

**THE PROPOSED PENNSYLVANIA
UNIFORM TRUST ACT
AND AMENDMENTS TO THE
PROBATE, ESTATES AND FIDUCIARIES CODE**

APRIL 2005

**REPORT OF THE ADVISORY COMMITTEE ON
DECEDENTS' ESTATES LAWS**



General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
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The release of this report should not be interpreted as an endorsement by the members of the Executive Committee of the Joint State Government Commission of all the findings, recommendations and conclusions contained in this report.

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April 2005

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Advisory Committee on Decedents' Estates Laws. This report contains proposed amendments and official comments to the Probate, Estates and Fiduciaries Code (Title 20 of the Pennsylvania Consolidated Statutes), including the Pennsylvania Uniform Trust Act. The recommendations contained in this report represent the consensus of the advisory committee gained after extensive analysis and deliberation.

On behalf of the General Assembly, I thank the members of the advisory committee for contributing their valuable time and expertise in the considerable effort to improve trust law in Pennsylvania and ensure that Title 20 remains modern and efficient. I commend the advisory committee for its commitment to develop legislation and assist in the legislative process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger A. Madigan".

Roger A. Madigan
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CONTENTS

Introduction.....	1
Summary of Recommendations.....	7
Pennsylvania Uniform Trust Act: Detailed Table of Contents.....	13
Pennsylvania Uniform Trust Act.....	23
Conforming Amendments to Title 20.....	127
§ 751. Appointment; purpose.	
§ 3384.1. Notice after settlor of revocable trust has died.	
§ 6101. Definitions.	
§ 6114. Rules of interpretation.	
§ 8121. Determination and distribution of net income.	
Transitional Provisions for the Pennsylvania Uniform Trust Act and Conforming Amendments to Title 20.....	133
Other Proposed Amendments to Title 20.....	135
<i>Appeals</i>	
§ 908. Appeals.	
<i>Cost of Distribution of Tangible Personal Property</i>	
§ 3534.1. Cost of distribution of tangible personal property.	
<i>Income on Distributive Shares</i>	
§ 3543. Income on distributive shares.	
<i>Interest and Penalties</i>	
§ 3702. Equitable apportionment of Federal estate tax.	
<i>Rule Against Perpetuities</i>	
§ 6104. Rule against perpetuities.	
§ 6106. Income accumulations; when valid.	
<i>Mutual Funds</i>	
§ 7201. Definitions.	
§ 7314.1. Mutual funds.	
<i>Limitations on Exercise of Trustee Powers and Powers of Beneficiaries to Appoint Trustees</i>	
§ 7503. Application of chapter.	
§ 7504. Certain trustee powers not exercisable.	
§ 7506. Certain powers of beneficiaries not exercisable.	
<i>Principal and Income</i>	
§ 8102. Definitions.	
§ 8104. Trustee's power to adjust.	
§ 8105. Power to convert to unitrust.	
§ 8107. Express unitrusts.	
§ 8113. Charitable trusts.	
§ 8141. Character of receipts.	
Transitional Provisions for Other Proposed Amendments to Title 20.....	157

INTRODUCTION

The Advisory Committee and Task Force Process

The Joint State Government Commission Advisory Committee on Decedents' Estates Laws is a standing group of attorneys and judges from across the Commonwealth who assist the General Assembly by recommending improvements to Pennsylvania law relating to Title 20 of the Pennsylvania Consolidated Statutes, known as the Probate, Estates and Fiduciaries Code, and related statutes. Since 1945, the Advisory Committee has provided expertise and advice in formulating legislation aimed at modernizing Pennsylvania law to make it more efficient. After reaching consensus on its legislative recommendations, the Advisory Committee presents its recommendations to the Task Force on Decedents' Estates Laws, which is a bicameral and bipartisan panel of legislators. The Task Force then considers the recommendations and decides whether to authorize the Joint State Government Commission to publish a report containing the recommendations, which serve as a basis for legislation.

In 2001, the Advisory Committee decided to review Pennsylvania trust law in light of the adoption of the Uniform Trust Code (UTC).¹ Accordingly, the Advisory Committee established a subcommittee consisting of C. Thomas Work (chair), Judge Calvin S. Drayer, Jr., Robert L. Freedman, Richard L. Grossman, Neil E. Hendershot and Edward M. Watters, III. Over a two-year period, the subcommittee met to discuss a more comprehensive statutory framework for trusts and proposed the Pennsylvania Uniform Trust Act. The Advisory Committee met on three occasions to review and discuss the subcommittee's recommendations. Throughout its deliberations, the Advisory Committee recognized that an organized, more comprehensive codification of trust law will facilitate the search for applicable Pennsylvania trust law, encourage better compliance with Pennsylvania law by trustees who do business in more than one state and enable beneficiaries of Pennsylvania trusts to better understand and enforce their rights. After its meeting on April 22, 2003, the Advisory Committee reached consensus on the provisions contained in the proposed act and the other amendments to Title 20.

