

A Bill for an Act Relating to the Uniform Trust Code.

Be It Enacted by the Legislature of the State of Hawaii:

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

The legislature further finds that the Uniform Trust Code will significantly reduce the time, complexity, and expense of trust proceedings and, in certain instances, allow for nonjudicial resolution of trust issues that currently require court intervention. At the same time, the Uniform Trust Code provides ready access to a judge if either a dispute arises during the course of trust administration or the interested parties desire judicial supervision. The Uniform Trust Code also provides greater clarity and certainty in many areas of trust law that are exceedingly thin or without precedent in Hawaii.

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

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

**“CHAPTER
UNIFORM TRUST CODE**

PART I. GENERAL PROVISIONS AND DEFINITIONS

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

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

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

“Action”, with respect to an act of a trustee, includes a failure to act.

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

“Beneficiary” means a person who:

- (1) Has a present or future beneficial interest in a trust, vested or contingent; or
- (2) In a capacity other than that of trustee, holds a power of appointment over trust property.

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

“Conservator” means a person appointed by the court to administer the estate of a minor or adult individual.

“Court” means the circuit court in this State having jurisdiction over all subject matter relating to trusts.

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

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

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

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

“Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

“Jurisdiction”, with respect to a geographic area, includes a state or country.

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

“Power of withdrawal” means a presently exercisable general power of appointment other than a power:

- (1) Exercisable by a trustee and limited by an ascertainable standard; or
- (2) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

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

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

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

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

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

“Spendthrift provision” means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary’s interest.

“Spouse” includes individuals who are married to each other and individuals who are reciprocal beneficiaries.

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

“Terms of a trust” means:

- (1) Except as otherwise provided in paragraph (2), the manifestation of the settlor’s intent regarding a trust’s provisions as:
 - (A) Expressed in the trust instrument; or
 - (B) Established by other evidence that would be admissible in a judicial proceeding; or
- (2) The trust’s provisions, as established, determined, or amended by:
 - (A) A trustee or other person in accordance with applicable law;
 - (B) A court order; or
 - (C) A nonjudicial settlement agreement under section -111.

“Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

“Trustee” includes an original, additional, and successor trustee, and a cotrustee.

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

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

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

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

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

- (1) The requirements for creating a trust;
- (2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
- (3) The requirement that a trust and its terms be for the benefit of its beneficiaries as their interests are defined by the terms of the trust and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) The power of the court to modify or terminate a trust under sections -410 through -416;
- (5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in part V;

- (6) The power of the court under section -702 to require, dispense with, or modify or terminate a bond;
- (7) The power of the court under section -708(b) to adjust a trustee's compensation, specified in the terms of the trust, that is unreasonably low or high;
- (8) The duty under section -813(c)(2) and (3) to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee, and of their right to request trustee reports;
- (9) The duty under section -813(b) to respond to the request of a qualified beneficiary of an irrevocable trust for trustee reports and other information reasonably related to the administration of a trust;
- (10) The effect of an exculpatory term under section -1008;
- (11) The rights under sections -1010 through -1013 of a person other than a trustee or beneficiary;
- (12) Periods of limitation for commencing a judicial proceeding;
- (13) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice; and
- (14) The subject matter jurisdiction of the court and venue for commencing a proceeding, as provided in sections -203 and -204.

§ -106 Common law of trusts; principles of equity. The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another law of this State.

§ -107 Governing law. The meaning and effect of the terms of a trust are determined by:

- (1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or
- (2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

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

- (1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
- (2) All or part of the administration occurs in the designated jurisdiction.
- (b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

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

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration no less than sixty days before initiating the transfer. The notice of proposed transfer shall include:

- (1) The name of the jurisdiction to which the principal place of administration is to be transferred;
 - (2) The address and telephone number at the new location at which the trustee can be contacted;
 - (3) An explanation of the reasons for the proposed transfer;
 - (4) The date on which the proposed transfer is anticipated to occur; and
 - (5) The date, no less than sixty days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.
- (e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.
- (f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section -704.

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

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

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

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

§ -110 Others treated as qualified beneficiaries. (a) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

- (1) Is a distributee or permissible distributee of trust income or principal;
- (2) Would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or
- (3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(b) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose, as provided in section -408 or -409, has the rights of a qualified beneficiary under this chapter.

