

UNIFORM TRUST CODE
(Last Revised or Amended in 2005)
(with changes recommended by Section Council
of MSBA Estate and Trust Law Section)

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

MEETING IN ITS ONE-HUNDRED-AND-THIRTEENTH YEAR
PORTLAND, OREGON

JULY 30 - AUGUST 6, 2004

Deleted: WITH PREFATORY NOTE
AND COMMENTS

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March 7, 2005

UNIFORM TRUST CODE

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UNIFORM TRUST CODE

ARTICLE 1 GENERAL PROVISIONS AND DEFINITIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Trust Code.

SECTION 102. SCOPE. This [Code] 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.

SECTION 103. DEFINITIONS. In this [Code]:

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

(2) “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 [Code] [amendment] [, or as later amended].

(3) “Beneficiary” means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

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

(5) “[Conservator]” means a person appointed by the court to administer the estate of a minor or adult individual.

(6) “Discretionary trust provision” means a provision in a trust that provides that the trustee has discretion to determine one or more of the following:

(i) whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust;

(ii) the amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries;

(iii) who, if any, among a class of beneficiaries will receive income or principal or both of the trust;

(iv) whether the distribution of trust assets is from income or principal or both of the trust; or

(v) when to pay income or principal, except that a power to determine when within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if such distribution must be made.

A provision is a discretionary trust provision regardless of whether the trust instrument provides guidance for the exercise of the trustee’s discretion, and regardless of whether the trust contains a spendthrift provision.

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

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(8) “[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. The term does not include a guardian ad litem.

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

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(10) “Jurisdiction,” with respect to a geographic area, includes a State or country.

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(11) “Mandatory provision” means a provision in a trust that requires a trustee to make a distribution of income or principal to or for the benefit of a beneficiary, including a distribution upon termination of the trust. The term does not include any trust provision for 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.

(12) “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.

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(13) “Power of withdrawal” means a presently exercisable general power of appointment other than a power: (A) exercisable by a trustee and limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

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

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

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

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

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

(16) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. The fact that the settlor becomes incapacitated does not convert a revocable trust into an irrevocable trust.

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(17) “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.

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(18) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest, or which restrains involuntary transfer of a beneficiary’s interest and permits voluntary transfer of a beneficiary’s interest only with the consent of a trustee who is not a beneficiary.

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(19) “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. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

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(20) “Support provision” means a mandatory provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, maintenance, or support of a beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions pursuant to the trust provision is not a mandatory support provision, and is instead a discretionary trust provision.

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

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

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

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SECTION 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.

SECTION 105. DEFAULT AND MANDATORY RULES.

(a) Except as otherwise provided in the terms of the trust, this [Code] 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 [Code] 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, 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 [Article] 5;

(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 which is unreasonably low or high;

~~(8) the duty under Section 813(a) and (b) to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;~~

~~(9) the effect of an exculpatory term under Section 1008;~~

~~(10) the rights under Sections 1010 through 1013 of a person other than a trustee or beneficiary;~~

~~(11) periods of limitation for commencing a judicial proceeding; [and]~~

~~(12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice [; and]~~

~~(13) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 203 and 204].~~

SECTION 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY.

The common law of trusts and principles of equity supplement this [Code], except to the extent modified by this [Code] or another statute of this State.

SECTION 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.

SECTION 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.

Absent a substantial change of circumstances, the trustee may assume that the original place of administration is also the appropriate place of administration.

(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 not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

Deleted: [(8) the duty under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;¶]

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

~~(e) 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.~~

Deleted: (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.¶

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SECTION 109. METHODS AND WAIVER OF NOTICE.

(a) Notice to a person under this [Code] or the sending of a document to a person under this [Code] must 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 [Code] or a document otherwise required to be sent under this [Code] 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 [Code] or the sending of a document under this [Code] may be waived by the person to be notified or sent the document.

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

SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.

~~(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this [Code] if the charitable organization, on the date the charitable organization's qualification is being determined:~~

Deleted: (a) Whenever notice to qualified beneficiaries of a trust is required under this [Code], the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.¶

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

~~(B) 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~~

~~(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.~~

(c) 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 [Code].

[(d) 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.]

SECTION 111. NONJUDICIAL SETTLEMENT AGREEMENTS.

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

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

(c) 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 [Code] or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

- (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.

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in [Article] 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

[**SECTION 112. RULES OF CONSTRUCTION.** The statutory 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.]

ARTICLE 2 JUDICIAL PROCEEDINGS

SECTION 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 trust's administration, including a request for instructions and an action to declare rights.