On October 20, 2003, the Task Force authorized both the publication of a report containing the recommendations of the Advisory Committee and the introduction of the

¹ The National Conference of Commissioners on Uniform State Laws (NCCUSL) recommended the UTC as a comprehensive and uniform framework of statutory trust law for individual states to consider and adopt. While some states have adopted detailed statutory provisions governing trusts, other states have little or no codification of trust law. In the latter states, trust law has often developed through court decisions; however, in many instances case law and statutory law offer little guidance regarding trust law and practice. The UTC and its comments and notes were replicated in the Joint State Government Commission Report of the Advisory Committee on Decedents' Estates Laws entitled *The Proposed Pennsylvania Uniform Trust Act and Amendments to the Probate, Estates and Fiduciaries Code* (November 2003). NCCUSL amended the UTC at its 2001, 2003 and 2004 annual meetings.

legislation contained in the report.² Senate Bill 978 of 2003 (Printer's No. 1329) contained the recommendations and was referred to the Senate Judiciary Committee on December 18, 2003. On March 30, 2004, the bill was reported out of committee with amendments. Senate Bill 978 (Printer's No. 1502) was subsequently referred to the Senate Appropriations Committee. No further legislative action was taken during the session.

On February 15, 2005, the Advisory Committee considered and approved again the proposed Pennsylvania Uniform Trust Act, with technical amendments, along with other proposed amendments to Title 20.³ This report contains the proposed legislation and official comments recommended by the Advisory Committee. The official comments may be used in determining the intent of the General Assembly.⁴

On April 4, 2005, the Task Force authorized both the publication of a report containing the recommendations of the Advisory Committee and the introduction of the legislation contained in this report. However, the inclusion of any recommendation in this report does not necessarily reflect the endorsement of the Task Force.

The Pennsylvania Uniform Trust Act

This report results from an extensive review of trust law in Pennsylvania and other matters governed by Title 20. It contains the proposed Pennsylvania Uniform Trust Act as Subchapters A through I of a new Chapter 77 to Title 20. The Pennsylvania Uniform Trust Act borrows heavily from the structure and content of the UTC;⁵ however, where appropriate, it deviates from and replaces provisions of the UTC to preserve existing Pennsylvania law. Those sections that are substantially similar to the UTC sections contain a reference in the heading to the relevant UTC section number, thereby allowing the reader easily to recognize those provisions that are substantially based on the UTC. Conversely, sections that do not substantially incorporate the UTC provisions or are substantially rewritten do not contain a UTC reference in the heading. To parallel the organizational framework of the UTC, several sections, subsections and paragraphs in the Pennsylvania Uniform Trust Act are reserved.

Changes to the UTC are noted in the official Pennsylvania Comments, which follow many of the statutory provisions of the proposed act and explain the statutory provisions. Where the UTC provisions have been substantially retained, the UTC comments are applicable to the extent of the similarity. In addition, the uniform

² The Joint State Government Commission issued the report in November 2003. See note 1, *supra*, for the full citation of the report. The inclusion of a recommendation in that report did not necessarily reflect the endorsement of the Task Force.

³ Some of these recommendations were part of the November 2003 report.

⁴ 1 Pa.C.S. § 1939.

⁵ A detailed table of contents for the Pennsylvania Uniform Trust Act precedes the proposed legislation and details its organizational structure.

provisions are to be interpreted and construed to effect their general purpose to make uniform the laws of those states that enact them.⁶

The following summarizes the most notable aspects of the Pennsylvania Uniform Trust Act.⁷

Notices. Section 7780.3, a replacement of UTC § 813, encourages and in many contexts requires a trustee to communicate with the trust's beneficiaries. A trustee must respond to a beneficiary's reasonable request for information unless the trust is a revocable trust and the settlor is alive. The exception preserves the settlor's privacy and respects the settlor's right to change the post-death provisions of the trust. The trustee must notify the trust's current beneficiaries in a variety of circumstances after the trust may no longer be amended or revoked. The contents of the notice are prescribed in the statute. Apart from the requirements of this section, a trustee may notify the beneficiaries of a trust whenever the trustee likes. A settlor may not negate the notice requirements. A two-year transitional rule will allow Pennsylvania trustees enough time to prepare for the new notice requirements.