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

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

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

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

- (1) The interpretation or construction of the terms of the trust;
- (2) The approval of a trustee's report or accounting;
- (3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) The resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) Transfer of a trust's principal place of administration; and
- (6) Liability of a trustee for an action relating to the trust.

(d) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in part III was adequate, and to determine whether the agreement contains terms and conditions that the court could have properly approved.

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

§ -112 **Rules of construction.** The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply, as appropriate, to the interpretation of the terms of a trust and the disposition of the trust property.

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

- (1) The insured is:
 - (A) A settlor of the trust; or
 - (B) An individual in whom a settlor of the trust has, or would have had if living when the policy was issued, an insurable interest; and
- (2) The life insurance proceeds are primarily for the benefit of one or more trust beneficiaries who have an insurable interest in the life of the insured.

(b) This section applies to any trust existing before, on, or after the effective date of this section, regardless of the effective date of the governing instrument under which the trust was created, but only as to a life insurance policy that is in force and for which an insured is alive on or after the effective date of this section.

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

PART II. JUDICIAL PROCEEDINGS

§ -201 **Role of court in administration of trust.** (a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

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

(c) A judicial proceeding involving a trust may relate to any matter involving the internal affairs of trusts, including a proceeding to:

- (1) Appoint or remove a trustee;
- (2) Review or determine a trustee's compensation;
- (3) Review a trustee's report or accounting or compel a trustee to report or account;
- (4) Ascertain beneficiaries;
- (5) Determine any question arising in the administration or distribution of any trust, including questions of construction of trust terms;
- (6) Request instructions to trustees; and
- (7) Determine the existence or nonexistence of any immunity, power, privilege, duty, or right.

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

§ -202 **Jurisdiction over trustee and beneficiary.** (a) By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.

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

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

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

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

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

(b) The court has concurrent jurisdiction with other courts of this State of actions and proceedings involving a trust, including:

- (1) Proceedings to determine the existence or nonexistence of trusts created other than by will;
- (2) Actions by or against creditors or debtors of trusts; and
- (3) Other actions and proceedings involving trustees and third parties.

§ -204 **Venue.** (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the judicial circuit of this State in which the trust's principal place of administration is or will be located

and, if the trust is created by will and the estate is not yet closed, in the judicial circuit in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in:

- (1) A judicial circuit of this State in which a beneficiary resides;
- (2) A judicial circuit in which any trust property is located;
- (3) If the trust is created by will, the judicial circuit in which the decedent's estate was or is being administered; or
- (4) The judicial circuit where the nominated trustee resides or has its principal place of business.

PART III. REPRESENTATION

§ -301 Representation; basic effect. (a) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

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

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

(d) A settlor shall not represent and bind a beneficiary under this part with respect to the termination or modification of a trust under section -411(a).

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

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

- (1) A conservator may represent and bind the estate that the conservator controls;
- (2) A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;
- (3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (4) A trustee may represent and bind the beneficiaries of the trust;
- (5) A personal representative of a decedent's estate may represent and bind persons interested in the estate;
- (6) A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed. The parent entitled to represent and bind the child is determined in the following order of priority:
 - (A) The parent who is a lineal descendant of a settlor;
 - (B) The parent who is a beneficiary of the trust that is the subject of the representation;
 - (C) The parent with legal custody of the child; and
 - (D) If one parent cannot be determined pursuant to the preceding criteria and if a disagreement arises between the parties seek-

- ing to represent the same child, a guardian ad litem shall be appointed to represent the minor child; and
- (7) A qualified beneficiary may represent and bind any beneficiary who may succeed to the qualified beneficiary's interest under the terms of the trust or pursuant to the exercise of a power of appointment.

§ -304 Representation by person having substantially identical interest.

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

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

(b) A guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this chapter, regardless of whether a judicial proceeding concerning the trust is pending.

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

PART IV. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

§ -401 Methods of creating trust. A trust may be created by:

- (1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee;
- (3) Exercise of a power of appointment in favor of a trustee; or
- (4) A court pursuant to its statutory or equitable powers.

