

**D R A F T**

**FOR DISCUSSION ONLY**

**UNIFORM TRUST CODE**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MARCH 10, 2000 INTERIM DRAFT

**UNIFORM TRUST CODE**

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# UNIFORM TRUST CODE

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1 **UNIFORM TRUST CODE**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS AND DEFINITIONS**

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

6 **SECTION 102. SCOPE.** This [Code] applies to express trusts, charitable or  
7 noncharitable, with additions thereto, and to any trust created pursuant to a statute, judgment, or  
8 decree that requires the trust to be administered in the manner of an express trust.

9 **SECTION 103. DEFINITIONS.** In this [Code]:

10 (1) “Action” includes a decision or failure to act.

11 (2) “Beneficiary” means a person who:

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

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

15 (3) “Charitable trust” means a trust created for a charitable purpose described in Section  
16 404. The term does not include the beneficial interest of a noncharitable beneficiary.

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

19 (5) “Environmental law” means any federal, state, or local law, rule, regulation, or  
20 ordinance relating to protection of the environment.

21 (6) “Fiduciary,” used as a noun, includes a personal representative, [conservator],  
22 [guardian], and trustee.

1 (7) “[Guardian]” means a person appointed by the court [, a parent, or a spouse] to make  
2 decisions regarding the support, care, education, health, and welfare of a minor or adult  
3 individual. The term does not include a guardian ad litem.

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

6 (9) “Know,” with respect to a fact, means to have knowledge of the fact or have reason  
7 to know the fact exists based upon all of the facts and circumstances known to the person at the  
8 time. A person who conducts activities through employees has knowledge of a fact only if the  
9 information was received at the person’s home office or at a place where there was an employee  
10 with responsibility to and a reasonable time in which to act on the information using the  
11 procedures and facilities available in the regular course of its operations. .

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

15 (11) “Petition” includes a complaint.

16 (12) “Power of withdrawal” means a presently exercisable general power of appointment  
17 other than a power exercisable only upon consent of the trustee or a person holding an adverse  
18 interest.

19 (13) “Property” means anything that may be the subject of ownership, whether real or  
20 personal, legal or equitable, or any interest therein. The term includes a chose in action, a claim,  
21 and an interest created by a beneficiary designation under a policy of insurance, financial  
22 instrument, employees’ trust, or deferred compensation or other retirement arrangement, whether

1 revocable or irrevocable.

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

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

5 (B) would be a distributee or permissible distributee of trust income or principal if  
6 the interests of the distributees in subparagraph (13)(A) terminated on that date; or

7 (C) would be a distributee or permissible distributee of trust income or principal if  
8 the trust were to terminate on that date.

9 (15) “Record” means information that is inscribed on a tangible medium or that is stored  
10 in an electronic or other medium and is retrievable in perceivable form.

11 (16) “Revocable trust” means a trust that is revocable by its settlor without the consent of  
12 the trustee or a person holding an adverse interest.

13 (17) “Settlor” means a person who creates, or contributes property to, an inter vivos or  
14 testamentary trust. If more than one person creates or contributes property to a trust, each  
15 person is a settlor of the portion of the trust property attributable to that person’s contribution  
16 except to the extent another person has the power to revoke or withdraw that portion.

17 (18) “Spendthrift provision” means a term of a trust which restrains both voluntary and  
18 involuntary transfer of a beneficiary’s interest.

19 (19) “State” means a State of the United States, the District of Columbia, Puerto Rico,  
20 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
21 of the United States. The term includes an Indian tribe or band, or Alaska native village,  
22 recognized by federal law or formally acknowledged by a State.

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

4 (21) “Trust instrument” means a writing or other record executed by the settlor that  
5 contains terms of the trust, including any amendments thereto.

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

7 **SECTION 104. DEFAULT AND MANDATORY RULES.**

8 (a) Except as otherwise provided in subsection (b), the terms of the trust govern the  
9 duties and powers of a trustee, relations among trustees, and the rights and interests of a  
10 beneficiary.

11 (b) The terms of a trust may not alter:

12 (1) the requirements for creating a trust;

13 (2) the requirement that a trustee act in good faith and in accordance with the  
14 purposes of the trust;

15 (3) the requirement that a trust, its terms, and its administration must be for the  
16 benefit of its beneficiaries;

17 (4) the ability of the beneficiaries pursuant to Section 410(a) to modify or  
18 terminate a trust that no longer serves a material purpose;

19 (5) the power of the court to modify or terminate a trust pursuant to Sections 409  
20 through 415;

21 (6) the validity and effect of a spendthrift provision and the rights of creditors as  
22 provided in [Article] 5;

1 (7) the duties to keep the beneficiaries informed and to report to beneficiaries, as  
2 required by Section 813;

3 (8) the rights under Sections 1010 through 1013 of a person other than a trustee or  
4 beneficiary;

5 (9) periods of limitation for bringing a judicial proceeding;

6 (10) the power of the court to take such action and exercise such jurisdiction as  
7 may be necessary in the interests of justice [; and

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

10 **SECTION 105. QUALIFIED BENEFICIARIES.**

11 (a) Whenever notice to the qualified beneficiaries of a trust is required under this [Code],  
12 the trustee must also give notice to a beneficiary not otherwise entitled to notice who has  
13 delivered to the trustee a request for special notice, but need not give notice to a beneficiary  
14 whose identity or location is unknown to and not reasonably ascertainable by the trustee.

15 (b) A charitable organization expressly entitled to receive benefits under the terms of a  
16 charitable trust or a person appointed to enforce a trust created for the care of an animal or  
17 another noncharitable purpose as provided in Section 407 or 408 has the rights of a qualified  
18 beneficiary under this [Code]. The Attorney General of this State has the rights of a qualified  
19 beneficiary with respect to a charitable trust having its principal place of administration in this  
20 State.

21 **SECTION 106. NOTICE.** Notice required under this [Code] must be given in the form  
22 of a writing or other record. Notice may be given by first-class mail, by personal delivery, by

1 delivery to the beneficiary's last known place of residence or place of business, by a properly  
2 directed electronic submission, or by any other method likely to result in receipt of the notice.  
3 Notice of a judicial proceeding must be given as provided in the applicable rules of civil  
4 procedure.

