

UNIFORM TRUST CODE

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

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
IN ST. AUGUSTINE, FLORIDA
JULY 28 – AUGUST 4, 2000

WITHOUT PREFATORY NOTE AND COMMENTS

Copyright © 2000

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 9, 2000

UNIFORM TRUST CODE

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Trust Code was as follows:

MAURICE A. HARTNETT, III, 144 Cooper Road, Dover, DE 19901, *Chair*

FRANK W. DAYKIN, 4745 Giles Way, Carson City, NV 89704, *Committee Member and Committee on Style Liaison*

E. EDWIN ECK, II, University of Montana, School of Law, Missoula, MT 59812

WILLIAM L. EVANS, Ohio Northern University, Pettit College of Law, 525 S. Main Street, Ada, OH 45810

RUSSELL L. GEORGE, P.O. Box 907, 120 W. Third Street, Rifle, CO 81650

JOHN H. LANGBEIN, Yale Law School, P.O. Box 208215, New Haven, CT 06520

GLEE S. SMITH, P.O. Box 360, 111 E. 8th, Larned, KS 67550

NATHANIEL STERLING, Law Revision Commission, Suite D-1, 4000 Middlefield Road, Palo Alto, CA 94303

RICHARD V. WELLMAN, University of Georgia, School of Law, Athens, GA 30602

DAVID M. ENGLISH, University of Missouri School of Law, Missouri and Conley Avenues, Columbia, MO 65211, *Reporter*

EX OFFICIO

JOHN McCLAUGHERTY, P.O. Box 553, Charleston, WV 25322, *President*

STANLEY M. FISHER, 1100 Huntington Building, 925 Euclid Avenue, Cleveland, OH 44115, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

JOSEPH KARTIGANER, 955 Fifth Avenue, New York, NY 10021, *Advisor*

DAVID ALAN RICHARDS, 875 3rd Avenue, New York, NY 10022, *Real Property, Probate & Trust Law Section Advisor*

RAYMOND H. YOUNG, 26th Floor, 150 Federal Street, Boston, MA 02110, *Real Property, Probate & Trust Law Section Advisor*

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Code may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

UNIFORM TRUST CODE

TABLE OF CONTENTS

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

SECTION 101. SHORT TITLE.....	1
SECTION 102. SCOPE.....	1
SECTION 103. DEFINITIONS.....	1
SECTION 104. KNOWLEDGE..	3
SECTION 105. DEFAULT AND MANDATORY RULES..	4
SECTION 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY.....	5
SECTION 107. GOVERNING LAW..	6
SECTION 108. PRINCIPAL PLACE OF ADMINISTRATION..	6
SECTION 109. METHODS AND WAIVER OF NOTICE.....	7
SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.....	8
SECTION 111. NONJUDICIAL SETTLEMENT AGREEMENTS.....	8
SECTION 112. RULES OF CONSTRUCTION.....	9

ARTICLE 2

JUDICIAL PROCEEDINGS

SECTION 201. ROLE OF COURT IN ADMINISTRATION OF TRUST.....	10
SECTION 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY.....	10
SECTION 203. SUBJECT-MATTER JURISDICTION.....	10
SECTION 204. VENUE..	11

ARTICLE 3

REPRESENTATION

SECTION 301. REPRESENTATION: BASIC EFFECT..	12
SECTION 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT.....	12
SECTION 303. REPRESENTATION BY FIDUCIARIES AND PARENTS.....	12
SECTION 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST...	13
SECTION 305. APPOINTMENT OF REPRESENTATIVE..	13

ARTICLE 4

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

SECTION 401. METHODS OF CREATING TRUST..	15
SECTION 402. REQUIREMENTS FOR CREATION.....	15
SECTION 403. TRUSTS CREATED IN OTHER JURISDICTIONS..	16
SECTION 404. TRUST PURPOSES.....	16
SECTION 405. CHARITABLE PURPOSES; ENFORCEMENT.....	16
SECTION 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE.....	17
SECTION 407. EVIDENCE OF ORAL TRUST.....	17
SECTION 408. TRUST FOR CARE OF ANIMAL..	17
SECTION 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY..	17

