the effective date of the chapter unless there



1 is a clear indication of a contrary intent in the
2 terms of the trust; and

3 (5) An act done before the effective date of the chapter
4 is not affected by this chapter.

5 (b) If a right is acquired, extinguished, or barred upon
6 the expiration of a prescribed period that has commenced to run
7 under any other statute before the effective date of the
8 chapter, that statute continues to apply to the right even if it
9 has been repealed or superseded."

10 SECTION 3. Section 415A-2, Hawaii Revised Statutes, is
11 amended by amending the definition of "professional service" to
12 read as follows:

13 "Professional service" means any service which lawfully
14 may be rendered only by persons licensed under chapters 442,
15 448, 453, 455, 457, 459, 461, 463E, 465, 466, 471, and 605 [~~and~~
16 ~~section 554-2~~]."

17 SECTION 4. Section 554G-4.5, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) Notwithstanding subsection (b), whenever there is a
20 dispute, deadlock, or difference of opinion between a trustee
21 and an advisor, the transferor may direct that the determination



1 of the advisor shall be binding upon the trustee; provided that
2 the trustee shall bear no liability or accountability for any
3 act or transaction entered into or omitted as a result of the
4 enforcement of the advisor's determination. The trustee's
5 administrative and non-administrative fiduciary duty to the
6 beneficiaries shall be waived as to the specific act or
7 transaction entered into or omitted as a result of the
8 enforcement of the advisor's determination; provided that:

- 9 (1) The trustee dissents in writing:
- 10 (A) Before the act or transaction is completed;
- 11 (B) To a failure to act; or
- 12 (C) In a reasonably timely manner to enter into a
13 transaction; or
- 14 (2) If the advisor is appointed by the transferor under
15 the terms of the trust and section [~~560:7-302~~
16 -808(c)] applies to the trust and the advisor, the
17 trustee is not required to dissent in writing for the
18 waiver of the trustee's administrative and
19 nonadministrative fiduciary duties to the
20 beneficiaries to take effect."



1 SECTION 5. Section 556A-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "court" to read as
3 follows:

4 "Court" means the circuit court in this State having
5 jurisdiction in matters relating to powers of attorney, in the
6 case of a fiduciary or agent acting under a will or power of
7 attorney; a circuit court in this State having jurisdiction in
8 matters relating to the affairs of decedents, in the case of a
9 personal representative; a circuit court in this State having
10 jurisdiction in matters relating to the affairs of decedents or
11 the family court, depending on which court has subject matter
12 jurisdiction under section 560:5-106, in the case of a
13 conservatorship; or a court that has jurisdiction under section
14 [~~560:7-204,~~ -202, in the case of a trustee acting under a
15 trust."

16 SECTION 6. Section 560:3-703, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) A personal representative is a fiduciary who shall
19 observe the standards of care applicable to trustees as
20 described by [~~section 560:7-302.~~ sections -804, -806, and
21 -808(c). A personal representative is under a duty to settle



1 and distribute the estate of the decedent in accordance with the
2 terms of any probated and effective will and this chapter, and
3 as expeditiously and efficiently as is consistent with the best
4 interests of the estate. The personal representative shall use
5 the authority conferred upon the personal representative by this
6 chapter, the terms of the will, if any, and any order in
7 proceedings to which the personal representative is party for
8 the best interests of successors to the estate."

9 SECTION 7. Section 560:3-913, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Before distributing to a trustee, the personal
12 representative may require that the trust be registered if the
13 State in which it is to be administered provides for
14 registration and that the trustee inform the beneficiaries as
15 provided in section [~~560:7-303.~~] -813."