5 **SECTION 107. COMMON LAW OF TRUSTS.** The common law of trusts and  
6 principles of equity supplement this [Code], except to the extent modified by this [Code] or  
7 another statute of this State.

8 **SECTION 108. CHOICE OF LAW.**

9 (a) A trust not created by will is validly created if its creation complies with the law of  
10 this State, the law of the place where the trust instrument was executed, the law of the place  
11 where, at the time of creation, the settlor was domiciled, had a place of abode, or was a national,  
12 the law of the place where a trustee was domiciled or had a place of business, or the law of the  
13 place where any trust property was located.

14 (b) The meaning and effect of the terms of a trust are determined by:

15 (1) the law of the State designated in those terms unless the designation of that  
16 State's law is contrary to a strong public policy of the State having the most significant  
17 relationship to the matter at issue; or

18 (2) in the absence of a controlling designation in the terms of the trust, the law of  
19 the State having the most significant relationship to the matter at issue.

20 **SECTION 109. PRINCIPAL PLACE OF ADMINISTRATION.**

21 (a) Without precluding other means for establishing a sufficient connection with the  
22 designated jurisdiction, terms of a trust designating the principal place of administration are valid

1 and controlling if:

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

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

5 (b) A trustee is under a continuing duty to administer the trust at a place appropriate to its  
6 purposes, its administration, and the interests of the beneficiaries. Without precluding the right of  
7 the court to order, approve, or disapprove a transfer, the trustee, in performing this duty, may  
8 transfer the trust's principal place of administration to another State or country. The trustee must  
9 notify the qualified beneficiaries of the proposed transfer not less than 60 days before initiating the  
10 transfer.

11 (c) In connection with a transfer of the trust's principal place of administration, the  
12 trustee may transfer some or all of the trust property to a successor trustee designated in the  
13 terms of the trust or appointed pursuant to Section 704.

14 **SECTION 110. NONJUDICIAL SETTLEMENT AGREEMENTS.**

15 (a) Interested persons may enter into a binding nonjudicial settlement agreement with  
16 respect to any matter involving a trust.

17 (b) For purposes of this section, "interested persons" means those persons whose consent  
18 would be required in order to achieve a binding settlement were the settlement to be approved by  
19 the court. Interested persons may include the beneficiaries and, where appropriate, the trustee or  
20 settlor.

21 (c) A nonjudicial settlement agreement is valid only to the extent it does not violate a  
22 material purpose of the trust and includes terms and conditions that could be properly approved

1 by the court under this [Code] or other applicable law.

2 (d) The consent to a nonjudicial settlement agreement of a person who may represent and  
3 bind another person under [Article] 3 with respect to the matter is the consent of the person  
4 represented.

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

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

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

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

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

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

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

14 (f) Any party to a nonjudicial settlement agreement may petition the court to approve the  
15 agreement, to determine whether the representation as provided in [Article] 3 was adequate, and  
16 to determine whether the agreement contained terms and conditions the court could have properly  
17 approved.

18 **[SECTION 111. RULES OF CONSTRUCTION.** The rules of construction that apply  
19 in this State to the interpretation of and disposition of property by will also apply as appropriate  
20 to the interpretation of the terms of a trust and the disposition of the trust property.]

21 **ARTICLE 2**

22 **JUDICIAL PROCEEDINGS**

1           **SECTION 201. ROLE OF COURT IN ADMINISTRATION OF TRUST.**

2           (a) The court may intervene in the administration of a trust to the extent its jurisdiction is  
3 invoked by interested persons or otherwise exercised as provided by law.

4           (b) Trusts are not subject to continuing judicial supervision unless ordered by the court.

5           (c) A judicial proceeding involving a trust may relate to any involving the trust’s  
6 administration and distribution, including a petition for instructions and an action to declare rights.

7           **SECTION 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY.**

8           (a) By accepting the trusteeship of a trust having its principal place of administration in  
9 this State or by moving the principal place of administration to this State, the trustee submits  
10 personally to the jurisdiction of the courts of this State regarding any matter relating to the trust.

11           (b) A beneficiary of a trust having its principal place of administration in this State is  
12 subject to the jurisdiction of the courts of this State regarding any matter relating to the trust.

13           **[SECTION 203. SUBJECT-MATTER JURISDICTION.]**

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

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

18           **[SECTION 204. VENUE.]**

19           (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding  
20 concerning a trust is in the [county] of this State in which the trust’s principal place of  
21 administration is or will be located and, if the trust is created by will and the estate is not yet  
22 closed, in the [county] in which the decedent’s estate is being administered.

1 (b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a  
2 trustee is in a [county] of this State in which a beneficiary resides, in a [county] in which the trust  
3 property, or some portion of the trust property, is located, and if the trust is created by will, in the  
4 [county] in which the decedent's estate was or is being administered.

5 **ARTICLE 3**

6 **REPRESENTATION**

7 **SECTION 301. REPRESENTATION: BASIC EFFECT.**

8 (a) Notice to a person who may represent and bind another person under this [article] has  
9 the same effect as if notice was given directly to the other person.

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

13 (c) Except as otherwise provided in Sections 410 and 602, a person who under this  
14 [article] may represent a settlor who lacks capacity may receive notice and give a binding consent  
15 on the settlor's behalf.

16 **SECTION 302. REPRESENTATION BY HOLDER OF GENERAL**

17 **TESTAMENTARY POWER OF APPOINTMENT.** To the extent there is no conflict of  
18 interest between the holder of a general testamentary power of appointment and the persons  
19 represented with respect to the particular question or dispute, the holder may represent and bind  
20 persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to  
21 the power.

22 **SECTION 303. REPRESENTATION BY FIDUCIARIES AND PARENTS.** To the

1 extent there is no conflict of interest between the representative and the person represented or  
2 among those being represented with respect to a particular question or dispute:

3 (1) a [conservator] may represent and bind the estate that the [conservator] controls;

4 (2) a [guardian] may represent and bind the ward if a [conservator] of the ward's estate  
5 has not been appointed;

6 (3) an agent having authority to do so may represent and bind the principal;

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

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

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

12 **SECTION 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY**  
13 **IDENTICAL INTEREST.** Unless otherwise represented, a minor, incapacitated, or unborn  
14 individual, or a person whose identity or location is unknown and not reasonably ascertainable,  
15 may be represented by and bound by another having a substantially identical interest with respect  
16 to the particular question or dispute, but only to the extent there is no conflict of interest between  
17 the representative and the person represented.