SECTION 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.....	18
SECTION 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT..	19
SECTION 412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY.....	20
SECTION 413. CY PRES.....	20
SECTION 414. TERMINATION OF UNECONOMIC TRUST.....	21
SECTION 415. REFORMATION TO CORRECT MISTAKES.....	21
SECTION 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES.....	22
SECTION 417. COMBINATION AND DIVISION OF TRUSTS.....	22

ARTICLE 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

SECTION 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE.....	23
SECTION 502. SPENDTHRIFT PROVISION.....	23
SECTION 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.....	23
SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD.....	24
SECTION 505. CREDITOR'S CLAIM AGAINST SETTLOR..	25
SECTION 506. OVERDUE DISTRIBUTION..	26
SECTION 507. PERSONAL OBLIGATIONS OF TRUSTEE.....	26

ARTICLE 6

REVOCABLE TRUSTS

SECTION 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST.....	27
SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST..	27
SECTION 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL.....	28
SECTION 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY.....	29

ARTICLE 7

OFFICE OF TRUSTEE

SECTION 701. ACCEPTING OR DECLINING TRUSTEESHIP.....	31
SECTION 702. TRUSTEE'S BOND.....	31
SECTION 703. COTRUSTEES.....	32
SECTION 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR..	33
SECTION 705. RESIGNATION OF TRUSTEE.....	34
SECTION 706. REMOVAL OF TRUSTEE..	34
SECTION 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE..	35
SECTION 708. COMPENSATION OF TRUSTEE..	35
SECTION 709. REIMBURSEMENT OF EXPENSES.....	36

ARTICLE 8

DUTIES AND POWERS OF TRUSTEE

SECTION 801. DUTY TO ADMINISTER TRUST.....	37
SECTION 802. DUTY OF LOYALTY.....	37
SECTION 803. IMPARTIALITY.....	39
SECTION 804. PRUDENT ADMINISTRATION..	39
SECTION 805. COSTS OF ADMINISTRATION..	40

SECTION 806. TRUSTEE'S SKILLS..	40
SECTION 807. DELEGATION BY TRUSTEE..	40
SECTION 808. POWERS TO DIRECT..	41
SECTION 809. CONTROL AND PROTECTION OF TRUST PROPERTY...	41
SECTION 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY...	41
SECTION 811. ENFORCEMENT AND DEFENSE OF CLAIMS...	42
SECTION 812. COLLECTING TRUST PROPERTY..	42
SECTION 813. DUTY TO INFORM AND REPORT..	42
SECTION 814. DISCRETIONARY POWERS; TAX SAVINGS..	43
SECTION 815. GENERAL POWERS OF TRUSTEE..	45
SECTION 816. SPECIFIC POWERS OF TRUSTEE..	45
SECTION 817. DISTRIBUTION UPON TERMINATION..	49

**ARTICLE 9
UNIFORM PRUDENT INVESTOR ACT**

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

SECTION 1001. REMEDIES FOR BREACH OF TRUST.....	52
SECTION 1002. DAMAGES FOR BREACH OF TRUST.....	52
SECTION 1003. DAMAGES IN ABSENCE OF BREACH.....	53
SECTION 1004. ATTORNEY'S FEES AND COSTS..	53
SECTION 1005. LIMITATION OF ACTION AGAINST TRUSTEE.....	53
SECTION 1006. RELIANCE ON TRUST INSTRUMENT.....	54
SECTION 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION.....	54
SECTION 1008. EXCULPATION OF TRUSTEE..	54
SECTION 1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION.....	55
SECTION 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.....	55
SECTION 1011. INTEREST AS GENERAL PARTNER.....	56
SECTION 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE..	57
SECTION 1013. CERTIFICATION OF TRUST..	57

**ARTICLE 11
MISCELLANEOUS PROVISIONS**

SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	60
SECTION 1102. ELECTRONIC RECORDS AND SIGNATURES.....	60
SECTION 1103. SEVERABILITY CLAUSE.....	60
SECTION 1104. EFFECTIVE DATE.....	60
SECTION 1105. REPEALS.....	60
SECTION 1106. APPLICATION TO EXISTING RELATIONSHIPS.....	60

1 individual. The term does not include a guardian ad litem.

2 (7) "Interests of the beneficiaries" means the beneficial interests provided in the
3 terms of the trust.

4 (8) "Jurisdiction," with respect to a geographic area, includes a State or country.