SECTION 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. 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.

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

ARTICLE 3 REPRESENTATION

SECTION 301. REPRESENTATION: BASIC EFFECT.

- (a) Except as required by the applicable rules of civil procedure in a judicial proceeding, notice to a person who may represent and bind another person under this [article] 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 [article] is binding on the person represented unless the person represented objects to the representation by notifying the trustee and the representative before the consent would otherwise have become effective.
- (c) Except as otherwise provided in Sections [411 and] 602, a person who under this [article] may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.
- (d) A settlor may not represent and bind a beneficiary under this [article] with respect to the termination or modification of a trust under Section 411(a).]

SECTION 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT. The holder of a power of appointment may represent and bind persons whose interests as permissible appointees or takers in default are subject to the power. A qualified power of appointment is a power exercisable in favor of:

- (1) The power holder, the power holder's estate, the power holder's creditors and the creditors of the power holder's estate; or
- (2) All persons other than the power holder, the power holder's estate, the power holder's creditors, and the creditors of the power holder's estate.

SECTION 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 guardian of the property may represent and bind the minor or disabled person;
- (2) a guardian of the person may represent and bind the minor or disabled person if a guardian of the property has not been appointed;
- (3) an agent having specific authority to act with respect to trust matters may represent and bind the principal;
- (4) a trustee of a trust that is a beneficiary of another trust may represent and bind the beneficiaries of the trust;
- (5) a personal representative of a decedent's estate that is a beneficiary of a trust may represent and bind interested persons in the estate; and

Deleted: [SECTION 203. SUBJECT-MATTER JURISDICTION.]

(a) The [designate] court has exclusive jurisdiction of proceedings in this State brought by a trustee or beneficiary concerning the administration of a trust.¶

(b) The [designate] court has concurrent jurisdiction with other courts of this State of other proceedings involving a trust.¶

Deleted: [SECTION 204. VENUE.]

(a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the [county] 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 [county] 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 a [county] of this State in which a beneficiary resides, in a [county] in which any trust property is located, and if the trust is created by will, in the [county] in which the decedent's estate was or is being administered.¶

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

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(7) if a minor, unborn or unknown person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor, unborn or unknown person.

(8) 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 qualified beneficiary's exercise of a power of appointment

SECTION 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 there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

SECTION 305. APPOINTMENT OF REPRESENTATIVE.

(a) If the court determines that an interest is not represented under this [article], or that the otherwise available representation might be inadequate, the court may appoint a [representative] 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 [representative] may be appointed to represent several persons or interests.

(b) A [representative] may act on behalf of the individual represented with respect to any matter arising under this [Code], whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a [representative] may consider general benefit accruing to the living members of the individual's family.

**ARTICLE 4
CREATION, VALIDITY, MODIFICATION,
AND TERMINATION OF TRUST**

SECTION 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; or
- (3) exercise of a power of appointment in favor of a trustee.

SECTION 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 any other 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.

Deleted: ; and¶
(5) the same person is not the sole trustee and sole beneficiary

SECTION 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.

SECTION 404. TRUST PURPOSES. A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

Deleted: , not contrary to public policy.

SECTION 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 a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

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

SECTION 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.

SECTION 407. EVIDENCE OF ORAL TRUST. Except as required by a statute other than this [Code], a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

SECTION 408. TRUST FOR CARE OF ANIMAL.

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

(b) 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.

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

SECTION 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. Except as otherwise provided in Section 408 or by another statute, 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. The trust may not be enforced for more than [21] years unless the settlor elects otherwise.

(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.

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

SECTION 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, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

Deleted: no purpose of the trust remains to be achieved,

(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.

SECTION 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.] [If, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination 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 an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's [conservator] with the approval of the court supervising the [conservatorship] if an agent is not so authorized; or by 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 [Code] [amendment].]]

(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) A spendthrift provision in the terms of the trust is not presumed to constitute 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 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.

SECTION 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 must 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 as ordered by the court.

SECTION 413. CY PRES.

(a) If a trust for charity is or becomes illegal, or impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, or impossible or impracticable of enforcement, and if the settlor or testator manifested a general intention to devote the property to charity, a court of equity, on application of any trustee, or any interested person, or the Attorney General of the state, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.

(b) This section shall be interpreted and construed to effectuate its general purpose to make uniform the law of those states which enact it.

(c) This section may be cited as the Maryland Uniform Charitable Trusts Administration Act.

SECTION 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST.