18 **SECTION 305. APPOINTMENT OF REPRESENTATIVE.**

19 (a) If the court determines that an interest is not represented under this [article], or that  
20 the otherwise available representation might be inadequate, the court may appoint a  
21 [representative] to receive notice, give consent, and otherwise represent, bind, and act on behalf  
22 of a minor, incapacitated, or unborn individual, or a person whose identity or location is

1 unknown. A [representative] may be appointed to represent several persons or interests.

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

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

7 **SECTION 306. JUDICIALLY APPROVED SETTLEMENT.**

8 (a) Notice to a person who may be represented and bound under this [article] of a  
9 proceeding for judicial approval of an agreement must be given:

10 (1) directly to the person or to one who may bind the person if the person may be  
11 represented and bound under Section 302, 303, or 305;

12 (2) in the case of a person who may be represented and bound under Section 304  
13 and who is unborn or whose identity or location is unknown and not reasonably ascertainable, to  
14 all persons whose interests in the judicial proceedings are substantially identical and whose  
15 identities and location  
16 s are known; or

17 (3) in the case of other persons who may be represented and bound under Section  
18 304, directly to the person.

19 **ARTICLE 4**

20 **CREATION, VALIDITY, MODIFICATION,**  
21 **AND TERMINATION OF TRUST**

22 **SECTION 401. METHODS OF CREATING A TRUST.**

1 (a) A trust may be created by:

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

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

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

7 (b) A trust instrument may subject identified property to a self-declared trust or transfer to  
8 a trustee property identified in the trust instrument.

9 **SECTION 402. REQUIREMENTS FOR CREATION.**

10 (a) A trust is created only if:

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

12 (2) the settlor indicates the intention to create a trust;

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

14 (A) a charitable trust;

15 (B) a trust for the care of an animal, as provided in Section 407; or

16 (C) a trust for a noncharitable purpose, as provided in Section 408;

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

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

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

21 (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the  
22 power is not exercised within a reasonable time, the power fails and the property subject to the

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

3 **SECTION 403. TRUST PURPOSES.** A trust may be created only to the extent its  
4 purposes are lawful, not contrary to public policy, and possible to achieve. A trust, its terms, and  
5 its administration must be for the benefit of its beneficiaries.

6 **SECTION 404. CHARITABLE PURPOSES.**

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

10 (b) If the purposes of a trust are charitable but the terms of the trust do not indicate a  
11 particular purpose or beneficiary, the court may select one or more charitable purposes or  
12 beneficiaries or delegate to the trustee the responsibility for preparing and implementing an  
13 appropriate plan.

14 **SECTION 405. CREATION OF TRUST INDUCED BY UNDUE INFLUENCE,**  
15 **DURESS, OR FRAUD.** A trust is void to the extent its creation was induced by undue  
16 influence, duress, or fraud.

17 **SECTION 406. EVIDENCE OF ORAL TRUST.** Except as required by a statute  
18 other than this [Code], a trust need not be evidenced by a writing or other record, but the creation  
19 of an oral trust and its terms may only be established by clear and convincing evidence.

20 **SECTION 407. TRUST FOR CARE OF ANIMAL.**

21 (a) A trust may be created for the care of an animal born during the settlor's lifetime. The  
22 trust terminates upon the death of all animals covered by the terms of the trust.

1 (b) A trust authorized by this section may be enforced by a person appointed in the terms  
2 of the trust, otherwise by a person appointed by the court. A person having an interest in the  
3 welfare of the animal may petition for an order appointing a person to enforce the trust or to  
4 remove that person.

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

10 **SECTION 408. TRUST FOR NONCHARITABLE PURPOSE.** Except as otherwise  
11 provided in Section 407 or by another statute, the following rules apply:

12 (1) A trust may be created for a noncharitable purpose without a definite or definitely  
13 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the  
14 trustee. The trust may not be enforced for more than [21] years.

15 (2) A trust authorized by this section may be enforced by a person appointed in the terms  
16 of the trust, otherwise by a person appointed by the court.

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

22 **SECTION 409. TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL**

1 **OR DISAPPROVAL.**

2 (a) In addition to the methods of termination prescribed in Sections 410 through 413, a  
3 trust terminates to the extent the trust is revoked, expires pursuant to its terms, or the purposes of  
4 the trust are achieved or become unlawful, impossible to achieve, or contrary to public policy.

5 (b) A proceeding to approve or disapprove a proposed action under Sections 410 through  
6 416 may be initiated by a trustee or beneficiary, and a proceeding to approve or disapprove a  
7 proposed action under Section 410 may be initiated by a settlor. The settlor of a charitable trust  
8 may maintain a proceeding to enforce the trust and may maintain a proceeding to modify the trust  
9 under Section 412.

10 **SECTION 410. TERMINATION OR MODIFICATION OF IRREVOCABLE**  
11 **TRUST BY CONSENT.**

12 (a) An irrevocable trust may be terminated upon consent of all of the beneficiaries if  
13 continuance of the trust is not necessary to achieve any material purpose of the trust. An  
14 irrevocable trust may be modified upon consent of all of the beneficiaries if the modification is not  
15 inconsistent with a material purpose of the trust. A spendthrift provision in the terms of the trust  
16 is presumed not to constitute a material purpose of the trust.

17 (b) An irrevocable trust may be modified or terminated upon consent of the settlor and all  
18 beneficiaries even if the modification or termination is inconsistent with a material purpose of the  
19 trust. A settlor's power to consent to a trust's termination may be exercised by an agent under a  
20 power of attorney only to the extent the power of attorney or the terms of the trust expressly  
21 authorize the agent to do so, by the settlor's [conservator] with the approval of the court  
22 supervising the [conservatorship] if an agent is not so authorized, or by the settlor's [guardian]

1 with the approval of the court supervising the [guardianship] if an agent is not so authorized and a  
2 conservator has not been appointed.

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

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

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

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

12 **SECTION 411. MODIFICATION OR TERMINATION BECAUSE OF**  
13 **UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST**  
14 **EFFECTIVELY.**

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

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

21 (c) Upon termination of a trust under this section, the trust property must be distributed  
22 in accordance with the trust purposes.