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

9 (10) "Power of withdrawal" means a presently exercisable general power of
10 appointment other than a power exercisable only upon consent of the trustee or a person holding
11 an adverse interest.

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

14 (12) "Qualified beneficiary" means a beneficiary who, on the date the
15 beneficiary's qualification is determined:

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

17 (B) would be a distributee or permissible distributee of trust income or
18 principal if the interests of the distributees described in subparagraph (A) terminated on that date;
19 or

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

22 (13) "Revocable," as applied to a trust, means revocable by the settlor without the

1 consent of the trustee or a person holding an adverse interest.

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

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

8 (16) “State” means a State of the United States, the District of Columbia, Puerto
9 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
10 jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal
11 law or formally acknowledged by a State.

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

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

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

19 **SECTION 104. KNOWLEDGE.**

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

21 (1) has actual knowledge of it;

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

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

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

13 **SECTION 105. DEFAULT AND MANDATORY RULES.**

14 (a) Except as otherwise provided in the terms of the trust, this [Code] governs the
15 duties and powers of a trustee, relations among trustees, and the rights and interests of a
16 beneficiary.

17 (b) The terms of a trust prevail over any provision of this [Code] except:
18 (1) the requirements for creating a trust;
19 (2) the duty of a trustee to act in good faith and in accordance with the
20 purposes of the trust;
21 (3) the requirement that a trust and its terms be for the benefit of its
22 beneficiaries;

1 (4) the power of the court to modify or terminate a trust under Sections
2 410 through 416;

3 (5) the effect of a spendthrift provision and the rights of certain creditors
4 and assignees to reach a trust as provided in [Article] 5;

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

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

9 (8) the duty to notify the qualified beneficiaries of an irrevocable trust who
10 have attained 25 years of age of the existence of the trust and of their right to request trustee's
11 reports and other information reasonably related to the administration of the trust;

12 (9) the duty to respond to the request of a beneficiary of an irrevocable
13 trust for trustee's reports and other information reasonably related to the administration of a trust;

14 (10) the effect of an exculpatory term under Section 1008;

15 (11) the rights under Sections 1010 through 1013 of a person other than a
16 trustee or beneficiary;

17 (12) periods of limitation for commencing a judicial proceeding; [and]

18 (13) the power of the court to take such action and exercise such
19 jurisdiction as may be necessary in the interests of justice [; and

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

22 **SECTION 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY.** The

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

3 **SECTION 107. GOVERNING LAW.** The meaning and effect of the terms of a trust
4 are determined by:

5 (1) the law of the jurisdiction designated in the terms unless the designation of
6 that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most
7 significant relationship to the matter at issue; or

8 (2) in the absence of a controlling designation in the terms of the trust, the law of
9 the jurisdiction having the most significant relationship to the matter at issue.

10 **SECTION 108. PRINCIPAL PLACE OF ADMINISTRATION.**

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

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

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

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

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

1 (d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a
2 trust's principal place of administration not less than 60 days before initiating the transfer. The
3 notice of proposed transfer must include:

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

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

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

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

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

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

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

18 **SECTION 109. METHODS AND WAIVER OF NOTICE.**

19 (a) Notice to a person under this [Code] or the sending of a document to a person
20 under this [Code] must be accomplished in a manner reasonably suitable under the circumstances
21 and likely to result in receipt of the notice or document. Permissible methods of notice or for
22 sending a document include first-class mail, personal delivery, delivery to the person's last

1 known place of residence or place of business, or a properly directed electronic message.

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

5 (c) Notice under this [Code] or the sending of a document under this [Code] may
6 be waived by the person to be notified or sent the document.

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

9 **SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.**

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

13 (b) A charitable organization expressly entitled to receive benefits under the
14 terms of a charitable trust or a person appointed to enforce a trust created for the care of an
15 animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of a
16 qualified beneficiary under this [Code].

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

19 **SECTION 111. NONJUDICIAL SETTLEMENT AGREEMENTS.**

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

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

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

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

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

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

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

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

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

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

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

19 **[SECTION 112. RULES OF CONSTRUCTION.** The rules of construction that apply
20 in this State to the interpretation of and disposition of property by will also apply as appropriate
21 to the interpretation of the terms of a trust and the disposition of the trust property.]