[Retain current ET§14-107]

Deleted: (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) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:¶
(1) the trust property is to revert to the settlor and the settlor is still living; or¶
(2) fewer than 21 years have elapsed since the date of the trust's creation.¶

SECTION 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 that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

SECTION 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.

SECTION 417. COMBINATION AND DIVISION OF TRUSTS. Upon consent of 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.

Deleted: (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than [\$50,000] 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 does not apply to an easement for conservation or preservation.¶

Deleted: After notice to

ARTICLE 5 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

SECTION 501. APPLICATION; GENERAL PROVISIONS.

(a) This [article] applies to creditor's and transferee's claims with respect to discretionary, support, spendthrift, and other types of trusts.

(b) Beneficial interests subject to a discretionary trust provision, a support provision, or a spendthrift provision and powers of appointment created by someone other than the holder of the power may not be judicially foreclosed or attached by a creditor.

SECTION 502. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE.

(a) To the extent a beneficiary's interest is not subject to a discretionary trust provision, a support trust provision, or a spendthrift provision and is not a power of appointment created by someone other than the holder of the power, a 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.

(b) The court may limit an award under this section to such relief as is appropriate under the circumstances considering among other factors determined appropriate by the court, if any, the support needs of the beneficiary, the beneficiary's spouse, the beneficiary's former spouse, and the beneficiary's dependent children, or, with respect to a beneficiary who is the recipient of public benefits, the supplemental needs of the beneficiary if the trust was not intended to provide for the beneficiary's basic support.

(c) If in exercising its power under this section the court decides to order either a sale of a beneficiary's interest or that a lien be placed on the interest, in deciding between the two, the court shall consider (among other factors it deems relevant, if any) the amount of the claim of the creditor or assignee and the proceeds a sale would produce relative to the potential value of the interest to the beneficiary.

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SECTION 503. DISCRETIONARY TRUSTS.

(a) The transferee or creditor of the beneficiary of a discretionary trust provision created by someone other than that beneficiary has no enforceable right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion; and trust property is not subject to the enforcement of a judgment until income or principal or both is distributed directly to the beneficiary.

(b) A transferee or creditor of a beneficiary may not compel a distribution that is subject to discretionary trust provision created by someone other than that beneficiary even if:

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

(2) the trustee has abused the discretion.

(c) A trust may contain a discretionary trust provision with respect to one or more but less than all beneficiaries.

(d) If a beneficiary of a discretionary trust provision has a power of withdrawal created by someone other than that beneficiary:

(1) during the period the power may be exercised, the portion of the trust the beneficiary may withdraw shall not be deemed to be subject to the discretionary trust provision with respect to that beneficiary to the extent the value of the property subject to the power of withdrawal exceeds the greatest of:

(A) the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code, or

(B) the amount specified in section 2503(b) of the Internal Revenue Code of 1986 if the donor of the property subject to the beneficiary's power of withdrawal is single at the time of the transfer of the property to the trust, or

(C) twice the amount specified in section 2503(b) of the Internal Revenue Code if the donor of the property subject to the beneficiary's power of withdrawal is married at the time of the transfer of the property to the trust.

(2) during the period the power may be exercised, the portion of the trust the beneficiary may not withdraw shall be deemed to be subject to the discretionary trust provision with respect to that beneficiary, and

(3) during periods in which the beneficiary does not have a power of withdrawal, the beneficiary's trust interest shall be deemed to be subject to the discretionary trust provision with respect to that beneficiary.

(e) If a beneficiary and one or more others have made contributions to a trust subject to a discretionary trust provision, the portion of the trust attributable to the beneficiary's contributions shall not be deemed to be subject to that discretionary trust provision with respect to that beneficiary, but the portion of the trust attributable to the contributions of others shall be deemed to be subject to that discretionary trust provision with respect to that beneficiary. For purposes of this subsection, the lapse, release, or waiver by a beneficiary of a power of withdrawal shall not be deemed to be a contribution to trust property subject to the power of withdrawal if the value of the property subject to the power of withdrawal is less than or equal to the greatest of the amounts specified in subsections (d)(1)(A), (B), and (C) above.

(f) The interest of a beneficiary who is blind or disabled as defined in 42 U.S.C. Sec. 1382c(a)(3) or its successor, may be subject to a discretionary trust provision notwithstanding

(1) precatory language in the trust instrument regarding its intended purpose of providing supplemental goods and services to or for the benefit of the beneficiary, and not to supplant benefits from public assistance programs, and

(2) a prohibition against providing food, clothing, and shelter to the beneficiary.