1           **SECTION 412. CY PRES.**

2           (a) Except as otherwise provided in subsection (b), if a particular charitable purpose  
3 becomes unlawful, impracticable, impossible to achieve, or wasteful:

4                   (1) the trust does not fail, in whole or in part;

5                   (2) the trust property does not revert to the settlor or the settlor's successors in  
6 interest; and

7                   (3) the court may apply cy pres to modify or terminate the trust by directing that  
8 the trust property be applied or distributed, in whole or in part, in a manner consistent with the  
9 settlor's charitable purposes.

10           (b) The power of the court under subsection (a) to apply cy pres to modify or terminate a  
11 charitable trust is subject to a contrary provision in the terms of the trust that would result in  
12 distribution of the trust property to a noncharitable beneficiary only if fewer than 21 years have  
13 elapsed since the date of the trust's creation.

14           **SECTION 413. TERMINATION OF UNECONOMIC TRUST.**

15           (a) On notice to the qualified beneficiaries, a trustee may terminate a trust whose property  
16 has a value of less than [\$50,000].

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

20           (c) Upon termination of a trust under this section, the trustee shall distribute the property  
21 of a noncharitable trust in accordance with the trust purposes, and shall distribute the property of  
22 a charitable trust in a manner consistent with the settlor's charitable purposes.



1 (a) A spendthrift provision is valid only if it restrains both voluntary and involuntary  
2 transfer of a beneficiary's interest.

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

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

10 **SECTION 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.**

11 (a) Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former  
12 spouse who has a judgment against the beneficiary for support or maintenance, or a judgment  
13 creditor who has provided services for the protection of a beneficiary's interest in the trust, may  
14 obtain from a court an order attaching present or future distributions to or for the benefit of the  
15 beneficiary.

16 (b) A spendthrift provision is unenforceable against a claim of this State or the United  
17 States to the extent a statute of this State or federal law so provides.

18 **SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD.**

19 (a) Except as otherwise provided in subsection (b), whether or not a trust contains a  
20 spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to  
21 the trustee's discretion, even if the discretion is expressed in the form of a standard of distribution  
22 or the trustee has abused the discretion.

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

3 (1) a distribution may be ordered by a court to satisfy a judgment against the  
4 beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

5 (2) the court shall direct the trustee to pay to the child, spouse, or former spouse  
6 such amount as is equitable under the circumstances but not more than the amount the trustee  
7 would have been required to distribute to or for the benefit of the beneficiary had the trustee  
8 complied with the standard or not abused the discretion.

9 (c) This section does not limit the right of a beneficiary to maintain a judicial proceeding  
10 against a trustee for an abuse of discretion or failing to comply with a standard for distribution.

11 **SECTION 505. CREDITOR'S CLAIM AGAINST SETTLOR.**

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

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

16 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may  
17 reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has  
18 more than one settlor, the amount the creditor or assignee of a particular settlor may reach may  
19 not exceed the settlor's interest in the portion of the trust attributable to that settlor's  
20 contribution.

21 (3) After the death of a settlor, and subject to the settlor's right to direct the  
22 source from which liabilities will be paid, the property of a trust that was revocable at the settlor's

1 death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate,  
2 the expenses of the settlor's funeral and disposal of remains, and [statutory allowances] to a  
3 surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy  
4 those claims, costs, expenses, and [allowances].

5 (b) For purposes of this section:

6 (1) during the period the power may be exercised, the holder of a power of  
7 withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the  
8 property subject to the power; and

9 (2) upon the lapse, release, or waiver of the power, the holder is treated as the  
10 settlor of the trust only to the extent the value of the property affected by the lapse, release, or  
11 waiver, exceeds the greater of the amount specified in (i) Section 2041(b)(2) or 2514(e) of the  
12 Internal Revenue Code of 1986, or (ii) Section 2503(b) of the Internal Revenue Code of 1986, in  
13 either case as in effect on January 1, [\_\_\_\_\_] [, or as later amended].

14 **SECTION 506. OVERDUE DISTRIBUTION.** Whether or not a trust contains a  
15 spendthrift provision, a creditor or assignee of a beneficiary may reach a distribution mandated to  
16 be made to the beneficiary by the terms of the trust, including a required distribution of income or  
17 distribution upon termination of the trust, if the trustee has not made the distribution within a  
18 reasonable time after the mandated distribution date.

19 **SECTION 507. PERSONAL OBLIGATIONS OF TRUSTEE.** The trust property is  
20 protected from the personal obligations of the trustee even if the trustee becomes insolvent or  
21 bankrupt.

22 **ARTICLE 6**

1 **REVOCABLE TRUSTS**

2 **SECTION 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST.** The

3 capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the  
4 actions of the trustee of a revocable trust, is the same as that required to make a will.

5 **SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.**

6 (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor  
7 may revoke or amend the trust. This subsection does not apply to a trust created under an  
8 instrument executed before [the effective date of this [Code]].

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

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

13 (2) to the extent the trust consists of other property, each settlor may revoke or  
14 amend the trust with regard the portion of the trust property attributable to that settlor's  
15 contribution.

16 (c) A trust that is revocable by the settlor may be revoked or amended:

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

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

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

22 (B) any other method manifesting clear and convincing evidence of the

1 settlor's intent.

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

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

7 (f) A [conservator] or, if no [conservator] has been appointed, a [guardian] may revoke or  
8 amend a revocable trust with the approval of the court supervising the [conservatorship] or  
9 [guardianship].

10 (g) A trustee who does not know that a trust has been revoked or amended is not liable to  
11 the settlor or settlor's successors in interest for distributions made and other actions taken on the  
12 assumption that the trust, as unamended, was still in effect.

13 **SECTION 603. SETTLOR'S POWERS; PRESENTLY EXERCISABLE POWERS**  
14 **OF WITHDRAWAL.**

15 (a) Except as otherwise provided in the terms of the trust:

16 (1) while a trust is revocable and the settlor has capacity to revoke the trust, rights  
17 of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively  
18 to, the settlor; or

19 (2) while a trust is revocable and the settlor does not have capacity to revoke the  
20 trust, rights of the beneficiaries are held by the beneficiaries.