1 **ARTICLE 2**

2 **JUDICIAL PROCEEDINGS**

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

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

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

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

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

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

15 (b) With respect to their interests in the trust, the beneficiaries of a trust having its
16 principal place of administration in this State are subject to the jurisdiction of the courts of this
17 State regarding any matter involving the trust. By accepting a distribution from such a trust, the
18 recipient submits personally to the jurisdiction of the courts of this State regarding any matter
19 involving the trust.

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

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

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

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

5 **[SECTION 204. VENUE.**

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

10 (b) If a trust has no trustee, venue for a judicial proceeding for the appointment of
11 a trustee is in a [county] of this State in which a beneficiary resides, in a [county] in which any
12 trust property is located, and if the trust is created by will, in the [county] in which the decedent's
13 estate was or is being administered.]

1 **ARTICLE 3**

2 **REPRESENTATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **SECTION 305. APPOINTMENT OF REPRESENTATIVE.**

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

22 (b) A [representative] may act on behalf of the individual represented with

1 respect to any matter arising under this [Code], whether or not a judicial proceeding concerning
2 the trust is pending.

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

1 **ARTICLE 4**

2 **CREATION, VALIDITY, MODIFICATION,**

3 **AND TERMINATION OF TRUST**

4 **SECTION 401. METHODS OF CREATING TRUST.** A trust may be created by:

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

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

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

10 **SECTION 402. REQUIREMENTS FOR CREATION.**

11 (a) A trust is created only if:

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

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

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

15 (A) a charitable trust;

16 (B) a trust for the care of an animal, as provided in Section 408; or

17 (C) a trust for a noncharitable purpose, as provided in Section 409;

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

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

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

22 (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If

1 the power is not exercised within a reasonable time, the power fails and the property subject to
2 the power passes to the persons who would have taken the property had the power not been
3 conferred.

4 **SECTION 403. TRUSTS CREATED IN OTHER JURISDICTIONS.** A trust not
5 created by will is validly created if its creation complies with the law of the jurisdiction in which
6 the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

- 7 (1) the settlor was domiciled, had a place of abode, or was a national;
- 8 (2) a trustee was domiciled or had a place of business; or
- 9 (3) any trust property was located.

10 **SECTION 404. TRUST PURPOSES.** A trust may be created only to the extent its
11 purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms
12 must be for the benefit of its beneficiaries.

13 **SECTION 405. CHARITABLE PURPOSES; ENFORCEMENT.**

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

17 (b) If the terms of a charitable trust do not indicate a particular charitable purpose
18 or beneficiary, the court may select one or more charitable purposes or beneficiaries. The
19 selection must be consistent with the settlor's intention to the extent it can be ascertained.

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

22 **SECTION 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR**

1 **UNDUE INFLUENCE.** A trust is void to the extent its creation was induced by fraud, duress,
2 or undue influence.

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

6 **SECTION 408. TRUST FOR CARE OF ANIMAL.**

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

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

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

20 **SECTION 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE**
21 **BENEFICIARY.** Except as otherwise provided in Section 408 or by another statute, the
22 following rules apply:

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

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

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

11 **SECTION 410. MODIFICATION OR TERMINATION OF TRUST;**
12 **PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.**

13 (a) In addition to the methods of termination prescribed by Sections 411 through
14 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no
15 purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful,
16 contrary to public policy, or impossible to achieve.

17 (b) A proceeding to approve or disapprove a proposed modification or
18 termination under Sections 411 through 416, or trust combination or division under Section 417,
19 may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a
20 proposed modification or termination under Section 411 may be commenced by the settlor. The
21 settlor of a charitable trust may maintain a proceeding to modify the trust under Section 413.

22 **SECTION 411. MODIFICATION OR TERMINATION OF NONCHARITABLE**

1 **IRREVOCABLE TRUST BY CONSENT.**

2 (a) A noncharitable irrevocable trust may be modified or terminated upon consent
3 of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a
4 material purpose of the trust. A settlor’s power to consent to a trust’s termination may be
5 exercised by an agent under a power of attorney only to the extent expressly authorized by the
6 power of attorney or the terms of the trust; by the settlor’s [conservator] with the approval of the
7 court supervising the [conservatorship] if an agent is not so authorized; or by the settlor’s
8 [guardian] with the approval of the court supervising the [guardianship] if an agent is not so
9 authorized and a conservator has not been appointed.

