

**PROBATE, ESTATES
AND FIDUCIARIES CODE**
Proposed Amendments
and Comments - 1985

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
October, 1985

The Joint State Government Commission was created by act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

Joint State Government Commission, 1985-86

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GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
JOINT STATE GOVERNMENT COMMISSION

ROOM 108 - FINANCE BUILDING
HARRISBURG 17120

October 16, 1985

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

This report summarizes amendments to the Probate, Estates and Fiduciaries Code recommended by the Task Force and Advisory Committee on Decedents' Estates Laws. Explanatory materials and official comments are included to facilitate review of the legislation introduced by members of the task force.

Since its first meeting on November 28, 1945, the task force and advisory committee have assisted the General Assembly in providing the Commonwealth with a probate law which is modern, efficient and responsive to the needs of its citizens.

The Joint State Government Commission wishes to express its deep appreciation to all present and former members of the task force and advisory committee for their contributions over the past 40 years.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Roger A. Madigan".

Roger A. Madigan
Chairman

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I. Introduction

This is the seventh biennial report of the Joint State Government Commission Task Force and Advisory Committee on Decedents' Estates Laws since the June 30, 1972 codification of the Probate, Estates and Fiduciaries Code as Title 20 of the Pennsylvania Consolidated Statutes. The task force and advisory committee recommend legislation which would:

- Streamline provisions relating to advertisement of accounts (§ 745), the annexation of certain accounts (§ 7188) and the attestation of certain applications and documents (§ 911).
- Make it possible to avoid automatic modification of wills (§ 2507) and conveyances (§ 6111.1) in the cases of subsequent marriage or divorce.
- Provide an additional rule of interpretation for wills (§ 2514) and conveyances (§ 6114).
- Specify the manner in which contracts concerning succession may be established (Chapter 27).
- Extend to personal representatives the authority to make certain temporary investments (§§ 3316 and 7315.1).
- Authorize the court to further modify the estate plan of an incompetent (§ 5536).
- Require banks to provide a single account form with three alternative types of joint accounts (§ 6305.1).
- Incorporate the Uniform Transfers to Minors Act to replace the Pennsylvania Uniform Gifts to Minors Act (Chapter 53).
- Repeal the Uniform Fiduciaries Act.

ACTS AMENDING THE
 PROBATE, ESTATES AND FIDUCIARIES CODE
 (1972, P.L. 508, No. 164, effective July 1, 1972)
 THROUGH 1983-84 SESSION OF THE GENERAL ASSEMBLY

Citation	Subject
1972, P.L. 1461, No. 331	Change of age of majority
1973, P.L. 62, No. 25	Bank holding companies
1973, P.L. 322, No. 104	Change of age of majority*
1974, P.L. 282, No. 84	Increase monetary limit, § 3101
1974, P.L. 383, No. 130	Increase monetary limit, § 3121*
1974, P.L. 720, No. 242	Deposit of securities; book-entry securities
1974, P.L. 816, No. 271	Editorial change in title designation
1974, P.L. 867, No. 293	Omnibus*
1974, P.L. 896, No. 294	Temporary fiduciaries*
1974, P.L. 899, No. 295	Powers of attorney*
1975, P.L. 598, No. 168	Increase monetary limit, § 3101
1976, P.L. 434, No. 105	Self-proved wills**
1976, P.L. 547, No. 134	Multiple-party bank accounts*
1976, P.L. 551, No. 135	Omnibus*
1976, P.L. 562, No. 136	Disclaimers*
1976, P.L. 836, No. 144	Estate plan for incompetent*
1978, P.L. 42, No. 23	Spouse's election*
1978, P.L. 77, No. 37	Omnibus*
1978, P.L. 202, No. 53	Judiciary Act Repealer Act
1978, P.L. 909, No. 173	Equal Rights Amendment
1978, P.L. 1269, No. 303	Illegitimates
1979, P.L. 255, No. 86	Conforming amendment
1980, P.L. 565, No. 118	Omnibus*
1980, P.L. 693, No. 142	Repealed § 773
1982, P.L. 45, No. 26	Omnibus*
1982, P.L. 682, No. 194	Anatomical gifts
1984, P.L. 103, No. 21	Forfeiture of parent's share, § 2106
1984, P.L. 929, No. 182	Omnibus*

*Drafted by the advisory committee and approved and introduced by the Task Force on Decedents' Estates Laws.