21 (b) During the period the power may be exercised, the holder of a power of withdrawal  
22 has the rights of a settlor of a revocable trust under this section to the extent of the property

1 subject to the power.

2 **SECTION 604. LIMITATION ON ACTION CONTESTING VALIDITY OF**  
3 **REVOCABLE TRUST.**

4 (a) Unless the trustee has sent the person a notice shortening the period for bringing a  
5 contest as provided in subsection (b), a person may at anytime within [three] years after the  
6 settlor's death initiate a judicial proceeding to contest the validity of a trust that was revocable at  
7 the settlor's death.

8 (b) The trustee may shorten the period a person has to contest the validity of a trust that  
9 was revocable at the settlor's death by sending the person a copy of the trust instrument and a  
10 notice informing the person of the trust's existence, of the trustee's name and address, and of the  
11 time allowing for initiating a contest. A person who is sent a notice and copy of the trust  
12 instrument must initiate a judicial proceeding to contest the validity of the trust within [120] days  
13 after the date the notice and copy of the trust instrument was sent, but in no event more than  
14 [three] years after the settlor's death.

15 (c) Upon the death of the settlor of a trust that was revocable at the settlor's death, the  
16 trustee may proceed to distribute the trust property in accordance with the terms of the trust.

17 This distribution may be made without liability unless the trustee:

- 18 (1) knows of a pending judicial proceeding contesting the validity of the trust; or  
19 (2) a potential contestant notified the trustee of a possible judicial proceeding to  
20 contest the trust and initiated the judicial proceeding within 60 days after the notice was sent.

21 (d) Until a contest is barred under this section, a beneficiary of what later turns out to have  
22 been an invalid trust is liable to return any distribution received.

1 **ARTICLE 7**

2 **OFFICE OF TRUSTEE**

3 **SECTION 701. ACCEPTING OR DECLINING TRUSTEESHIP.**

4 (a) Except as otherwise provided in subsection (c), a person designated as trustee  
5 accepts the trusteeship by:

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

7 (2) unless the terms of the trust expressly make the method provided in the terms  
8 expressly exclusive, accepting delivery of the trust property, exercising powers or performing  
9 duties as trustee, or otherwise indicating an acceptance of the trusteeship.

10 (b) A person designated as trustee who has not yet accepted the trusteeship may reject  
11 the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable  
12 time after knowing of the designation rejects the trusteeship.

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

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

17 (2) inspect or investigate trust property to determine potential liability for violation  
18 of environmental law.

19 **SECTION 702. TRUSTEE'S BOND.**

20 (a) A trustee must give bond to secure performance of the trustee's duties only if the  
21 court finds that a bond is needed to protect the interest of beneficiaries or a bond is required by  
22 the terms of the trust and the court has not dispensed with the requirement.

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

3 **SECTION 703. COTRUSTEES.**

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

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

6 (c) A cotrustee must participate in the performance of a trustee's function unless the  
7 cotrustee is unavailable to perform the function because of absence, illness, or other temporary  
8 incapacity, or the trustee has properly delegated the performance of the function to a cotrustee.

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

13 (e) A trustee may not delegate to a cotrustee the performance of a function the settlor  
14 reasonably expected the trustees to perform jointly unless the inability to delegate would result in  
15 adverse tax consequences to the trustee or the trust. Unless the delegation was irrevocable, a  
16 trustee may revoke a delegation previously made.

17 (f) Each trustee shall exercise reasonable care to prevent a cotrustee from committing a  
18 material breach of trust and to compel a cotrustee to redress a material breach of trust.

19 (g) A trustee who does not join in an action of another trustee is treated as not having  
20 participated in the action. A dissenting trustee who joins in an action at the direction of the  
21 majority trustees and who notified any cotrustee of the dissent at or before the time of the action  
22 is treated as not having participated in the action unless the action constituted a material breach of

1 trust.

2 **SECTION 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF**  
3 **SUCCESSOR.**

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

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

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

7 (3) a trustee resigns;

8 (4) a trustee is disqualified or removed;

9 (5) a trustee dies; or

10 (6) a [guardian] or [conservator] is appointed for an individual serving or eligible  
11 to serve as trustee.

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

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

16 (1) by a person designated by unanimous agreement of the qualified beneficiaries; or

17 (2) by a person appointed by the court.

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

21 **SECTION 705. RESIGNATION OF TRUSTEE.**

22 (a) A trustee may resign:

- 1 (1) upon at least 30 days' notice to the qualified beneficiaries and all cotrustees; or
- 2 (2) with the approval of the court.

3 (b) A qualified beneficiary by a writing or other record may waive a notice otherwise  
4 required by this section.

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

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

9 **SECTION 706. REMOVAL OF TRUSTEE.**

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

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

13 (1) the trustee has committed a material breach of trust;

14 (2) lack of cooperation among cotrustees substantially impairs the administration of  
15 the trust;

16 (3) investment decisions of the trustee, although not constituting a breach of trust,  
17 have resulted in investment performance persistently and substantially below that of comparable  
18 trusts;

19 (4) because of changed circumstances, unfitness, or unwillingness or inability to  
20 effectively administer the trust, removal of the trustee is in the best interest of the beneficiaries; or

21 (5) the designation of the particular trustee did not constitute a material purpose of  
22 the trust and all of the beneficiaries, in compliance with Section 410(a), agree to remove the

1 trustee.

2 (c) Pending a final decision on a petition to remove a trustee, or in lieu of or in addition to  
3 removing a trustee, the court may order such appropriate relief under Section 1001(b) as may be  
4 necessary to protect the trust property or the interests of the beneficiaries.

5 **SECTION 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE.** Unless a  
6 cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to  
7 a successor trustee or to a person appointed by the court to receive the property:

8 (1) a trustee who has resigned or been removed has the duties of a trustee and the powers  
9 necessary to protect the trust property; and

10 (2) a former trustee's personal representative, if the former trustee's appointment  
11 terminated because of death, or a former trustee's [conservator] or [guardian], if the appointment  
12 terminated because of the former trustee's incapacity, is responsible for and has the powers  
13 necessary to protect the trust property.