SECTION 504. TRUST FOR SUPPORT.

Except as provided in Section 506 and Section 507(c),

(a) the interest of a beneficiary that is subject to a support provision may not be transferred; and trust property is not subject to the enforcement of a judgment (i) until income or principal or both is distributed directly to the beneficiary, and (ii) only to the extent that the income or principal or both is not necessary for the health, education, maintenance, or support of the beneficiary; and

(b) With regard to each beneficiary whose interest is subject to a support provision, the use, occupancy, and enjoyment by the beneficiary of a single parcel of trust residential real property (as designated by the trustee) or any trust tangible personal property may not be transferred; and such use, occupancy, and enjoyment are not subject to the enforcement of a judgment against the beneficiary.

SECTION 505. SPENDTHRIFT PROVISION.

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest or if it restrains involuntary transfer of a beneficiary's interest and permits voluntary transfer of a beneficiary's interest only with the consent of a trustee who is not a beneficiary.

(b) A provision 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 may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this [article], a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. Any attempt by a beneficiary to transfer an interest in a trust in violation of a valid spendthrift provision shall be void and of no effect.

(d) If a beneficiary is allowed to use, occupy, or enjoy a single parcel of residential real property (as designated by the trustee) or tangible personal property that are owned by the trust and made available to the beneficiary in accordance with the trustee's authority under the trust instrument, the single parcel of residential real property or tangible personal property used, occupied, or enjoyed shall not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property.

SECTION 506. EXCEPTIONS TO SUPPORT AND SPENDTHRIFT PROVISIONS.

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.

(b) Subject to the provisions of Section 503, the interest of a beneficiary that is subject to either a spendthrift provision or a support provision or both can be

reached in satisfaction of an enforceable claim against the beneficiary by any of the following:

(1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance; or

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

(c) A claimant described in subsection (b) of this section may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary; but the court may only order the trustee to satisfy all or part of the judgment out of payments of income or principal as they become due. The court may limit the award to such relief as is appropriate under the circumstances, considering among any other factors determined appropriate by the court: the support needs of the beneficiary's spouse, former spouse, and dependent children, the support needs of the beneficiary, or, with respect to a beneficiary who is the recipient of public benefits, the supplemental needs of the beneficiary if the trust was not intended to provide for the beneficiary's basic support.

(d) The only exceptions to the effectiveness of a spendthrift provision or a support provision are those described in subsection (b) of this section, in subsection (b) of Section 507, and in Section 509.

(e) Notwithstanding that the trust instrument includes a spendthrift provision or a support provision or both, this section shall not apply to the interest of a beneficiary that is subject to a discretionary trust provision.

SECTION 507. MANDATORY PROVISIONS.

(a) To the extent that the interest of a beneficiary subject to a mandatory provision does not contain a spendthrift provision or a support provision, the court may authorize a creditor or assignee of the beneficiary to attach present or future mandatory distributions to or for the benefit of the beneficiary, or to reach the beneficiary's interest by other means, as provided in Section 502.

(b) Whether or not a trust contains a spendthrift provision or a support provision, a creditor or assignee of a beneficiary may reach a mandatory distribution the beneficiary is entitled to receive if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

SECTION 508. POWERS OF APPOINTMENT CREATED BY THIRD PARTIES AND BENEFICIARY-TRUSTEE INTERESTS.

(a) A power of withdrawal or power of appointment held by a person other than the settlor of the trust is not a property interest; and neither that power of withdrawal or appointment nor any property subject to that power of withdrawal or appointment may be judicially foreclosed or attached by a creditor of the holder of the power.

(b) A creditor may not attach, exercise, reach or otherwise compel distribution of the beneficial interest of a beneficiary who is a trustee or the sole trustee of the trust, but who is not a settlor of the trust, except to the extent that the interest would be subject to the creditor's claim were the beneficiary not acting as co-trustee or sole trustee of the trust.

(c) A creditor may not attach, exercise, reach or otherwise compel distribution of the beneficial interest of a beneficiary or any other person who holds an unconditional or conditional power to remove a trustee, to replace a trustee, or to remove

and replace a trustee, except to the extent that the interest would be subject to the creditor's claim if the beneficiary or other person did not have such power to remove, replace, or remove and replace a trustee.