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

15 (c) A spendthrift provision in the terms of the trust is not presumed to constitute a
16 material purpose of the trust.

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

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

22 (1) if all of the beneficiaries had consented, the trust could have been

1 modified or terminated under this section; and

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

4 **SECTION 412. MODIFICATION OR TERMINATION BECAUSE OF**
5 **UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST**
6 **EFFECTIVELY.**

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

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

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

15 **SECTION 413. CY PRES.**

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

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

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

21 (3) the court may apply cy pres to modify or terminate the trust by
22 directing that the trust property be applied or distributed, in whole or in part, in a manner

1 consistent with the settlor's charitable purposes.

2 (b) A provision in the terms of a charitable trust that would result in distribution
3 of the trust property to a noncharitable beneficiary prevails over the power of the court under
4 subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes
5 effect:

6 (1) the trust property is to revert to the settlor and the settlor is still living;

7 or

8 (2) fewer than 21 years have elapsed since the date of the trust's creation.

9
10 **SECTION 414. TERMINATION OF UNECONOMIC TRUST.**

11 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of
12 trust property having a total value less than [\$50,000] may terminate the trust if the trustee
13 concludes that the value of the trust property is insufficient to justify the cost of administration.

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

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

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

20 **SECTION 415. REFORMATION TO CORRECT MISTAKES.** The court may
21 reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if
22 it is proved by clear and convincing evidence that both the settlor's intent and the terms of the

1 trust were affected by a mistake of fact or law, whether in expression or inducement.

2 **SECTION 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX**

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

6 **SECTION 417. COMBINATION AND DIVISION OF TRUSTS.** After notice to the
7 qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a
8 trust into two or more separate trusts, if the result does not impair rights of any beneficiary or
9 adversely affect achievement of the purposes of the trust.

1 **ARTICLE 5**

2 **CREDITOR’S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS**

3 **SECTION 501. RIGHTS OF BENEFICIARY’S CREDITOR OR ASSIGNEE.** To
4 the extent a beneficiary’s interest is not protected by a spendthrift provision, the court may
5 authorize a creditor or assignee of the beneficiary to reach the beneficiary’s interest by
6 attachment of present or future distributions to or for the benefit of the beneficiary or other
7 means. The court may limit the award to such relief as is appropriate under the circumstances.

8 **SECTION 502. SPENDTHRIFT PROVISION.**

9 (a) A spendthrift provision is valid only if it restrains both voluntary and
10 involuntary transfer of a beneficiary’s interest.

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

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

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

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

21 (b) Even if a trust contains a spendthrift provision, a beneficiary’s child, spouse,
22 or former spouse who has a judgment or court order against the beneficiary for support or

1 maintenance, or a judgment creditor who has provided services for the protection of a
2 beneficiary's interest in the trust, may obtain from a court an order attaching present or future
3 distributions to or for the benefit of the beneficiary.

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

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

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

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

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

13 (2) the trustee has abused the discretion.

14 (c) To the extent a trustee has not complied with a standard of distribution or has
15 abused a discretion:

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

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

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

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

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

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

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

14 (3) After the death of a settlor, and subject to the settlor's right to direct
15 the source from which liabilities will be paid, the property of a trust that was revocable at the
16 settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's
17 estate, the expenses of the settlor's funeral and disposal of remains, and [statutory allowances] to
18 a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy
19 those claims, costs, expenses, and [allowances].

20 (b) For purposes of this section:

21 (1) during the period the power may be exercised, the holder of a power of
22 withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the

1 property subject to the power; and

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

7 **SECTION 506. OVERDUE DISTRIBUTION.** Whether or not a trust contains a
8 spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution
9 of income or principal, including a distribution upon termination of the trust, if the trustee has
10 not made the distribution to the beneficiary within a reasonable time after the required
11 distribution date.

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

1 **ARTICLE 6**

2 **REVOCABLE TRUSTS**

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

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

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

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

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

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

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

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

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

22 (A) executing a later will or codicil that expressly refers to the trust

1 or specifically devises property that would otherwise have passed according to the terms of the
2 trust; or

3 (B) any other method manifesting clear and convincing evidence of
4 the settlor's intent.

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

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

10 (f) A [conservator] of the settlor or, if no [conservator] has been appointed, a
11 [guardian] of the settlor may exercise a settlor's powers with respect to revocation, amendment,
12 or distribution of trust property only with the approval of the court supervising the
13 [conservatorship] or [guardianship].