**Drafted by the advisory committee without official action of the advisory committee or task force.

This proposed legislation represents the most recent effort by the task force and advisory committee to ensure that Pennsylvania's probate law retains its vitality. On November 28, 1985, the task force, chaired by Senator Stewart J. Greenleaf, and the advisory committee, chaired by George J. Hauptfuhrer, will mark the fortieth anniversary of its first meeting.

The table on page 2 lists all of the amendatory acts to the Probate, Estates and Fiduciaries Code since its consolidation into Title 20 of the Pennsylvania Consolidated Statutes in 1972. Fourteen of these acts were proposed by the task force and advisory committee. The most recent of these is Act No. 182 of 1984.

In 1981, the task force and advisory committee proposed legislation, enacted as Act No. 255 of 1982, to revise and consolidate Pennsylvania's inheritance tax law into Chapter 17 (Inheritance and Estate Tax Act) of the Pennsylvania Consolidated Statutes. The 1981 biennial report provides the official comments to Chapter 17. For the staff study of the impact of inheritance taxes on decedents' domiciles, see the appendix to the Commission's report, Probate, Estates and Fiduciaries Code, Proposed Amendments and Comments--1979, p. 11. At the time of that study, one state levied no inheritance tax and three states levied only the tax necessary to obtain the federal tax credit. At the present time, 20 states levy only the tax necessary to obtain the federal credit. Since the codification, the task force and advisory committee have continued to review inheritance tax law issues. A subcommittee has been appointed to review and develop recommendations with regard to a variety of issues involving the Inheritance and Estate Tax Act. The subcommittee consists of:

George J. Hauptfuhrer Jr., Esq.
William McC. Houston, Esq.
Honorable Edmund S. Pawelec
William C. Ries, Esq.
M. Paul Smith, Esq.
Honorable Robert W. Tredinnick
Donald R. Waisel, Esq.
Honorable Vincent X Yakowicz
Robert L. Freedman, Esq.
Richard L. Grossman, Esq.

Any comments or suggestions for revision of the Probate, Estates and Fiduciaries Code or the Inheritance and Estate Tax Act should be forwarded to the Commission offices for consideration by the task force and advisory committee.

II. Proposed Amendments and Comments

This part provides explanatory material for the proposed legislation amending the Probate, Estates and Fiduciaries Code. The official comments of the advisory committee are included and may be utilized in determining the intent of the General Assembly: 1 Pa.C.S. § 1939; Martin Estate, 365 Pa. 280, 74 A.2d 120 (1950).

PROBATE, ESTATES AND FIDUCIARIES CODE

Section 745. ADVERTISEMENT OF ACCOUNTS

This section is amended so that accounts are advertised by the clerk of the orphans' court division two times instead of four.

Section 911. ATTESTATION OF CERTAIN APPLICATIONS AND DOCUMENTS

This section is added to provide that documents submitted to the register of wills, except a probate petition, may be attested to by an affidavit or, in the alternative, by a verified statement under penalty of law.

Section 2507. MODIFICATION BY CIRCUMSTANCE

Section 6111.1. MODIFICATION BY DIVORCE

The amendments to these sections make it possible to avoid automatic modification of wills that are made in contemplation of a marriage or divorce and of inter vivos conveyances that are made in contemplation of a divorce.

Section 2507.

Comment: The amendments to paragraphs (2) and (3) give a testator who contemplates a particular marriage or divorce the same freedom to adjust his

will to this event before it occurs as he has always had to do so afterwards. The spouse's right of election against the will is not affected and would be the same regardless of whether the will was executed before or after the marriage.

Section 6111.1.

Comment: This parallels the change made in § 2507(2).

Section 2514. RULES OF INTERPRETATION

Section 6114. RULES OF INTERPRETATION

Section 2514 provides rules for interpreting wills and section 6114 provides rules for interpreting conveyances. Many wills contain clauses authorizing or perhaps restricting investments in the securities or common trust funds of a corporate fiduciary or making special provisions with respect to voting securities of the corporate fiduciary. Paragraph (20) is added to section 2514 to construe these provisions to apply to the securities and common trust funds of any affiliate of the corporate fiduciary. Trust agreements are covered by the same provision added as paragraph (8) of section 6114.

Chapter 27. CONTRACTUAL ARRANGEMENTS RELATING TO SUCCESSION

This chapter is added to enumerate the ways in which contracts concerning succession may be established.

Comment: Section 2701 is taken from section 2-701 of the Uniform Probate Code with certain changes intended to eliminate possible ambiguities. The official comment of the National Conference of Commissioners on Uniform State Laws to that section is as follows:

It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

This section requires that either the will must set forth the material provisions of the contract, or the will must make express reference to the contract and extrinsic evidence proving the terms of the contract, or there must be a separate writing signed by the decedent evidencing the contract. Oral testimony regarding the contract is permitted if the will makes reference to the contract, but this provision of the statute is not intended to affect normal rules regarding admissibility of evidence.