(d) None of the following factors may be considered dominion and control over a trust or trust property by a settlor or beneficiary of the trust:

(1) a beneficiary serving as a trustee or co-trustee as described in subsection (b);

(2) the settlor or a beneficiary holding an unrestricted power to remove or replace a trustee;

(3) the settlor or a beneficiary of a trust serving as a trust administrator, a partner of a partnership, a manager of a limited liability company, an officer of a corporation, or any other managerial function of any other type of entity if part or all of the trust property consists of an interest in the entity;

(4) A person related by blood or adoption to a settlor or a beneficiary serving as trustee of the trust;

(5) A settlor's or beneficiary's agent, accountant, attorney, financial advisor, or friend serving as trustee of the trust;

(6) A business associate of the settlor or a beneficiary serving as trustee of the trust;

(7) A power of appointment held by the settlor other than the settlor's reserved power to withdraw trust property for the benefit of the settlor, the settlor's creditors, the settlor's estate, or the creditors of the settlor's estate;

(8) A power to substitute property of equivalent value for trust property as defined in Internal Revenue Code of 1986 section 675(4)(C); or

(9) A power to borrow trust property for less than adequate interest or without security as defined in Internal Revenue Code of 1986 section 675(2).

SECTION 509. CREDITOR'S CLAIM AGAINST SETTLOR.

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

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

(2) 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 may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) With respect to a trust described in 42 U.S.C. section 1396p(d)(4)(A) or (C), the court may limit the award of a settlor's creditor under subsections (1) and (2) of this subsection to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court, the supplemental needs of the beneficiary.

(4) 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 and children to the extent the

settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. Notwithstanding the provisions of this subsection, however, if a claim is or would be barred against the settlor's probate estate under Section 8-103 of this Estates and Trusts Article, that claim is barred against the Trustee and the property of the revocable trust.

(b) If (i) an individual creates, or has created, a trust for the benefit of that individual's spouse, (ii) the trust is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code, as in effect on the effective date of this [article], or as later amended, and (iii) the individual retains a beneficial interest in the trust income, trust principal or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust, the individual who created such trust shall not be considered a settlor or contributor with regard to such individual's retained beneficial interest in the trust that follows the termination of the individual's spouse's prior beneficial interest in the trust.

(c) The holder of a power of withdrawal created by the holder is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power during the period the power may be exercised.

SECTION 510. PERSONAL OBLIGATIONS OF TRUSTEE. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

ARTICLE 6 REVOCABLE TRUSTS

SECTION 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

SECTION 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 does not apply to a trust created under an instrument executed before [the effective date of this [Code]].

(b) 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 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:

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

Deleted: SECTION 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 such relief as is appropriate under the circumstances.¶

SECTION 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 may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this [article], a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.¶

SECTION 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.¶

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.¶

(b) A spendthrift provision is unenforceable against:¶

(1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;¶

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and¶

(3) a claim of this State or the United States to the extent a statute of this State or federal law so provides.¶

(c) 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 such relief as is appropriate under the circumstances.¶

SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD.¶

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.¶

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

(1) the discretion is exp[... [1]

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) any other 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 or the power.

(f) A ~~guardian of the property~~ of the settlor or, if no ~~guardian of the property~~ has been appointed, a ~~guardian of the person~~ 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 ~~guardianship~~.

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(g) A trustee who does not know 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.

SECTION 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL.

(a) ~~Except as provided in subsection (c), while a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.~~

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(b) During the period the power may be exercised, the ~~rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the holder of a power of withdrawal to the extent of the property subject to the power.~~

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~~(c) While a trust is revocable and a settlor does not have the capacity to revoke the trust, a beneficiary shall have the right to enforce the settlor's intent to benefit the beneficiary during the settlor's incapacity.~~

SECTION 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY.

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

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

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(2) ~~90 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; ~~or~~

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~~(3) Six months after the date of the first publication of notice of the trust's existence, the name and address of each trustee and of the settlor, and the time allowed for commencing a proceeding, in the same manner as required for publication of notice of appointment of a personal representative, if the trustee sends a copy of the text of such notice, not later than 15 days after the date of its first publication, to each qualified beneficiary of the trust, heir of the decedent, and other person who would be an interested person if the trust were a will and who would have been required to be sent notice of the appointment of a personal representative if a personal representative had been appointed,~~

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(b) ~~After~~ the death of the settlor of a trust that was revocable at the settlor's death, ~~and after the earlier of the time periods described in Section 604(a),~~ the trustee may proceed to distribute the trust property in accordance with the terms of the trust, ~~and the~~ trustee is not subject to liability for doing so.

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(1) the trustee knows 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 60 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.

ARTICLE 7 OFFICE OF TRUSTEE

SECTION 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 or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, 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 ~~(not to exceed 120 days)~~ 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 ~~deceased~~ or lacks capacity, to a qualified beneficiary; and

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

SECTION 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 regulated financial-service institution qualified to do trust business in this State need not give bond, even if required by the terms of the trust.]