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

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

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

21 (b) While a trust is revocable and the settlor does not have capacity to revoke the
22 trust, rights of the beneficiaries are held by the beneficiaries.

1 (c) If a revocable trust has more than one settlor, the duties of the trustee are
2 owed to all of the settlors having capacity to revoke the trust.

3 (d) During the period the power may be exercised, the holder of a power of
4 withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the
5 property subject to the power.

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

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

10 (1) [three] years after the settlor's death; or

11 (2) [120] days after the trustee sent the person a copy of the trust
12 instrument and a notice informing the person of the trust's existence, of the trustee's name and
13 address, and of the time allowed for commencing a proceeding.

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

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

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

22 (c) A beneficiary of a trust that is determined to have been invalid is liable to

1 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:

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

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

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

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

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

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

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

22 (a) A trustee shall give bond to secure performance of the trustee's duties only if

1 the court finds that a bond is needed to protect the interests of the beneficiaries or is required by
2 the terms of the trust and the court has not dispensed with the requirement.

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

5 [(c) A regulated financial-service institution qualified to do trust business in this
6 State need not give bond, even if required by the terms of the trust.]

7 **SECTION 703. COTRUSTEES.**

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

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

12 (c) A cotrustee must participate in the performance of a trustee's function unless
13 the cotrustee is unavailable to perform the function because of absence, illness, disqualification
14 under other law, or other temporary incapacity or the cotrustee has properly delegated the
15 performance of the function to another trustee.

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

20 (e) A trustee may not delegate to a cotrustee the performance of a function the
21 settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a
22 trustee may revoke a delegation previously made.

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

3 (g) Each trustee shall exercise reasonable care to:

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

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

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

9 **SECTION 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF**
10 **SUCCESSOR.**

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

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

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

14 (3) a trustee resigns;

15 (4) a trustee is disqualified or removed;

16 (5) a trustee dies; or

17 (6) a [guardian] or [conservator] is appointed for an individual serving as
18 trustee.

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

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

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

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

5 (3) by a person appointed by the court.

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

9 **SECTION 705. RESIGNATION OF TRUSTEE.**

10 (a) A trustee may resign:

11 (1) upon at least 30 days' notice to the qualified beneficiaries and all
12 cotrustees; or

13 (2) with the approval of the court.

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

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

18 **SECTION 706. REMOVAL OF TRUSTEE.**

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

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

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

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

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

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

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

13 **SECTION 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE.**

14 (a) Unless a cotrustee remains in office or the court otherwise orders, and until
15 the trust property is delivered to a successor trustee or other person entitled to it, a trustee who
16 has resigned or been removed has the duties of a trustee and the powers necessary to protect the
17 trust property.

18 (b) A trustee who has resigned or been removed shall proceed expeditiously to
19 deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or
20 other person entitled to it.

21 **SECTION 708. COMPENSATION OF TRUSTEE.**

22 (a) If the terms of a trust do not specify the trustee's compensation, a trustee is

1 entitled to compensation that is reasonable under the circumstances.

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

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

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

8 **SECTION 709. REIMBURSEMENT OF EXPENSES.**

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

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

12 and

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

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

1 **ARTICLE 8**

2 **DUTIES AND POWERS OF TRUSTEE**

3 **SECTION 801. DUTY TO ADMINISTER TRUST.** Upon acceptance of a
4 trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and
5 purposes and the interests of the beneficiaries, and in accordance with this [Code].

6 **SECTION 802. DUTY OF LOYALTY.**

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

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

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

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

15 (3) the beneficiary did not commence a judicial proceeding within the time
16 allowed by Section 1005;

17 (4) the beneficiary consented to the trustee's conduct, ratified the
18 transaction, or released the trustee in compliance with Section 1009; or

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

21 (c) A sale, encumbrance, or other transaction involving the investment or
22 management of trust property is presumed to be affected by a conflict between personal and

1 fiduciary interests if it is entered into by the trustee with:

2 (1) the trustee's spouse;

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

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

5 (4) a corporation or other person or enterprise in which the trustee, or a

6 person that owns a significant interest in the trustee, has an interest that might affect the trustee's
7 best judgment.