Section 3316. INVESTMENT OF FUNDS

Section 7315.1. RETENTION OF CASH; TEMPORARY INVESTMENTS

Section 3316 is amended to extend to personal representatives the provisions of section 7315.1(b).

Section 3316 is amended to allow personal representatives to make the temporary investments authorized for fiduciaries in section 7315.1(b). Personal representatives are excluded from the definition of "fiduciary" in section 7301, therefore the authority of section 7315.1(b) which permits balance sweeping programs and other modern forms of temporary investments does not extend to personal representatives. Since estates often hold substantial amounts of uninvested cash for limited periods of time, application of the temporary investment provisions of section 7315.1(b) is appropriate. A technical amendment is made to section 7315.1(b) to implement this amendment.

Chapter 37. APPORTIONMENT OF DEATH TAXES

The amendments to this chapter are all of a technical or editorial nature.

Chapter 53. PENNSYLVANIA UNIFORM TRANSFERS TO MINORS ACT

This chapter which incorporates the Uniform Transfers to Minors Act is added and replaces the Pennsylvania Uniform Gifts to Minors Act repealed by this proposed legislation. The uniformity of the act is retained except for a change to reflect Pennsylvania terminology ("guardian" instead of "conservator") and stylistic changes mandated by the Pennsylvania Consolidated Statutes editorial policy. As

provided in 1 Pa.C.S. § 1927 (construction of uniform laws), "[s]tatutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." Since the provisions of the uniform act are incorporated without substantive change, the comments of the National Conference of Commissioners on Uniform State Laws will be instructive in the application of this chapter.

In order to facilitate the convenient use of the Commissioners' comments the following cross reference table is provided:

UTMA	20 Pa.C.S. (unless otherwise indicated)
*§ 1	§ 5302
2	5303
3	5304
4	5305
5	5306
6	5307
7	5308
8	5309
9	5310
10	5311
11	5312
12	5313
13	5314
14	5315
15	5316
16	5317
17	5318
18	5319
19	5320
20	5321
21	14(a) of proposed legislation
22	14(b) and (c) of proposed legislation
23	See: 1 Pa.C.S. § 1927 (construction of uniform laws)
24	5301

(continued)

UTMA	20 Pa.C.S. (unless otherwise indicated)
25	See: 1 Pa.C.S. § 1925 (constitutional construction of statutes)
26	16 of proposed legislation
27	7 of proposed legislation

*The following definitions from the uniform act have not been incorporated since they are specifically provided for in either 1 Pa.C.S. § 1991 (definitions) or 20 Pa.C.S. § 102 (definitions) and therefore apply to Chapter 53:

Adult	1 Pa.C.S. § 1991
Conservator (guardian)	20 Pa.C.S. § 102
Court	20 Pa.C.S. § 102
Person	1 Pa.C.S. § 1991
Personal representative	20 Pa.C.S. § 102
State	1 Pa.C.S. § 1991

Section 5536. DISTRIBUTION OF INCOME AND PRINCIPAL DURING INCOMPETENCY

Subsection (b)(8) is amended to authorize the court to exercise all rights and privileges under certain contracts which provide for payments to an incompetent or others after the incompetent's death. Subsection (b)(11) is added to authorize the court to modify the estate plan of an incompetent to reflect changes in applicable tax laws.

Section 5603. IMPLEMENTATION OF POWER OF ATTORNEY

The amendment to subsection (a)(3) is a technical amendment to change the reference of the Pennsylvania Uniform Gifts to Minors Act to the Pennsylvania Uniform Transfers to Minors Act.

Section 6305.1. ACCOUNT FORM

This section, previously recommended and included in 1983 SB 1079, Pr.'s No. 1368, is added to Chapter 63 (Multiple-party Accounts) to require banks to provide a single account form with three alternative types of joint accounts. The persons opening the account are to select one of the types of accounts. This proposal is in response to the recurring bank signature card problem.

Comment: This section is in response to the recurring bank signature card problem. In opening joint accounts, names are entered on signature cards for various reasons, many of which are apparent only to the account owners. Different contracts should be available to carry out the wishes of the depositors, as well as protect the bank in its relationship with its customers.

Section 7188. ANNEXATION OF ACCOUNT OF DISTRIBUTED ESTATE OR TRUST

This section is amended to authorize double piggybacking of accounts.