SECTION 703. COTRUSTEES.

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

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

(c) A cotrustee must 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 trustee may delegate to a cotrustee the performance of a function relating to management, investment, or trust administration, but may not delegate a decision to make a distribution. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

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

(g) 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.

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

SECTION 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 or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies;
- (6) a [guardian] or [conservator] is appointed for an individual serving as

trustee; or

(7) a trustee cannot be located for 120 consecutive days.

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

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

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

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

(3) by a person appointed by the court.

(d) Whether or not 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.

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

(1) by a person designated in the terms of the trust to act as 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.¶

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SECTION 705. RESIGNATION OF TRUSTEE.

(a) A trustee may resign:

(1) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees or, if there is no co-trustee, to the next designated successor trustee, if any; or

(2) 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.

SECTION 706. REMOVAL OF TRUSTEE.

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

(b) 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, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

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

(c) 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 such appropriate relief under Section 1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

SECTION 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 proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

SECTION 708. COMPENSATION OF TRUSTEE.

[Retain current ET §14-103]

SECTION 709. REIMBURSEMENT OF EXPENSES.

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

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

(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 of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Deleted: (a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.¶
(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:¶
(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or¶
(2) the compensation specified by the terms of the trust would be unreasonably low or high.

ARTICLE 8
DUTIES AND POWERS OF TRUSTEE

SECTION 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 [Code].

SECTION 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 which 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 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;
- (2) the trustee's descendants, siblings, parents, or their spouses;
- (3) an agent or attorney of the trustee; or
- (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) 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.

(f) 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

[Article] 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must 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.

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

(h) 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.

(i) 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.

SECTION 803. IMPARTIALITY. If a trust has two or more beneficiaries, the trustee shall act impartially, giving due regard to the beneficiaries' respective interests.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 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 in order to monitor the agent's performance and compliance with the terms of the delegation.

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(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) is not 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.

SECTION 808. POWERS TO DIRECT.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust, even if in doing so (i) the trustee exceeds the authority granted to the trustee under the terms of the trust, or (ii) the trustee would otherwise violate a duty the trustee owes under the trust.

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

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

(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.

SECTION 809. CONTROL AND PROTECTION OF TRUST PROPERTY. A trustee shall take reasonable steps to take control of and protect the trust property, except that this duty does not apply to, and the trustee is not responsible for, items of tangible personal property that are property of a trust revocable by the settlor and that are not in the possession or control of the trustee.

SECTION 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.

SECTION 811. ENFORCEMENT AND DEFENSE OF CLAIMS. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. A trustee may abandon any claim that it believes is unreasonable to enforce or assign such a claim to one or more of the beneficiaries of the trust holding the claim.

SECTION 812. COLLECTING TRUST PROPERTY. 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 fiduciary.

SECTION 813. DUTY TO INFORM AND REPORT.

(a) 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, including a copy of the trust instrument.

(b) A trustee shall send to the qualified beneficiaries who request it, 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, 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, the former trustee must send a report to the qualified beneficiaries who request it. A personal representative, guardian, or attorney-in-fact may send the qualified beneficiaries a report on behalf of the former trustee.

SECTION 814. DISCRETIONARY POWERS; TAX SAVINGS.

(a) A beneficiary of a discretionary trust provision as described in Section 503 has no property right in a trust interest that is subject to a discretionary trust provision, and has no enforceable right to any amount of trust income or principal that may be distributed only in the exercise of the trustee’s discretion even if that discretion is capped or limited by an ascertainable standard. However, and notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as “absolute”, “sole”, or “uncontrolled”, a trustee abuses the trustee’s discretion in exercising or failing to exercise a discretionary power if the trustee (a) acts dishonestly, (b) acts with an improper motive, even though not a dishonest motive, or (c) if the trustee fails to exercise the trustee’s judgment in accordance with the terms and purposes of the trust. A court may review a support trust provision or a mandatory trust provision, if the trustee acted dishonestly, acted with an improper motive, failed to use the trustee’s judgment, or acted unreasonably.

(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 may 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) does 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 [Code]] [, or as later amended], was previously allowed;

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

Deleted: 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.

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(b) A trustee:¶
(1) upon request of a beneficiary, shall promptly furnish to the beneficiary

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(2) within 60 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 60 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 (c); and¶

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee’s compensation.¶

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

(e) Subsections (b)(2) and (3) do not apply to a trustee who accepts a trusteeship before [the effective date of this [Code]], to an irrevocable trust [2]

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(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 [Code]] [, or as later amended].