16 SECTION 8. Section 560:7-305, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§560:7-305 Trustee's duties; appropriate place of**
19 **administration; deviation.** A trustee is under a continuing duty
20 to administer the trust at a place appropriate to the purposes
21 of the trust and to its sound, efficient management. If the



1 principal place of administration becomes inappropriate the
2 court may for good cause enter any order furthering efficient
3 administration and the interests of beneficiaries, including, if
4 appropriate, release of registration, removal of the trustee,
5 designation of administration in another state, and appointment
6 of a trustee in another state. Trust provisions relating to the
7 place of administration and to changes in the place of
8 administration or of trustee control unless compliance would be
9 contrary to efficient administration or the purposes of the
10 trust. Views of adult beneficiaries shall be given weight
11 pursuant to section [~~554-27~~] -704(c), in determining the
12 suitability of the trustee and the place of administration."

13 SECTION 9. Section 560:7-501, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) A trust for the care of one or more designated
16 domestic or pet animals shall be subject to the following
17 provisions:

18 (1) Except as expressly provided otherwise in the
19 instrument creating the trust, [~~and notwithstanding~~
20 ~~section 554A-37~~] no portion of the principal or income
21 of the trust may be converted to the use of the



- 1 trustee or to a use contrary to the trust's purposes
2 or for the benefit of a covered animal;
- 3 (2) Upon termination, the trustee shall transfer the
4 unexpended trust property in the following order:
- 5 (A) As directed in the trust instrument;
- 6 (B) If there is no such direction in the trust
7 instrument and if the trust was created in a non-
8 residuary clause in the transferor's will, then
9 under the residuary clause in the transferor's
10 will; and
- 11 (C) If no taker is produced by the application of
12 subparagraph (A) or (B), then to the transferor's
13 heirs, determined according to section 560:2-711;
- 14 (3) The intended use of the principal or income may be
15 enforced by an individual designated for that purpose
16 in the trust instrument or, if none, by an individual
17 appointed by a court having jurisdiction over the
18 matter and parties, upon petition by an individual;
- 19 (4) Except as ordered by the court or required by the
20 trust instrument, no filing, report, registration,
21 periodic accounting, separate maintenance of funds,



1 appointment, or fee shall be required by reason of the
2 existence of the fiduciary relationship of the
3 trustee;

4 (5) The court may reduce the amount of the property
5 transferred if it determines that the amount
6 substantially exceeds the amount required for the
7 intended use and the court finds that there will be no
8 substantial adverse impact in the care, maintenance,
9 health, or appearance of the designated domestic or
10 pet animal. The amount of the reduction, if any,
11 shall pass as unexpended trust property under
12 paragraph (2);

13 (6) If a trustee is not designated or no designated
14 trustee is willing and able to serve, the court shall
15 name a trustee. The court may order the transfer of
16 the property to another trustee if the transfer is
17 necessary to ensure that the intended use is carried
18 out and if a successor is not designated in the trust
19 instrument or if no designated successor trustee
20 agrees to serve and is able to serve. The court may
21 also make other orders and determinations as are



1 advisable to carry out the intent of the transferor
2 and the purpose of this section; and

3 (7) The trust is exempt from the operation of chapter 525,
4 the Uniform Statutory Rule Against Perpetuities Act."

5 SECTION 10. Section 560:8-101, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Except as provided elsewhere in this chapter, on the
8 effective date of this chapter:

9 (1) The chapter applies to any wills of decedents dying
10 thereafter;

11 (2) The chapter applies to any proceedings in court then
12 pending or thereafter commenced regardless of the time
13 of the death of decedent except to the extent that in
14 the opinion of the court the former procedure should
15 be made applicable in a particular case in the
16 interest of justice or because of infeasibility of
17 application of the procedure of this chapter;

18 (3) Every executor of a will admitted to a probate prior
19 to July 1, 1977, in this State and every administrator
20 appointed prior to July 1, 1977, by a court of this
21 State shall be a supervised personal representative



1 with respect to the estate, and every guardian of the
 2 property appointed prior to July 1, 1976, by a court
 3 of this State shall be a guardian of the property,
 4 with only the powers conferred by this chapter and
 5 subject to the duties imposed by this chapter with
 6 respect to any act occurring or done thereafter.