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

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

15 (f) An investment by a trustee in securities of an investment company or
16 investment trust to which the trustee, or its affiliate, provides services in a capacity other than as
17 trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the
18 investment complies with the prudent investor rule of [Article] 9. The trustee may be
19 compensated by the investment company or investment trust for providing those services out of
20 fees charged to the trust if the trustee at least annually notifies the persons entitled under Section
21 813 to receive a copy of the trustee's annual report of the rate and method by which the
22 compensation was determined.

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

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

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

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

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

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

15 (5) an advance by the trustee of money for the protection of the trust.

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

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

21 **SECTION 804. PRUDENT ADMINISTRATION.** A trustee shall administer the trust
22 as a prudent person would, by considering the purposes, terms, distributional requirements, and

1 other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable
2 care, skill, and caution.

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

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

9 **SECTION 807. DELEGATION BY TRUSTEE.**

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

13 (1) selecting an agent;

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

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

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

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

22 (d) By accepting a delegation of powers or duties from the trustee of a trust that is

1 subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

2 **SECTION 808. POWERS TO DIRECT.**

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

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

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

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

16 **SECTION 809. CONTROL AND PROTECTION OF TRUST PROPERTY.** A

17 trustee shall take reasonable steps to take control of and protect the trust property.

18 **SECTION 810. RECORDKEEPING AND IDENTIFICATION OF TRUST**
19 **PROPERTY.**

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

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

22 (c) Except as otherwise provided in subsection (d), a trustee shall cause the trust

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

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

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

7 **SECTION 812. COLLECTING TRUST PROPERTY.** A trustee shall take
8 reasonable steps to compel a former trustee or other person to deliver trust property to the trustee,
9 and to redress a breach of trust known to the trustee to have been committed by a former trustee.

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

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

15 (b) A trustee:

16 (1) upon request of a beneficiary, shall promptly furnish to the beneficiary
17 a copy of the trust instrument;

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

20 (3) within 60 days after the date the trustee acquires knowledge of the
21 creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly
22 revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall

1 notify the qualified beneficiaries of the trust’s existence, of the identity of the settlor or settlors,
2 of the right to request a copy of the trust instrument, and of the right to a trustee’s report as
3 provided in subsection (c); and

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

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

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

17 **SECTION 814. DISCRETIONARY POWERS; TAX SAVINGS.**

18 (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of
19 the trust, including the use of such terms as “absolute”, “sole”, or “uncontrolled”, the trustee
20 shall exercise a discretionary power in good faith and in accordance with the terms and purposes
21 of the trust and the interests of the beneficiaries.

22 (b) Subject to subsection (d), and unless the terms of the trust expressly indicate

1 that a rule in this subsection does not apply:

2 (1) a person other than a settlor who is a beneficiary and trustee of a trust
3 that confers on the trustee a power to make discretionary distributions to or for the trustee's
4 personal benefit may exercise the power only in accordance with an ascertainable standard
5 relating to the trustee's individual health, education, support, or maintenance within the meaning
6 of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on [the
7 effective date of this [Code]] [, or as later amended]; and

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

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

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

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

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

21 (3) a trust if contributions to the trust qualify for the annual exclusion
22 under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on [the effective date of

1 this [Code]] [, or as later amended].

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

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

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

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

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

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

10 (C) any other powers conferred by this [Code].

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

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

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

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

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

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

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

22 (6) with respect to an interest in a proprietorship, partnership, limited liability

1 company, business trust, corporation, or other form of business or enterprise, continue the
2 business or other enterprise and take any action that may be taken by shareholders, members, or
3 property owners, including merging, dissolving, or otherwise changing the form of business
4 organization or contributing additional capital;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (B) paying it to the beneficiary's custodian under [the Uniform Transfers
2 to Minors Act] or custodial trustee under [the Uniform Custodial Trust Act], and, for that
3 purpose, creating a custodianship or custodial trust;

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

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

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

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

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

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

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

21 **SECTION 817. DISTRIBUTION UPON TERMINATION.**

22 (a) Upon termination or partial termination of a trust, the trustee may send to the

1 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed
2 distribution terminates if the beneficiary does not notify the trustee of an objection within 30
3 days after the proposal was sent but only if the proposal informed the beneficiary of the right to
4 object and of the time allowed for objection.