§ -402 Requirements for creation. (a) A trust is created only if:

- (1) The settlor has capacity to create a trust;
- (2) The settlor indicates an intention to create the trust;
- (3) The trust has a definite beneficiary or is:
 - (A) A charitable trust;
 - (B) A trust for the care of an animal, as provided in section -408; or
 - (C) A trust for a noncharitable purpose, as provided in section -409; and
- (4) The trustee has duties to perform.

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

(c) A power in a trustee, or in another person under the terms of the trust, to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to

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

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

- (1) The trust is created by an agent of the settlor under a power of attorney that specifically authorizes the creation of a trust; and
- (2) The settlor had capacity to create a trust when the power of attorney was executed.

§ -403 **Trusts created in other jurisdictions.** A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

- (1) The settlor was domiciled, had a place of abode, or was a national;
- (2) A trustee was domiciled or had a place of business; or
- (3) Any trust property was located.

Unless otherwise provided in the trust instrument, this section shall also apply to trust amendments.

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

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

(b) If the terms of a charitable trust do not indicate or otherwise provide for selection of a particular charitable purpose or beneficiary, the trustee or other person authorized by the terms of the trust or, if none, the court may select one or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

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

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

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

(b) Except as required by law other than this chapter, a trust need not be evidenced by a trust instrument, but the establishment of a missing trust and its terms may be established by clear and convincing evidence. In the absence of clear and convincing evidence to establish the existence or terms and provisions of a missing trust, the existence of or the terms and provisions of a missing trust may be established by court order; provided that, in the circumstances and upon appropriate notice, it would be fair and equitable to do so. This section does not preclude a court from ordering relief otherwise allowed by law.

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

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

- (1) Except as expressly provided otherwise in the instrument creating the trust, and notwithstanding section -816, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use contrary to the trust's purposes or for the benefit of a covered animal;
- (2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:
 - (A) As directed in the trust instrument;
 - (B) If there is no direction in the trust instrument and if the trust was created in a non-residuary clause in the transferor's will, then under the residuary clause in the transferor's will; and
 - (C) If no taker is produced by the application of subparagraph (A) or (B), then to the transferor's heirs, determined according to section 560:2-711;
- (3) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed;
- (4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee shall be required by reason of the existence of the fiduciary relationship of the trustee;
- (5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health, or appearance of the designated domestic or pet animal; provided that the amount of the reduction, if any, shall pass as unexpended trust property under paragraph (2);
- (6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out and if a successor is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section; and
- (7) The trust is exempt from the operation of chapter 525, the Uniform Statutory Rule Against Perpetuities.

§ -409 Noncharitable trust without ascertainable beneficiary. Except as otherwise provided in section -408 or by other law, the following rules apply:

- (1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee;
- (2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court; and
- (3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use; provided that, except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living; otherwise pursuant to the terms of the settlor's will; or, if none, to the settlor's successors in interest.

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

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

§ -411 Modification or termination of noncharitable irrevocable trust by consent. (a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by:

- (1) An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust;
- (2) The settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or
- (3) The settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

This subsection does not apply to irrevocable trusts created before or to revocable trusts that become irrevocable before the effective date of this chapter.

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

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

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

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

- (1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
- (2) The interests of a beneficiary who does not consent will be adequately protected.

§ -412 Modification or termination because of unanticipated circumstances or inability to administer trust effectively. (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intention.

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

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

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

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

(b) Subsection (a) shall not apply if the document creating the charitable interest expressly provides for an alternate disposition of the charitable interest if the charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful. A general residuary disposition by trust shall not be considered an express provision for an alternate disposition. In addition, if the alternative plan is also a charitable trust and that trust fails, the intention shown in the original plan shall prevail in the application of this section.

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

§ -414 Modification or termination of uneconomic trust. (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value of less than \$100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

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

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

§ -415 Reformation to correct mistakes. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's

intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

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

§ **-417 Combination and division of trusts.** After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts before the combination. The terms of each new trust created by a division under this section shall provide, in the aggregate, for the same succession of interests and beneficiaries as are provided in the original trust.

PART V. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

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

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

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

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

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

- (1) A beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance; and
- (2) A claim of this State or the United States to the extent a law of this State or federal law so provides.