14 **SECTION 708. COMPENSATION OF TRUSTEE.**

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

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

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

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



1 released the trustee in compliance with Section 1009; or

2 (5) the transaction involves a contract entered into or claim acquired by the trustee  
3 before the person became or contemplated becoming trustee.

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

7 (1) the trustee's spouse;

8 (2) the trustee's descendants, siblings, parents, or their spouses;

9 (3) an agent or attorney of the trustee;

10 (4) a corporation or other entity or enterprise in which the trustee, or a person with  
11 a significant ownership interest in the trustee, has an interest that might affect the trustee's best  
12 judgment.

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

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

20 (f) An investment by a trustee in securities of an investment company or investment trust  
21 to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not a  
22 prohibited act of self-dealing but must otherwise comply with this section and with the prudent

1 investor rule of [Article] 9. The trustee may be compensated by the investment company or  
2 investment trust for providing those services out of fees charged to the trust if the trustee discloses  
3 at least annually to the persons entitled under Section 813 to receive a copy of the trustee's annual  
4 report the rate and method by which the compensation was determined.

5 (g) A trustee shall act in the best interests of the beneficiaries in voting shares of stock or in  
6 exercising powers of control over ownership interests in other forms of business or enterprise.

7 When the trust is the sole owner of a corporation or other form of business or enterprise, the  
8 trustee shall elect or appoint directors or other managers who will manage the corporation or  
9 business enterprise in the best interests of the trust's beneficiaries.

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

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

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

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

16 (4) the deposit of trust funds in a regulated financial-service institution operated by  
17 the trustee; or

18 (5) the advance by the trustee of money for the protection of the trust, which gives  
19 rise to a lien against trust property to secure reimbursement with reasonable interest.

20 (i) Upon petition by a trustee or beneficiary, the court may appoint a special fiduciary to  
21 make a decision with respect to any proposed transaction that might violate this section if entered  
22 into by the trustee.

1           **SECTION 803. IMPARTIALITY.** If a trust has two or more beneficiaries, the trustee  
2 shall act impartially in investing, managing, and distributing the trust property, giving due regard to  
3 the beneficiaries' respective interests.

4           **SECTION 804. PRUDENT ADMINISTRATION.** A trustee shall administer the trust  
5 as a prudent person would, by considering the purposes, terms, distribution requirements, and  
6 other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable  
7 care, skill, and caution.

8           **SECTION 805. COSTS OF ADMINISTRATION.** In administering a trust, the trustee  
9 may incur only costs that are reasonable in relation to the trust property, the purposes of the trust,  
10 and the skills of the trustee.

11           **SECTION 806. TRUSTEE'S SKILLS.** A trustee who has special skills or expertise, or  
12 is named trustee in reliance upon the trustee's representation that the trustee has special skills or  
13 expertise, shall use those special skills or expertise.

14           **SECTION 807. DELEGATION BY TRUSTEE.**

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

18                   (1) selecting an agent;

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

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

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

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

5 (d) By accepting a delegation of powers or duties from the trustee of a trust that is subject  
6 to the law of this State, an agent submits to the jurisdiction of the courts of this State.

7 **SECTION 808. POWERS TO DIRECT.**

8 (a) While a trust is revocable, the trustee may follow a direction of the settlor even if  
9 contrary to the terms of the trust.

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

15 (c) The holder of a power to direct is presumptively a fiduciary who, as such, is required  
16 to act in good faith, with regard to the purposes of the trust and the interest of the beneficiaries.  
17 The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

18 **SECTION 809. CONTROL AND PROTECTION OF TRUST PROPERTY.** A  
19 trustee shall take reasonable steps to take control of and protect the trust property.

20 **SECTION 810. SEPARATION AND IDENTIFICATION OF TRUST PROPERTY.**

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

22 (b) Except as otherwise provided in subsection (c), a trustee other than a regulated

1 financial-service institution shall cause the trust property to be designated so that the interest of the  
2 trust, to the extent feasible, appears in records maintained by a party other than a trustee or  
3 beneficiary.

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

6 **SECTION 811. ENFORCEMENT AND DEFENSE OF CLAIMS.** A trustee shall  
7 take reasonable steps to enforce claims of the trust and to defend claims against the trust.

8 **SECTION 812. FORMER FIDUCIARIES.** A trustee shall take reasonable steps to  
9 compel a former trustee or other fiduciary to deliver trust property to the trustee, and to redress a  
10 breach of trust known to the trustee to have been committed by a former trustee or other fiduciary.

11 **SECTION 813. DUTY TO INFORM AND REPORT.**

12 (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about  
13 the administration of the trust and, unless unreasonable under the circumstances, promptly respond  
14 to a beneficiary's request for information.

15 (b) A trustee shall:

16 (1) upon request of a beneficiary, promptly provide the beneficiary with a copy of  
17 the trust instrument;

18 (2) within 60 days after accepting a trusteeship, notify the qualified beneficiaries of  
19 the acceptance and of the trustee's name, address, and telephone number;

20 (3) within 60 days after the date an irrevocable trust was created, or the date a  
21 formerly revocable trust became irrevocable, whether by the death of the settlor or otherwise,  
22 notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors,

1 and of the right to request a copy of the trust instrument;

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

4 (c) Except as otherwise provided in the terms of the trust and unless disclosure is forbidden  
5 by law or would be seriously detrimental to the interests of the beneficiaries, the trustee shall notify  
6 the qualified beneficiaries before entering into a binding agreement with respect to the sale of a  
7 controlling interest in a closely-held business or a sale of real estate, tangible personal property,  
8 closely-held business interest, or other asset not normally sold on a public market, whose value at  
9 the time of the sale, in the trustee's reasonable judgment, comprises at least 25 percent of the total  
10 value of the trust property.

11 (d) A trustee shall send to the qualified beneficiaries at least annually and at the  
12 termination of the trust a report of the trust property, liabilities, receipts, and disbursements,  
13 including the source and amount of the trustee's compensation, a listing of the trust assets and, if  
14 feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee  
15 remains in office a report must be sent to the qualified beneficiaries by the former trustee or, if the  
16 trusteeship terminated by reason of death or incapacity, by the former trustee's personal  
17 representative, [conservator], or [guardian].