Comment: This change will permit a trustee who has received funds from an estate which in turn has received funds from a terminated inter vivos trust or from an agency to annex the account of the inter vivos trustee or agent as well as the executor's account. A parallel amendment to section 3501.2 seems unnecessary since it is unlikely that an estate would be the ultimate recipient of a similar double pour-over.

REPEAL OF UNIFORM FIDUCIARIES ACT

The act of May 31, 1923 (P.L. 468, No. 256), known as the Uniform Fiduciaries Act, is repealed by this proposed legislation in view of provisions of the Uniform Commercial Code and 20 Pa.C.S. § 304 (application of payments made to fiduciaries).

The Uniform Fiduciaries Act (UFA) was promulgated by the National Conference of Commissioners on Uniform State Laws in 1922. It was adopted in Pennsylvania by the act of May 31, 1923 (P.L. 468, No. 256). A total of 26 jurisdictions,

including 24 states, the District of Columbia and the Virgin Islands, have adopted it, the last being Missouri in 1959.¹ Cited in eight cases by various Pennsylvania courts during the 1930s and '40s, its use by the courts has declined in recent years. The decisions that have referred to it since 1950 have done so in conjunction with the Uniform Commercial Code (UCC), adopted in 1953.² A study of related UCC provisions leads to the conclusion that the UFA, with the exception of section 2, has been superceded by the UCC.

Section 1 of the UFA contains the act's definitions. The definitions of "bank" and "person" can be found in section 1201 of the UCC. They are similar to the ones found in the UFA, but the UCC also includes other organizations. The definition of "good faith" in the UFA requires an act be done honestly in fact, as does the section 1201 definition in the UCC. However, the UFA does add that something can be done negligently and still be in good faith. Although "fiduciary" as defined in the UFA contains the most extensive list of possible fiduciary positions, the definitions found in 20 Pa.C.S. § 102 and 1 Pa.C.S. § 1991 cover the same list more generally. The definition of "principal" is not found in any of these other acts.

Section 2 of the UFA has most recently been referred to in a 1966 Pennsylvania Superior Court decision. The Hamilton Savings and Loan Association paid over funds to Herman H. James Jr., as administrator of his father's estate. James had given proof of his authorization to receive such funds and the association drew a check payable to him, which did not indicate that James was a fiduciary. The association was not found liable for James' subsequent misappropriation because the court found that it had paid the funds over in good faith. Although the court's primary statutory authority for this decision was the UFA, it cited, among other acts, section 8-403 of the UCC (now 13 Pa.C.S. § 8403) in determining that "the development of our statutory law has been directed toward placing the responsibility for assets held in a fiduciary capacity directly on the fiduciary, where it rightly belongs, and relieving those who deal with fiduciaries from responsibility." Gordon v. Hamilton S & L Ass'n., 207 Pa. Superior Ct. 228, 235, 217 A.2d 843, 845 (1966).

¹Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings, 1982 (1984).

²Act of April 6, 1953, P.L. 3, No. 1, subsequently codified as 13 Pa.C.S. §§ 1101-9507.

The Commissioners' Notes to section 2 indicate that "it applies to all fiduciaries and not merely to trustees and to all transfers and not merely to payments of money."³ This is an all-encompassing provision designed to cover a variety of situations in which persons may make transfers to fiduciaries. Much of the Pennsylvania law governing fiduciaries is found in the Probate, Estates and Fiduciaries Code. For this reason, section 2 was added to 20 Pa.C.S. (Probate, Estates and Fiduciaries Code) as section 304 by the act of October 12, 1984 (P.L. 929, No. 182). Section 2, however, was not repealed at that time.

According to the Commissioners' Notes to the UFA,⁴ section 3 of the UFA has been superceded by section 8-403 of the UCC (13 Pa.C.S. § 8403) and section 2 of the Uniform Act for Simplification of Fiduciaries Security Transfers (not adopted by Pennsylvania). Section 3 deals with the registration or transfer of securities to or by fiduciaries or their nominees, and imposes a duty of inquiry upon an issuer only when the issuer has actual knowledge of a fiduciary's breach of duty, or knowledge of such facts as would make participation in the registration or transfer an act of bad faith. Section 8403 of the UCC outlines the limited duty of inquiry into adverse claims of issuers of securities. Section 8403(c) indicates that unless an issuer has notice of an adverse claim, he has no duty to inquire into a fiduciary's purposes in a securities registration or transfer. Notice, as defined in 13 Pa.C.S. § 1201, includes actual knowledge, notification or situations in which the facts and circumstances known to the issuer at the time in question gives him reason to know an adverse claim exists. This "facts and circumstances" notice is very similar to the "bad faith" test of section 3 of the UFA. The bona fide purchaser for value provisions indicate that persons who have notice that a security is registered in the name of or indorsed by a fiduciary do not have a duty to inquire into adverse claims or the rightfulness of the transfer unless the purchaser has actual knowledge that the fiduciary is breaching his duties (13 Pa.C.S. §§ 8302, 8304).