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

§ **-504 Discretionary trusts; effect of standard.** (a) Except as otherwise provided in subsection (b), regardless of whether a trust contains a spend-

thrift provision, a creditor of a beneficiary shall not compel a distribution that is subject to the trustee's discretion, even if:

- (1) The discretion is expressed in the form of a standard of distribution; or
 - (2) The trustee has abused the discretion.
- (b) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:
- (1) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and
 - (2) The court shall direct the trustee to pay to or for the benefit of the beneficiary's child, an amount as is equitable under the circumstances but no more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.
- (c) This section shall not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.
- (d) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor shall not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

§ -505 Creditor's claim against settlor. (a) Regardless of whether the terms of a trust contain a spendthrift provision, the following rules shall apply:

- (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors;
 - (2) Except as provided in chapter 554G, with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and
 - (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse or reciprocal beneficiary and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.
- (b) For purposes of this section:
- (1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and
 - (2) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, as amended, or section 2503(b) of the Inter-

nal Revenue Code of 1986, as amended, in each case as in effect on the effective date of this chapter.

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

§ -506 Overdue distribution. (a) Regardless of whether a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

(b) As used in this section, “mandatory distribution” means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. “Mandatory distribution” does not include a distribution subject to the exercise of the trustee’s discretion even if:

- (1) The discretion is expressed in the form of a standard of distribution; or
- (2) The terms of the trust authorizing a distribution couple language of discretion with language of direction.

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

PART VI. REVOCABLE TRUSTS

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

§ -602 Revocation or amendment of revocable trust. (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection shall not apply to a trust created under an instrument executed before the effective date of this chapter.

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

- (1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone, but may be amended only by joint action of both spouses;
- (2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor’s contribution; and
- (3) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust, including requiring a higher level of capacity to amend or revoke, or, if the terms of the trust do not provide a method of amendment or revocation, by any written and signed method manifesting clear and convincing evidence of the settlor’s intent.

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

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

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

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

§ -603 Settlor's powers; powers of withdrawal. (a) While the settlor of a revocable trust is alive, rights of the beneficiaries are subject to the control of the settlor, the duties of the trustee are owed exclusively to the settlor, and beneficiaries other than the settlor have no right to receive notice, information, or reports under section -813.

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

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

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

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

- (1) The trustee has actual knowledge of a pending judicial proceeding contesting the validity of the trust; or
 - (2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.
- (c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

PART VII. OFFICE OF TRUSTEE

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

- (1) By substantially complying with a method of acceptance provided in the terms of the trust; or
- (2) If the terms of the trust do not provide a method of acceptance or the method provided in the terms of the trust is not expressly made exclusive, by knowingly accepting delivery of the trust property, knowingly exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

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

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

- (1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none or unknown, to a qualified beneficiary; and
- (2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

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

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

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

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

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

(c) Subject to the settlor's powers to direct under section -808, a cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

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

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

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

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

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

- (1) Prevent a cotrustee from committing a serious breach of trust; and
- (2) Compel a cotrustee to redress a serious breach of trust.

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

§ -704 Vacancy in trusteeship; appointment of successor. (a) A vacancy in a trusteeship occurs if:

- (1) A person designated as trustee rejects the trusteeship;
- (2) A person designated as trustee cannot be identified, cannot be located, or does not exist;
- (3) A trustee resigns;
- (4) A trustee is disqualified, incapacitated, or removed;
- (5) A trustee dies; or
- (6) A guardian or conservator is appointed for an individual serving as trustee.

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

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

- (1) By a person designated in the terms of the trust to act as successor trustee or a person named in the trust who has authority to appoint a successor trustee;
- (2) By a person selected by unanimous agreement of the qualified beneficiaries; or
- (3) By a person appointed by the court.

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

- (1) By a person designated in the terms of the trust to act as successor trustee or a person named in the trust who has authority to appoint a successor trustee;
- (2) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or
- (3) By a person appointed by the court.

(e) Regardless of whether a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

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

- (1) For a revocable trust, upon at least thirty days' notice to the settlor, if living, or if incapacitated, to the settlor's duly appointed agent or conservator, if any, and all cotrustees or, if none, to the designated successor trustee or trustees;
- (2) For an irrevocable trust, upon at least thirty days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees or, if none, to the designated successor trustee or trustees; or
- (3) With the approval of the court.