SECTION 815. GENERAL POWERS OF TRUSTEE.

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

- (1) powers conferred by the terms of the trust; or
- (2) except as limited by the terms of the trust:

(A) all powers over the trust property which 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 [Code].

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

SECTION 816. SPECIFIC POWERS OF TRUSTEE. Without limiting the authority conferred by Section 815, a trustee may:

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

(2) acquire or sell property, for cash or on credit, at 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-service institution;

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

(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 subscription or conversion rights;

~~(D) exercise stock options and other rights; and~~

~~(E) deposit the securities with a depository or other regulated financial-service institution;~~

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(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 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 property 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 which 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;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee 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 [the Uniform Transfers to Minors Act] or custodial trustee under [the 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; or

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

(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;

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

~~(26) purchase and pay from trust principal the premiums on life insurance; and~~

~~(27) 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.~~

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SECTION 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 30 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.

Deleted: (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 beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.¶

ARTICLE 9

UNIFORM PRUDENT INVESTOR ACT

General Comment

Because of the widespread adoption of the Uniform Prudent Investor Act, no effort has been made to disassemble and integrate the Uniform Prudent Investor Act into the Uniform Trust Code. States adopting the Uniform Trust Code that have previously enacted the Prudent Investor Act are encouraged to reenact their version of the Prudent Investor Act as Article 9 of the Uniform Trust Code. Reenacting the Uniform Prudent

Investor Act as a unit will preserve uniformity with States that have enacted the Uniform Prudent Investor Act in free-standing form.

The Uniform Prudent Investor Act prescribes a series of duties relevant to the *investment* and *management* of trust property. The Uniform Trust Code, Article 8 contains duties and powers of a trustee relevant to the *investment, administration, and distribution* of trust property. There is therefore significant overlap between Article 8 and the Prudent Investor Act. Where the Uniform Prudent Investor Act and Uniform Trust Code are duplicative, enacting jurisdictions are encouraged to enact the Uniform Prudent Investor Act in this article but *without* the provisions already addressed in Article 8 of the Uniform Trust Code. The duplicative provisions of the Uniform Prudent Investor Act and Article 8 of this Code are as follows:

	Prudent Investor Act	Article 8
Special skills	2(f)	806
Loyalty	5	802
Impartiality	6	803
Investment costs	7	805
Delegation	9	807

Deleting these duplicative provisions leaves the following sections of the Uniform Prudent Investor Act for enactment in this article:

Section 1	Prudent Investor Rule
Section 2 (a)-(e)	Standard of Care; Portfolio Strategy; Risk and Return Objectives
Section 3	Diversification
Section 4	Duties at Inception of Trusteeship
Section 8	Reviewing Compliance
Section 10	Language Invoking Standard of [Act]

ARTICLE 10

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

SECTION 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; or
- (10) order any other appropriate relief.

SECTION 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 that are also liable. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust 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.

SECTION 1003. DAMAGES IN ABSENCE OF BREACH.

~~Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.~~

SECTION 1004. ATTORNEY'S FEES AND COSTS. In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

SECTION 1005. LIMITATION OF ACTION AGAINST TRUSTEE.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or the representative of the beneficiary known to the trustee was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary or the representative of the beneficiary known to the trustee 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 of the potential claim or should have inquired into its existence.

(c) No beneficiary shall commence any judicial proceeding against a trustee for breach of trust after the earlier of:

(1) The expiration of any applicable time period for commencing such action, as provided by any provision of the Code (including, but not limited to, subsection (a) of this section and the provisions of Title 5 of the Courts and Judicial Proceedings Article); or

Deleted: (a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.¶
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(2) Three years after the first to occur of:

i. The removal, resignation, or death of the trustee;

ii. The termination of the beneficiary's interest in the trust; or

iii. The termination of the trust.

SECTION 1006. RELIANCE ON TRUST INSTRUMENT. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

SECTION 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION. If the happening of an event, including but not limited to marriage, divorce, performance of educational requirements, death, birth or adoption, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

SECTION 1008. EXCULPATION OF TRUSTEE.

(a) 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 a fiduciary or confidential relationship to the settlor.

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

SECTION 1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION.

(a) A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, 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.

(b) If the beneficiary's approval involves a self-dealing transaction, the approval is binding only if the transaction was fair and reasonable.

SECTION 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.

(a) Except as otherwise provided in the contract, a trustee is not 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.