7 Every guardian of a person holding an appointment on
 8 that date continues to hold the appointment but has
 9 only the powers conferred by this chapter and is
 10 subject to the duties imposed by this chapter with
 11 respect to any act occurring or done thereafter;

12 (4) The consequences of an act done before the applicable
 13 effective date in any proceeding and any accrued right
 14 is not impaired by this chapter. If a right is
 15 acquired, extinguished, or barred upon the expiration
 16 of a prescribed period of time which has commenced to
 17 run by the provisions of any statute before July 1,
 18 1977, the provisions of such statute shall remain in
 19 force with respect to that right;

20 (5) Any rule of construction or presumption provided in
 21 this chapter applies to instruments executed and



1 multiple-party accounts opened before July 1, 1976,
2 unless there is a clear indication of a contrary
3 intent; and

4 (6) Notwithstanding any of the above, this chapter shall
5 not affect any property or other rights accrued under
6 the case and statutory law of this State, including
7 but not limited to the law relating to intestacy,
8 dower and curtesy (chapters 532 and 533), which became
9 vested prior to July 1, 1977[+

10 ~~(7) Section 560:7-501 applies to governing instruments~~
11 ~~executed on or after June 24, 2005]."~~

12 SECTION 11. Chapter 554A, Hawaii Revised Statutes, is
13 repealed.

14 SECTION 12. Chapter 554C, Hawaii Revised Statutes, is
15 repealed.

16 SECTION 13. Article VII of chapter 560, Hawaii Revised
17 Statutes, is repealed.

18 SECTION 14. Section 554-2, Hawaii Revised Statutes, is
19 repealed.

20 [~~§554-2 Nomination by beneficiaries; appointment of~~
21 ~~trustees.~~ (a) ~~Whenever any appointment of a trustee under a~~



1 ~~private trust is made by any court of record, if, prior to such~~
2 ~~appointment, beneficiaries who constitute a majority both in~~
3 ~~number and interest of the beneficiaries of the trust (as~~
4 ~~hereinafter defined) nominate for the trusteeship by an~~
5 ~~instrument or instruments in writing filed in the court any~~
6 ~~qualified person or corporation worthy in the opinion of the~~
7 ~~court to be appointed, the court shall appoint the nominee as~~
8 ~~the trustee, unless the express terms of the trust provide an~~
9 ~~effective method of nomination or appointment. No person so~~
10 ~~nominated as trustee by the beneficiaries of any such trust~~
11 ~~shall be held disqualified to be appointed or to act as the~~
12 ~~trustee for the sole reason that the person is a beneficiary or~~
13 ~~a possible beneficiary under the trust estate.~~

14 ~~(b) The term "majority both in number and interest of the~~
15 ~~beneficiaries of the trust," as used in this section, means a~~
16 ~~majority of the competent adult beneficiaries holding more than~~
17 ~~one half of the value of the then vested interests held by all~~
18 ~~the competent adult beneficiaries in the trust; provided that if~~
19 ~~the guardian of any spendthrift, non compos person, or minor,~~
20 ~~owning such a vested interest, when the guardian is not an adult~~
21 ~~beneficiary, or married to an adult beneficiary, of the trust,~~



1 ~~executes or joins in the execution of any instrument of~~
2 ~~nomination and presents the same to the court (each such~~
3 ~~guardian being hereby authorized in the guardian's discretion~~
4 ~~either to execute or to refrain from executing the instrument of~~
5 ~~nomination, as in the guardian's judgment shall be in the best~~
6 ~~interest of the guardian's ward), then the spendthrift, non~~
7 ~~compos person, or minor, and the value of the spendthrift's, non~~
8 ~~compos person's, or minor's interest shall be included in~~
9 ~~determining the majority both in number and interest of the~~
10 ~~beneficiaries of the trust. The value of the then vested~~
11 ~~interests shall be determined as of the date of the presentation~~
12 ~~of the instrument or instruments of nomination to the court, in~~
13 ~~the manner provided for the appraisal of similar interests under~~
14 ~~the laws of the State for inheritance tax purposes and as the~~
15 ~~same would be valued for the purposes if the trust had been~~
16 ~~created by instrument made in contemplation of the death of the~~
17 ~~person who created the trust and the trust had come into~~
18 ~~existence and the death had occurred on the date of presentation~~
19 ~~of the instrument or instruments of nomination. When more than~~
20 ~~one instrument is presented to the court designating the same~~
21 ~~nominee, the date of presentation for the purposes of this~~