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

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

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

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

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

(c) The court may remove a trustee if:

- (1) The trustee has committed a serious breach of trust;
- (2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (3) Because of unfitness, unwillingness, persistent failure of the trustee to administer the trust effectively, or any other reason, the court determines removal of the trustee best serves the interests of the beneficiaries; or
- (4) Removal of the trustee best serves the interests of all beneficiaries and:
 - (A) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries;
 - (B) Removal is not inconsistent with a material purpose of the trust; and
 - (C) A suitable cotrustee or successor trustee is available.

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

§ -707 Delivery of property by former trustee. (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee, or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

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

§ -708 Compensation of trustee. (a) A trustee's compensation shall be as set forth in sections 607-18 and 607-20, as appropriate.

(b) On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee, including any attorney, auditor, investment advisor, or other specialized agent or assistant; the reasonableness of the compensation of any person so employed; the reasonableness of the determination of trust estate value or income made by the trustee for the purpose of computing the fee allowed by sections 607-18 and 607-20; and the reasonableness of any additional compensation for special services under sections 607-18 and 607-20. Any person who has

received excessive compensation from a trust may be ordered to make appropriate refunds.

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

- (1) Expenses that were properly incurred in the administration of the trust, including the defense or prosecution of any action, whether successful or not, unless the trustee is determined to have wilfully or wantonly committed a material breach of trust; or
- (2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

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

PART VIII. DUTIES AND POWERS OF TRUSTEE

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

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

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

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

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

- (1) The trustee's spouse, or the spouse's descendants, siblings, or ancestors, and their spouses;
- (2) The trustee's descendants, siblings, ancestors, or their spouses;
- (3) An agent or attorney of the trustee;
- (4) A corporation or other person or enterprise in which the trustee has such a substantial interest that it might affect the trustee's best judgment; or

(5) A corporation or other person or enterprise that has such a substantial interest in the trustee that it might affect the trustee's best judgment.

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

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

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

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

- (1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
- (2) Payment of reasonable compensation to the trustee;
- (3) A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;
- (4) A deposit of trust money in a regulated financial-service institution operated by the trustee; or
- (5) An advance by the trustee of money for the protection of the trust.

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ -803 Impartiality. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

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

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

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

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

- (1) Selecting an agent;
 - (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - (3) Periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.
- (b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- (c) A trustee who complies with subsection (a) shall not be liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

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

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

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

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

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

- (1) Where one or more persons are given authority by the terms of a trust and accept this authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or any other decision of the trustee, those persons shall be considered to be advisors and shall have the duties and obligations of fiduciaries when exercising the given authority, unless the trust provides otherwise;
- (2) If a trust provides that a trustee is to follow the direction of an advisor and the trustee acts in accordance with the advisor's direction, then, except in cases of wilful misconduct or gross negligence on the part of the trustee so directed, the trustee shall not be liable for any loss resulting directly or indirectly from any such act;
- (3) If a trust provides that a trustee is to make decisions with the consent of an advisor, then, except in cases of wilful misconduct or gross negligence on the part of the trustee, the trustee shall not be liable for any loss resulting directly or indirectly from any act taken

- or omitted as a result of the advisor's failure to provide consent after having been requested to do so by the trustee; and
- (4) Whenever a trust provides that a trustee is to follow the direction of an advisor with respect to investment decisions, distribution decisions, or any other decision of the trustee, then, except to the extent that the terms of the trust provide otherwise, the trustee shall have no duty to:
- (A) Monitor the conduct of the advisor;
 - (B) Provide advice to the advisor or consult with the advisor; or
 - (C) Communicate with, warn, or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the advisor.

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

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

(e) For purposes of this section:

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

- (1) Remove and appoint trustees, advisors, trust committee members, and other protectors;
- (2) Modify or amend the trust to achieve a favorable tax status or to facilitate the efficient administration of the trust; and
- (3) Modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust.

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

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

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

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

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

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

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

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

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

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

§ -813 Duty to inform and report. (a) During the lifetime of the settlor of a revocable trust, regardless of whether the settlor has capacity to revoke the trust, the trustee's duties under this section are owed exclusively to the settlor. If the settlor lacks capacity to revoke the trust, a trustee may satisfy the trustee's duties under this section by providing information and reports to any one or more of the following in the order of preference listed:

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

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

(b) After the settlor's death, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust.