Section 2 of the Uniform Act for Simplification of Fiduciaries Security Transfers (USFST) similarly states that a corporation or transfer agent registering a security in the name of a fiduciary does not have a duty to inquire into the existence, extent or correct description of the fiduciary relationship. The Commissioners' Prefatory Note to this uniform act indicates that division 8 of the Pennsylvania UCC was a precedent for the act and that it was meant to be

³Uniform Laws Annotated. vol. 7A, at 135 (West 1978).

⁴Ibid., at 138.

compatible with the UCC.⁵ Although Pennsylvania has not adopted the USFST, the UCC alone supercedes section 3 of the UFA.

Sections 4 through 6 of the UFA impose liability on persons taking negotiable instruments or checks from fiduciaries if the person receiving the paper has actual knowledge or knowledge of such facts that his taking the instrument would be an act of bad faith. Paralleling those provisions is division 3 of the UCC. Governing commercial paper, division 3 provides that holders in due course of negotiable instruments take free of any adverse claims or defenses (with some exceptions not applicable here). A holder in due course must take the instrument for value, in good faith and without notice of any defenses against or claims to it (13 Pa.C.S. § 3302(a)). The purchaser of an instrument has notice of a claim against it if he has actual knowledge that the fiduciary from whom he received it had breached his duty in transferring it (13 Pa.C.S. § 3304(b)). Knowledge that the person negotiating the instrument is or was a fiduciary is not notice to a holder (13 Pa.C.S. § 3304(d)(5)). Notice of a claim or defense includes any incompleteness or other irregularity of the instrument that creates an ambiguity as to the party to pay (13 Pa.C.S. § 3304(a)). These notice provisions parallel the actual knowledge and bad faith provisions of sections 4 through 6 of the UFA.

A pre-UCC Pennsylvania Supreme Court decision held that

To defeat the rights of one dealing with negotiable securities it is not enough to show that he took them under circumstances which ought to excite the suspicion of a prudent man and cause him to make inquiry, but that he had actual knowledge of an infirmity or defect, or of such facts that his failure to make further inquiry would indicate a deliberate desire on his part to evade knowledge because of a belief or fear that investigation would disclose a vice in the transaction. This test, that of good faith with respect to negotiable instruments, is prescribed alike at common law, by the Negotiable Instruments Law of 1901, P.L. 194, and by the Uniform Fiduciaries Act of 1923, P.L. 468. First National Bank of Blairstown v. Goldberg, 340 Pa. 337, 340, 17 A.2d 377 (1941).

⁵Ibid., at 710.

Two post-UCC decisions interpreting the holder in due course provisions of the UCC make reference to this statement in determining what constitutes "good faith." See The First National Bank of Philadelphia v. Anderson, 17 D.& C.2d 661, 665 (1956) and Valley Bank & Trust Co. v. American Utilities, Inc., 415 F. Supp. 298, 302 (E.D. Pa. 1976).

Sections 7 through 10 of the UFA deal with bank deposits and provide that a bank need not inquire as to whether a fiduciary is breaching his duty in making the deposit unless it has actual knowledge of the breach or knowledge of such facts that its participation in the transaction is an act of bad faith. Division 4 of the UCC, governing bank deposits and collections, provides that banks can be holders in due course (13 Pa.C.S. §§ 4208, 4209) and that the provisions of the UCC governing commercial paper (division 3) and investment securities (division 8) apply to bank deposits and collections. Thus, the good faith, notice and knowledge provisions of the holder in due course sections of the UCC similarly define a bank's duties in its relationship with a fiduciary.

It appears that the repeal of the Uniform Fiduciaries Act would not change the duties or liabilities of persons dealing with fiduciaries. It has fallen into disuse in the judicial system, and various sections of the UCC provide the protection to innocent persons dealing with fiduciaries that the UFA first sought to provide. Section 2 of the UFA has been transferred to the Probate, Estates and Fiduciaries Code, where it joins a body of law that comprehensively covers other aspects of fiduciary relationships.