18 (e) A beneficiary, by a consent made in writing or by other record, may waive the right to  
19 a trustee's report or other information otherwise required to be provided under this section. A  
20 beneficiary, with respect to future reports and other information, may revoke a consent previously  
21 given.

22 (f) The terms of a trust may dispense with the requirements of this section only with respect

1 to a beneficiary who is a settlor or who has not attained 25 years of age.

2 (g) Except as otherwise provided by the terms of a trust, while the trust is revocable and  
3 the settlor has capacity to revoke the trust, the duties of the trustee under this section are owed  
4 exclusively to the settlor. If a trust has more than one settlor, the duties under this section are  
5 owed to all settlors.

6 **SECTION 814. DISCRETIONARY POWERS.**

7 (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust,  
8 including the use of such terms as “absolute”, “sole”, or “uncontrolled”, the trustee shall exercise  
9 a discretionary power in good faith and with regard to the purposes of the trust and the interest of  
10 the beneficiaries.

11 (b) Despite a term of a trust providing for a broader standard, a person other than a  
12 settlor who is a beneficiary and trustee of a trust that grants the trustee a power to make  
13 discretionary distributions to or for the benefit of the person may exercise the power only in  
14 accordance with an ascertainable standard relating to the person’s health, education, support, or  
15 maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue  
16 Code of 1986, as in effect on January 1, [[\_\_\_\_\_], or as later amended].

17 (c) Except as expressly provided in the terms of the trust, a trustee may not exercise a  
18 power to make discretionary distributions to satisfy a legal obligation of support which the trustee,  
19 in an individual capacity, owes another person.

20 (d) A power whose exercise is limited or proscribed by subsections (b) and (c) may be  
21 exercised by a majority of the remaining trustees whose exercise of the power is not so limited or  
22 prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special

1 fiduciary with authority to exercise the power.

2 (e) Subsections (b)-(d) do not apply to:

3 (1) a power held by the settlor's spouse who is the trustee of a trust for which a  
4 marital deduction, as defined in Section 2056 or 2523 of the Internal Revenue Code of 1986, as in  
5 effect on January 1, [[\_\_\_\_]], or as later amended], was previously allowed;

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

8 (3) a trust contributions to which qualify for the annual exclusion under Section  
9 2503(c) of the Internal Revenue Code of 1986, as in effect on January 1, [[\_\_\_\_]], or as later  
10 amended].

11 **SECTION 815. GENERAL POWERS OF TRUSTEE.**

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

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

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

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

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

19 (C) any other powers conferred by this [Act].

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

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

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

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

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

5 (4) deposit trust funds in an account in a regulated financial-service institution;

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

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

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

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

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

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

21 (D) deposit the securities with a securities depository or other regulated financial-  
22 services institution;

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

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

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

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

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

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

16 (A) inspect or investigate property the trustee holds or has been asked to hold, or  
17 property owned or operated by an entity in which the trustee holds or has been asked to hold an  
18 interest, for the purpose of determining the application of environmental law with respect to the  
19 property;

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

1 (C) decline to accept property into trust or to disclaim any power with respect to  
2 property that has or may have liability for violation of environmental law attached;

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

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

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

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

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

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

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

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

20 (20) appoint a trustee to act in another State or country with respect to trust property  
21 located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of  
22 the appointing trustee, require that the appointed trustee furnish security, and remove any trustee

1 so appointed;

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

5 (A) paying it to the beneficiary's [conservator] or, if the beneficiary does not have a  
6 [conservator], the beneficiary's [guardian];

7 (B) paying it to the beneficiary's custodian under [the Uniform Transfers to Minors  
8 Act] or custodial trustee under [the Uniform Custodial Trust Act], and, for such purpose, to create  
9 a custodianship or custodial trust;

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

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

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

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

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

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

3 (26) on termination of the trust, exercise the powers appropriate to wind up the  
4 administration of the trust and distribute the trust property to the persons entitled to it.

5 **SECTION 817. TERMINATING DISTRIBUTIONS.**

6 (a) Upon termination or partial termination of a trust, the trustee may send to the  
7 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed  
8 distribution terminates if the beneficiary does not inform the trustee of an objection within 30 days  
9 after the proposal was sent but only if the proposal informed the beneficiary of the right to object  
10 and of the allowed.

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

14 (c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the  
15 extent it was induced by improper conduct of the trustee or the beneficiary, at the time of the  
16 release, did not know of the beneficiary's rights or of the material facts relating to the breach.

17 **ARTICLE 9**

18 **UNIFORM PRUDENT INVESTOR ACT**

19 **(Insert modified Text of this other Uniform Act)**

20 **ARTICLE 10**

21 **LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE**

22 **SECTION 1001. REMEDIES FOR BREACH OF TRUST.**

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

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

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

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

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

7 (4) order a trustee to account;

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

10 (6) suspend or remove the trustee;

11 (7) reduce or deny compensation to the trustee;

12 (8) subject to Section 1012, void an act of the trustee, impose a lien or a  
13 constructive trust on trust property, or trace trust property wrongfully disposed of and recover the  
14 property or its proceeds; or

15 (9) order any other appropriate relief.

16 **SECTION 1002. DAMAGES FOR BREACH OF TRUST.**

17 (a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the  
18 greater of:

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

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

22 (b) If more than one trustee is liable to the beneficiaries for a breach of trust, each trustee is

1 ordinarily entitled to contribution from the other trustee. A trustee is not entitled to contribution  
2 from the other trustee if the trustee is substantially more at fault than the other trustee or if the  
3 trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of  
4 the trust or the interest of the beneficiaries. A trustee who received a benefit from the breach of  
5 trust is not entitled to contribution from another trustee to the extent of the benefit received.

6 **SECTION 1003. DAMAGES IN ABSENCE OF BREACH.**

7 (a) A trustee is accountable to a beneficiary affected for any profit made by the trustee  
8 arising from the administration of the trust, even absent a breach of trust.

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

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

15 **SECTION 1005. LIMITATION OF ACTION AGAINST TRUSTEE.**

16 (a) A beneficiary may not initiate a proceeding against a trustee for breach of trust more  
17 than one year after the date that the trustee or representative of the beneficiary was sent a report  
18 that adequately disclosed the facts constituting the claim and which informed the beneficiary of the  
19 time allowed.