- (c) After the settlor's death, a trustee:
- (1) Upon request of a qualified beneficiary, shall promptly furnish to the qualified beneficiary a copy of the trust instrument;
 - (2) Within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;
 - (3) Within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (d); and

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

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

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

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

(g) Every trustee acting under appointment of any court or under any appointment requiring the approval of any court shall, except where the prior trustee, if any, was not required by statute or the instrument creating the trust or appointing the trustee to file an account, file annually with the court having jurisdiction thereof an account showing in detail all receipts and disbursements, together with a full and detailed inventory of all property in the trustee's possession or under the trustee's control; provided that the court, when it deems it advisable in the interests of the beneficiaries, may permit the accounts to be filed biennially or triennially instead of annually or, if they are filed annually, may permit them to accumulate to be passed upon biennially or triennially; provided further that the court on its own examination or that of its clerk shall, without reference to a master, pass upon the accounts when the annual income does not exceed \$1,000, except in the case of a final account when the court may refer the same to a master, irrespective of the amount of the annual income, if for any reason it is deemed proper or necessary. If any trustee fails to file an account as required in this section, the clerk of the court in which the trustee is required to file the account shall notify the trustee promptly of the failure, and if the trustee fails to file the account within thirty days after the notification, the trustee shall be cited to appear before the court and be required to show cause why the trustee should not be punished for contempt of court as provided by section 710-1077, and the trustee shall be subject to all of the penalties provided in that section. The court may also, in its discretion, remove the trustee.

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

(i) Subsection (c)(2) and (3) shall not apply to:

- (1) A trustee who accepts a trusteeship before the effective date of this chapter;
- (2) An irrevocable trust created before the effective date of this chapter;
or
- (3) A revocable trust that becomes irrevocable before the effective date of this chapter.

§ -814 Discretionary powers; tax savings. (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as “absolute”, “sole”, or “uncontrolled”, the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

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

- (1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard; and
- (2) A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

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

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

- (1) A power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter was previously allowed;
- (2) Any trust during any period that the trust may be revoked or amended by its settlor; or
- (3) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter.

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

- (1) Powers conferred by the terms of the trust; and
- (2) Except as limited by the terms of the trust:
 - (A) All powers over the trust property that an unmarried competent owner has over individually owned property;
 - (B) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and
 - (C) Any other powers conferred by this chapter.

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

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

- (1) Collect trust property, accept or reject additions to the trust property from a settlor or any other person, and retain trust property, even if the trustee has a personal interest in the property, until in the judgment of the trustee, disposition of the property should be made;
- (2) Invest and reinvest trust assets and acquire or sell property for cash or on credit at a public or private sale;
- (3) Exchange, partition, or otherwise change the character of trust property;

- (4) Deposit trust money in an account in a regulated financial services institution, including a financial institution operated by the trustee, if the deposit is adequately insured or secured;
- (5) Borrow money, with or without security, including from a corporate trustee's lending department, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust; or advance money for the protection of the trust and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets;
- (6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- (7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - (B) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - (C) Pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock option, subscription, conversion, or other rights; and
 - (D) Deposit the securities with a depository or other regulated financial services institution;
- (8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use, with or without consideration, or grant public or private easements, and make or vacate plats and adjust boundaries;
- (9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;
- (10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;
- (11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;
- (12) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
- (13) With respect to possible liability for violation of environmental law:
 - (A) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;
 - (B) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting prop-

- erty held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;
- (C) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
 - (D) Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and
 - (E) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;
- (14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
 - (15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;
 - (16) Exercise elections with respect to federal, state, and local taxes;
 - (17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
 - (18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;
 - (19) Pledge trust property to guarantee loans made by others to the beneficiary or to an entity in which the trust or beneficiary has an ownership interest; provided that this power shall not apply to any beneficiary whose interest is subject to a spendthrift provision;
 - (20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee any or all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;
 - (21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:
 - (A) Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
 - (B) Paying it to the beneficiary's custodian under chapter 553A, the Hawaii Uniform Transfers to Minors Act, or custodial trustee under chapter 554B, the Hawaii Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;
 - (C) If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf;
 - (D) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution; or