Deleted: If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after the first to occur of:
(1) the removal, resignation, or death of the trustee;
(2) the termination of the beneficiary's interest in the trust; or
(3) the termination of the trust.

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(b) A trustee is 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, whether or not the trustee is personally liable for the claim.

[SECTION 1011. INTEREST AS GENERAL PARTNER.

(a) Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not 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 the [Uniform Partnership Act or Uniform Limited Partnership Act].

(b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general partner is not 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 does 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 or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

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

SECTION 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 knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised ~~those~~ powers.

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(b) A person other than a beneficiary who in good faith deals with a trustee is not 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 need not 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 knowledge that the trusteeship has terminated is 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 prevail over the protection provided by this section.

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 and the date the trust instrument was executed;
- (2) the identity of the settlor;
- (3) the identity and address of the currently acting trustee;
- (4) the powers of the trustee in the pending transaction;
- (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 in order to exercise powers of the trustee;

(7) the trust's taxpayer identification number: provided, however, that the certification of trust need not contain the trust's taxpayer identification number if that taxpayer identification number is also the social security number of a settlor; and

(8) the manner and name in which title to trust property may be taken.

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

(c) A certification of trust must 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 need not 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 which 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 is not 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 may 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 is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

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

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ARTICLE 11
MISCELLANEOUS PROVISIONS

SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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(a) This [article] shall be construed and applied to promote the following underlying purposes and policies:

(1) to make more comprehensive and to clarify the law governing trusts in Maryland;

(2) to permit the continued expansion and development of trust practices through custom, usage, and agreement of the parties; and

(3) to foster certainty in the law so that settlors of trusts will have confidence that their instructions will be carried out as expressed in the trust instrument.

(b) The legislature does not intend the courts to consider the Official Comments to the Uniform Trust Code as approved by the National Conference of Commissioners on Uniform State Laws in their application and interpretation of this [article], nor for the courts to consult the Restatement (Third) of the Law of Trusts as approved by the American Law Institute with respect to subject matters addressed by this [article].

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SECTION 1102. ELECTRONIC RECORDS AND SIGNATURES. The provisions of this [Code] governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such 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.

SECTION 1103. SEVERABILITY CLAUSE. If any provision of this [Code] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this [Code] which can be given effect without the invalid provision or application, and to this end the provisions of this [Code] are severable.

SECTION 1104. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this [Code], on [the effective date of this [Code]]:

(1) this [Code] applies to all trusts created before, on, or after [its effective date];

(2) this [Code] applies to all judicial proceedings concerning trusts commenced on or after [its effective date];

(3) this [Code] applies to judicial proceedings concerning trusts commenced before [its effective date] unless the court finds that application of a particular provision of this [Code] 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 [Code] does not apply and the superseded law applies;

(4) any rule of construction or presumption provided in this [Code] applies to trust instruments executed before [the effective date of the [Code]] unless there is a clear indication of a contrary intent in the terms of the trust; and

Deleted: **SECTION 1104. EFFECTIVE DATE.** This [Code] takes effect on _____,¶
SECTION 1105. REPEALS. The following Acts are repealed:¶
(1) Uniform Trustee Powers Act.¶
(2) Uniform Probate Code, Article VII.¶
(3) Uniform Trusts Act (1937); and¶
(4) Uniform Prudent Investor Act.¶

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(5) an act done before [the effective date of the [Code]] is not affected by this [Code].

(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 [Code]], that statute continues to apply to the right even if it has been repealed or superseded.

SECTION 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 such relief as is appropriate under the circumstances.

SECTION 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 may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this [article], a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

SECTION 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) a claim of this State or the United States to the extent a statute of this State or federal law so provides.

(c) 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 such relief as is appropriate under the circumstances.

SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD.

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another State.

(b) Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may 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.

(c) 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, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not 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.

(d) This section does 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.

(e) 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 may 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.

SECTION 505. CREDITOR'S CLAIM AGAINST SETTLOR.

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

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

(2) 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 may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(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 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, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on [the effective date of this [Code]] [, or as later amended].

SECTION 506. OVERDUE DISTRIBUTION.

(a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term 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.

(b) Whether or not 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.

SECTION 507. PERSONAL OBLIGATIONS OF TRUSTEE. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

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

(e) Subsections (b)(2) and (3) do not apply to a trustee who accepts a trusteeship before [the effective date of this [Code]], to an irrevocable trust created before [the effective date of this [Code]], or to a revocable trust that becomes irrevocable before [the effective date of this [Code]].

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(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms 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.