20 (b) A report adequately discloses the facts constituting a claim if it provides sufficient  
21 information so that the beneficiary or representative knows of the claim or should have inquired  
22 into its existence.

1 (c) If subsection (a) does not apply, a beneficiary must initiate a judicial proceeding against a  
2 trustee for breach of trust within five years following the first to occur of:

3 (1) the removal or resignation of the trustee;

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

5 (3) the termination of the trust.

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

9 **SECTION 1007. EVENTS AFFECTING ADMINISTRATION OR DISTRIBUTION.**  
10 Whenever the happening of an event, including marriage, divorce, performance of educational  
11 requirements, or death, affects the administration or distribution of a trust, a trustee who has  
12 exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting  
13 from the trustee's lack of knowledge.

14 **SECTION 1008. EXCULPATION OF TRUSTEE.**

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

17 (1) relieves a trustee of liability for breach of trust committed in bad faith or with  
18 reckless indifference to the purposes of the trust or the interest of the beneficiaries; or

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

21 (b) An exculpatory term drafted by or caused to have been drafted by the trustee is invalid  
22 as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory

1 term is fair under the circumstances and that its existence and contents were adequately  
2 communicated to the settlor.

3 **SECTION 1009. BENEFICIARY’S CONSENT, RELEASE, OR RATIFICATION.**

4 A trustee is not liable to a breach for breach of trust if the beneficiary, while having capacity,  
5 consented to the conduct constituting the breach, released the trustee from liability for the breach,  
6 or ratified the transaction constituting the breach, unless:

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

9 (2) at the time of the consent, release, or ratification, the beneficiary did not know of the  
10 beneficiary’s rights or of the material facts relating to the breach.

11 **SECTION 1010. LIMITATION ON CONTRACT OR TORT LIABILITY OF**  
12 **TRUSTEE.**

13 (a) Except as otherwise provided in the contract, a trustee is not personally liable on a  
14 contract properly entered into in the trustee’s fiduciary capacity in the course of administering of  
15 the trust if the trustee in the contract disclosed the fiduciary capacity.

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

19 (c) A claim based on a contract entered into by a trustee in the trustee’s fiduciary capacity,  
20 on an obligation arising from ownership or control of trust property, or on a tort committed in the  
21 course of administering a trust, may be asserted in a judicial proceeding against the trustee in the  
22 trustee’s fiduciary capacity, whether or not the trustee is personally liable on the claim.

1           **SECTION 1011. GENERAL PARTNERSHIP INTERESTS.**

2           (a) Except as provided in subsection (c) or unless personal liability is imposed in the  
3 contract, a trustee who holds a general partnership interest is not personally liable on a contract  
4 entered into by the partnership subsequent to the trust’s acquisition of the partnership interest if the  
5 fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the  
6 [Uniform Partnership Act].

7           (b) Except as provided in subsection (c), a trustee who holds a general partnership interest  
8 is not personally liable for torts committed by the partnership or for obligations arising from  
9 ownership or control of the general partnership interest unless the trustee was personally at fault.

10          (c) The immunity provided by this section does not apply if an interest in the partnership is  
11 held by the trustee in a capacity other than that of trustee or is held by the trustee’s spouse or the  
12 trustee’s descendants, siblings, parents, or their spouses.

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

16           **SECTION 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE.**

17          (a) A person other than a beneficiary who in good faith assists a trustee or who in good  
18 faith and for value deals with a trustee without knowledge that the trustee is exceeding or  
19 improperly exercising the trustee’s powers is protected from liability as if the trustee properly  
20 exercised the power.

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

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

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

6 (e) The protection provided by this section to persons assisting or dealing with a trustee is  
7 superseded by comparable protective provisions of other laws relating to commercial transactions  
8 or to the transfer of securities by fiduciaries.

9 **SECTION 1013. CERTIFICATION OF TRUST.**

10 (a) Instead of providing a person other than a beneficiary with a copy of the trust  
11 instrument, the trustee may provide the person with a certification of trust containing the following  
12 information:

- 13 (1) that the trust exists and the date the trust instrument was executed;
- 14 (2) the identity of the settlor or settlors and of the currently acting trustee or trustees  
15 of the trust;
- 16 (3) the powers of the trustee;
- 17 (4) the revocability or irrevocability of the trust and the identity of any person  
18 holding a power to revoke the trust;
- 19 (5) the authority of cotrustees to sign and whether all or less than all are required in  
20 order to exercise powers of the trustee;
- 21 (6) the trust's taxpayer identification number; and
- 22 (7) the manner in which title to trust property may be taken.

1 (b) A certification of trust must be in the form of a writing or other record and may be  
2 signed or acknowledged by any trustee.

3 (c) A certification of trust must contain a statement that the trust has not been revoked,  
4 modified, or amended in any manner that would cause the representations contained in the  
5 certification of trust to be incorrect.

6 (d) A certification of trust need not contain the beneficial terms of a trust.

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

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

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

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

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

1 **ARTICLE 11**

2 **TRANSITIONAL PROVISIONS**

3 **SECTION 1101. APPLICATION TO EXISTING RELATIONSHIPS.**

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

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

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

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

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

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

18 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period  
19 that has commenced to run under any other statute before [the effective date of the [Code]], that  
20 statute remains in force with respect to that right.

21 **ARTICLE 12**

22 **MISCELLANEOUS PROVISIONS**

1           **SECTION 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
2 applying and construing this Uniform Act, consideration must be given to the need to promote  
3 uniformity of the law with respect to its subject matter among States that enact it.

4           **SECTION 1202. SEVERABILITY CLAUSE.** If any provision of this [Code] or its  
5 application to any person or circumstances is held invalid, the invalidity does not affect other  
6 provisions or applications of this [Code] which can be given effect without the invalid provision or  
7 application, and to this end the provisions of this [Code] are severable.

8           **SECTION 1203. EFFECTIVE DATE.**  
9 This [Code] takes effect on \_\_\_\_\_.

10           **SECTION 1204. REPEALS.**

11           The following Acts are repealed:

- 12                   (1) Uniform Trustee Powers Act;
- 13                   (2) Uniform Probate Code, Article VII;
- 14                   (3) Uniform Trusts Act (1937); and
- 15                   (4) Uniform Prudent Investor Act.