- (E) Creating or funding a plan under section 529 of the Internal Revenue Code of 1986, in effect on July 1, 2003, for the beneficiary's benefit;
- (22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;
- (23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;
- (24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties, including petitioning the court for approval of accounts and termination and discharge of the trustee;
- (25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;
- (26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;
- (27) Divide, sever, or separate a single trust into two or more separate trusts or merge two or more separate trusts into a single trust for administration or tax purposes, including the allocation of the generation-skipping transfer exemption; provided that the terms of the new trust provide, in the aggregate, for the same succession of interests and beneficiaries as are provided in the original trust; and
- (28) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in performance of the trustee's administrative duties; act without independent investigation upon their recommendations; and rather than acting personally, employ one or more agents to perform any administrative acts, regardless of whether the acts are discretionary.

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

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

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

- (1) It was induced by improper conduct of the trustee; or
- (2) The trustee failed to adequately disclose to the beneficiary, at the time of the release, the material facts relating to the breach or sufficient information to enable the beneficiary to know of a potential claim or to inquire into the existence of a breach or potential claim.

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

PART IX. UNIFORM PRUDENT INVESTOR ACT

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

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

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

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

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

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (5) The expected total return from income and the appreciation of capital;
- (6) Other resources of the beneficiaries;
- (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ -903 Diversification. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances or directives of the trust, the purposes of the trust are better served without diversifying.

§ -904 Duties at inception of trusteeship. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this part.

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

§ -906 Language invoking standard of part. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this part: “authorized investments”; “investments permissible by law for investment of trust funds”; “legal investments”; “prudent investor rule”; “prudent man rule”; “prudent person rule”; “prudent trustee rule”; and “using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital”.

PART X. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

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

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

- (1) Compel the trustee to perform the trustee’s duties;
- (2) Enjoin the trustee from committing a breach of trust;
- (3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) Order a trustee to account;
- (5) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) Suspend the trustee;
- (7) Remove the trustee as provided in section -706;
- (8) Reduce or deny compensation to the trustee;
- (9) Subject to section -1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds;
- (10) Order that the trustee, not the trust, shall bear the trustee’s attorney’s fees and those incurred by other parties to the trust; or
- (11) Order any other appropriate relief, including punitive damages.

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

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

- (1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
- (2) The profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. In determining the amount of contribution, the court shall consider the degree of fault of each trustee and whether any trustee or trustees acted in bad faith or with reckless indifference

to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ -1003 No damages in absence of breach. Absent a breach of trust, a trustee shall not be liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

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

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

§ -1005 Limitation of action against trustee. (a) A beneficiary shall not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary, as described in part III, was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

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

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust shall be commenced within three years after the first to occur of:

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

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

§ -1006 Reliance on trust instrument. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument shall not be liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ -1007 Event affecting administration or distribution. If the happening of an event, including marriage, divorce, performance of educational requirements, or attainment of a specific age, birth, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event shall not be liable for a loss resulting from the trustee's lack of knowledge.

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

- (1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or
- (2) Was inserted as the result of an abuse by the trustee of either a fiduciary or confidential relationship to the settlor.

§ -1009 Beneficiary's consent, release, or ratification. A trustee is not liable to a beneficiary for breach of trust if the beneficiary or the representative of the beneficiary, as described in part III, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

- (1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
- (2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ -1010 Limitation on personal liability of trustee. (a) Except as otherwise provided in the contract, a trustee shall not be personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

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

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, regardless of whether the trustee is personally liable for the claim.

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

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

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

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

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

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

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

(c) A person who in good faith delivers assets to a trustee shall not be required to ensure their proper application.

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

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

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

- (1) That the trust exists, the date the trust instrument was executed, and the name of the trust;
- (2) The identity of the settlor;
- (3) The identity and address of the currently acting trustee;
- (4) The powers of the trustee;
- (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
- (6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required to exercise powers of the trustee; and
- (7) If an action is to be undertaken through an agent, that delegation of the action to an agent is not prohibited by the trust instrument.

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

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

(d) A certification of trust shall not be required to contain the dispositive terms of a trust.