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

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

11 (1) it was induced by improper conduct of the trustee; or

12 (2) the beneficiary, at the time of the release, did not know of the
13 beneficiary's rights or of the material facts relating to the breach.

1

ARTICLE 9

2

UNIFORM PRUDENT INVESTOR ACT

1 **ARTICLE 10**

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

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

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

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

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

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

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

11 (4) order a trustee to account;

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

14 (6) suspend the trustee;

15 (7) remove the trustee as provided in Section 706;

16 (8) reduce or deny compensation to the trustee;

17 (9) subject to Section 1012, void an act of the trustee, impose a lien or a
18 constructive trust on trust property, or trace trust property wrongfully disposed of and recover the
19 property or its proceeds; or

20 (10) order any other appropriate relief.

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

22 (a) A trustee who commits a breach of trust is liable to the beneficiaries affected

1 for the greater of:

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

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

5 (b) Except as otherwise provided in this subsection, if more than one trustee is
6 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other
7 trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at
8 fault than another trustee or if the trustee committed the breach of trust in bad faith or with
9 reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee
10 who received a benefit from the breach of trust is not entitled to contribution from another trustee
11 to the extent of the benefit received.

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

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

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

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

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

22 (a) A beneficiary may not commence a proceeding against a trustee for breach of

1 trust more than one year after the date the beneficiary or a representative of the beneficiary was
2 sent a report that adequately disclosed the existence of a potential claim for breach of trust and
3 informed the beneficiary of the time allowed for commencing a proceeding.

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

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

9 (1) the removal, resignation, or death of the trustee;

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

11 (3) the termination of the trust.

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

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

20 **SECTION 1008. EXCULPATION OF TRUSTEE.**

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

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

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

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

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

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

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

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

18 **SECTION 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.**

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

22 (b) A trustee is personally liable for torts committed in the course of

1 administering a trust, or for obligations arising from ownership or control of trust property,
2 including liability for violation of environmental law, only if the trustee is personally at fault.

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

8 **[SECTION 1011. INTEREST AS GENERAL PARTNER.**

9 (a) Except as otherwise provided in subsection (c) or unless personal liability is
10 imposed in the contract, a trustee who holds an interest as a general partner in a general or
11 limited partnership is not personally liable on a contract entered into by the partnership after the
12 trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a
13 statement previously filed pursuant to the [Uniform Partnership Act or Uniform Limited
14 Partnership Act].

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

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

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

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

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

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

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

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

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

19 **SECTION 1013. CERTIFICATION OF TRUST.**

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

- 1 (1) that the trust exists and the date the trust instrument was executed;
- 2 (2) the identity of the settlor;
- 3 (3) the identity and address of the currently acting trustee;
- 4 (4) the powers of the trustee;
- 5 (5) the revocability or irrevocability of the trust and the identity of any
- 6 person holding a power to revoke the trust;
- 7 (6) the authority of cotrustees to sign or otherwise authenticate and
- 8 whether all or less than all are required in order to exercise powers of the trustee;
- 9 (7) the trust's taxpayer identification number; and
- 10 (8) the manner of taking title to trust property.

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

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

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

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

20 (f) A person who acts in reliance upon a certification of trust without knowledge
21 that the representations contained therein are incorrect is not liable to any person for so acting
22 and may assume without inquiry the existence of the facts contained in the certification.

1 Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or
2 part of the trust instrument is held by the person relying upon the certification.

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

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

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

1 **ARTICLE 11**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
4 applying and construing this Uniform Act , consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among States that enact it.

6 **SECTION 1102. ELECTRONIC RECORDS AND SIGNATURES.** The provisions
7 of this [Code] governing the legal effect, validity, or enforceability of electronic records or
8 electronic signatures, and of contracts formed or performed with the use of such records or
9 signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global
10 and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the
11 requirements of the Electronic Signatures in Global and National Commerce Act.

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

16 **SECTION 1104. EFFECTIVE DATE.** This [Code] takes effect on _____.

17 **SECTION 1105. REPEALS.** The following Acts are repealed:

- 18 (1) Uniform Trustee Powers Act ;
19 (2) Uniform Probate Code, Article VII;
20 (3) Uniform Trusts Act (1937); and
21 (4) Uniform Prudent Investor Act.

22 **SECTION 1106. APPLICATION TO EXISTING RELATIONSHIPS.**

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

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

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

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

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

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

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