1 ~~section shall be deemed to be the date when the last instrument~~
2 ~~is so presented.~~

3 ~~(c) This section applies to trusts created before, as well~~
4 ~~as to those created after April 28, 1943."]~~

5 SECTION 15. Section 554-4, Hawaii Revised Statutes, is
6 repealed.

7 ~~["§554-4 Annual account; trustees to file. Every trustee~~
8 ~~acting under appointment of any court or under any appointment~~
9 ~~requiring the approval of any court, shall, except in cases~~
10 ~~where the prior trustee, if any, was not required by statute or~~
11 ~~the instrument creating the trust or appointing the trustee to~~
12 ~~file such an account, file annually with the court having~~
13 ~~jurisdiction thereof an account showing in detail all receipts~~
14 ~~and disbursements, together with a full and detailed inventory~~
15 ~~of all property in the trustee's possession or under the~~
16 ~~trustee's control; provided that the court in cases in which it~~
17 ~~deems it advisable in the interests of the beneficiaries may~~
18 ~~permit the accounts to be filed biennially or triennially~~
19 ~~instead of annually or, if they are filed annually, may permit~~
20 ~~them to accumulate to be passed upon biennially or triennially;~~
21 ~~and provided further that the court on its own examination or~~



1 ~~that of its clerk, shall, without reference to a master, pass~~
2 ~~upon the accounts in cases in which the annual income does not~~
3 ~~exceed \$1,000, except in the case of a final account when the~~
4 ~~court may refer the same to a master, irrespective of the amount~~
5 ~~of the annual income, if for any reason it is deemed proper or~~
6 ~~necessary. If any such trustee fails to file an account as~~
7 ~~herein required, the clerk of the court in which the trustee is~~
8 ~~required to file the account, shall notify the trustee promptly~~
9 ~~of such failure, and, if the trustee fails to file the account~~
10 ~~within thirty days after such notification, the trustee shall be~~
11 ~~cited to appear before the court and be required to show cause~~
12 ~~why the trustee should not be punished for contempt of court as~~
13 ~~provided by section 710 1077 and the trustee shall be subject to~~
14 ~~all of the penalties in such section provided. The court may~~
15 ~~also, in its discretion, remove any such trustee.~~

16 ~~Unless otherwise required by the instrument creating the~~
17 ~~trust, nothing in this section shall be construed to require the~~
18 ~~filing of an annual account by a trustee or trustees appointed~~
19 ~~by the court as additional trustee or trustees to serve with or~~
20 ~~in the place and stead of a trustee or trustees appointed in the~~
21 ~~instrument creating a trust, nor by a trustee whose appointment~~



1 ~~is made in accordance with or pursuant to the instrument~~
2 ~~creating the trust where such appointment has been confirmed by~~
3 ~~any court in proceedings brought to secure the confirmation or~~
4 ~~approval thereof. This provision applies to trusts existing on~~
5 ~~May 13, 1935, and appointments made thereunder as well as to~~
6 ~~future trusts."]~~

7 SECTION 16. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 17. This Act shall take effect on January 1, 2022.



Report Title:

Judiciary Package; Uniform Trust Code

Description:

Enacts the Uniform Trust Code (2018). Repeals the Uniform Trustees' Powers Act, Uniform Prudent Investors Act, and article VII (trust administration) of the Uniform Probate Code. Takes effect 1/1/2022. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