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

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

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

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

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

PART XI. MISCELLANEOUS PROVISIONS

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

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

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

§ -1104 **Application to existing relationships.** (a) Except as otherwise provided in this chapter, on the effective date of this chapter:

- (1) This chapter applies to all trusts created before, on, or after its effective date;
- (2) This chapter applies to all judicial proceedings concerning trusts commenced on or after its effective date;
- (3) This chapter applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter shall not apply and the superseded law applies;
- (4) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before the effective date of the chapter unless there is a clear indication of a contrary intent in the terms of the trust; and
- (5) An act done before the effective date of the chapter is not affected by this chapter.

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

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

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

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

“(c) Notwithstanding subsection (b), whenever there is a dispute, deadlock, or difference of opinion between a trustee and an advisor, the transferor may direct that the determination of the advisor shall be binding upon the trustee; provided that the trustee shall bear no liability or accountability for any act or transaction entered into or omitted as a result of the enforcement of the advisor’s determination. The trustee’s administrative and non-administrative fiduciary duty to the beneficiaries shall be waived as to the specific act or transaction entered into or omitted as a result of the enforcement of the advisor’s determination; provided that:

- (1) The trustee dissents in writing:
 - (A) Before the act or transaction is completed;
 - (B) To a failure to act; or
 - (C) In a reasonably timely manner to enter into a transaction; or
- (2) If the advisor is appointed by the transferor under the terms of the trust and section [560:7-302] ~~___~~-808(c) applies to the trust and the advisor, the trustee is not required to dissent in writing for the waiver of the trustee’s administrative and [~~nonadministrative~~] non-administrative fiduciary duties to the beneficiaries to take effect.”

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

““Court” means the circuit court in this State having jurisdiction in matters relating to powers of attorney, in the case of a fiduciary or agent acting under a will or power of attorney; a circuit court in this State having jurisdiction in matters relating to the affairs of decedents, in the case of a personal representative; a circuit court in this State having jurisdiction in matters relating to the affairs of decedents or the family court, depending on which court has subject matter jurisdiction under section 560:5-106, in the case of a conservatorship; or a court that has jurisdiction under section [560:7-204;] ~~___~~-202, in the case of a trustee acting under a trust.”

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

“(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by [~~section 560:7-302;~~] sections ~~___~~-804, ~~___~~-806, and ~~___~~-808(c). A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this chapter, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this chapter, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.”

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

“(a) Before distributing to a trustee, the personal representative may require that the trust be registered if the [~~State~~] state in which it is to be admin-

istered provides for registration and that the trustee inform the beneficiaries as provided in section [560:7-303.] ____-813.”

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

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

- (1) The chapter applies to any wills of decedents dying thereafter;
- (2) The chapter applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this chapter;
- (3) Every executor of a will admitted to a probate [~~prior to~~ before July 1, 1977, in this State and every administrator appointed [~~prior to~~ before July 1, 1977, by a court of this State shall be a supervised personal representative with respect to the estate, and every guardian of the property appointed [~~prior to~~ before July 1, 1976, by a court of this State shall be a guardian of the property, with only the powers conferred by this chapter and subject to the duties imposed by this chapter with respect to any act occurring or done thereafter. Every guardian of a person holding an appointment on that date continues to hold the appointment but has only the powers conferred by this chapter and is subject to the duties imposed by this chapter with respect to any act occurring or done thereafter;
- (4) The consequences of an act done before the applicable effective date in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1977, the provisions of [~~such~~] the statute shall remain in force with respect to that right;
- (5) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 1, 1976, unless there is a clear indication of a contrary intent; and
- (6) Notwithstanding any of the above, this chapter shall not affect any property or other rights accrued under the case and statutory law of this State, including but not limited to the law relating to intestacy, dower and curtesy (chapters 532 and 533), which became vested [~~prior to~~ before July 1, 1977];
- (7) ~~Section 560:7-501 applies to governing instruments executed on or after June 24, 2005].”~~

SECTION 9. Chapter 554A, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 554C, Hawaii Revised Statutes, is repealed.

SECTION 11. Article VII of chapter 560, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 554-2, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 554-4, Hawaii Revised Statutes, is repealed.

SECTION 14. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 15. This Act shall take effect on January 1, 2022.

(Approved June 7, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.