Recognition of revocable trusts as will substitutes. Subchapter F (Revocable Trusts) essentially applies the same rules in force for wills to revocable trusts. Those provisions equate capacity to execute a revocable trust with capacity to execute a will; impose a similar period of time to contest a revocable trust as applies to wills; require notices of the trust relationship to the settlor's spouse, children and beneficiaries akin to Pennsylvania Orphans' Court Rule 5.6 applicable to wills and intestacy; apply to revocable trusts the same rules of construction that apply to testamentary trusts; and set forth a road map for clearance of creditors' claims against the revocable trust and the settlor's estate.

Virtual representation in litigated and non-litigated trust matters. Concepts of virtual representation have been broadened, refined and detailed. A person may represent his minor and unborn descendants unless there is a conflict of interest between the ancestor and descendant with respect to the matter at issue. These rules apply to releases, settlements and other transactions outside a judicial context as well as to matters before the court. Departing from the UTC, the Pennsylvania Uniform Trust Act requires the trustee to give written notice to a person ("A") if the trustee expects A to represent another person in a trust matter and recognizes A's right to decline the proposed representation. The UTC and existing Pennsylvania law assume that certain parties suitably represent others without any such notice or express right to opt out of representation.

Choice of law. A settlor may select the law that will govern the meaning and effect of the trust instrument unless that law contravenes one of the mandatory rules set forth in

⁶ 1 Pa.C.S. § 1927.

⁷ A summary of recommendations follows this introduction and provides a more detailed list of the provisions of the Pennsylvania Uniform Trust Act, along with a list of other proposed amendments to Title 20.

the Pennsylvania Uniform Trust Act, such as the rules requiring the trustee to communicate with the beneficiaries.

Changes of situs and venue. Section 7708 permits a trustee to change the situs of a trust to another state or county after notifying the trust's primary beneficiaries of the proposed transfer and obtaining their consent. The notice must include certain salient, practical aspects of the transfer. The right of the court to direct a change in situs is preserved. Under the Pennsylvania Uniform Trust Act, a change in venue follows automatically from a change in situs.

Removal of trustees. Judicial authority to remove a trustee for fault is clarified.

Effect of spendthrift clause. The Pennsylvania Uniform Trust Act codifies the effect of a spendthrift provision. Such a provision is valid as against any creditor except (1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance to the extent of the beneficiary's interests in the trust's income and principal; (2) another person who has such a judgment or court order, to the extent of the beneficiary's interest in the trust's income; (3) a judgment creditor who has provided services for the protection of the beneficiary's interest in the trust and (4) a governmental claim as provided by state or Federal law. The same rules apply whether the action is by the beneficiary against the trustee, or by a creditor of the beneficiary against the trustee to compel or enjoin a distribution from the trust. These rules are essentially consistent with existing Pennsylvania law.

Trusts presumed to be revocable. Trusts created on or after the effective date of the act are presumed to be amendable and revocable. This reverses existing Pennsylvania law.

Compensation of trustees. Intended to codify existing Pennsylvania law, § 7768 clarifies some ambiguities in and replaces 20 Pa.C.S. § 7185.

Limited codification of laches doctrine. Under § 7785, a trustee who communicates essential trust information to the beneficiaries may implement a procedure that bars claims by a beneficiary after the passage of a specific period of time. To do so the trustee must provide written reports of trust assets and transactions to the beneficiary for a period of at least five years and notify the beneficiary of the time by which challenges to trust transactions must be asserted. A claim with respect to a transaction that occurred in the first of those five years is barred six months after the beneficiary has received all such information for the five-year period unless the claim is presented to the trustee in writing before the end of that period.

Mandatory rules. Following the UTC, the Pennsylvania Uniform Trust Act sets forth a series of mandatory rules that may not be countermanded in the trust instrument. These include the notice requirements, the duty to inform and report, the requirements for creation of a trust and the authority of the court in various trust matters.

Oral trusts. Under the Pennsylvania Uniform Trust Act, trusts must be in writing; oral trusts will no longer be recognized.

Applicability. The Pennsylvania Uniform Trust Act will apply to trusts created both before and after the enactment, with appropriate transitional rules where needed for existing trusts.

Other Amendments to Title 20

The proposed legislation moves several existing statutory provisions not being replaced by the Pennsylvania Uniform Trust Act to Subchapter J of Chapter 77. It does so by repealing these provisions and re-enacting them. The official comments following each provision in Subchapter J supply the repealed section on which the provision is based.

This report contains other proposed amendments to Title 20⁸, including a new provision regarding the cost of distribution of tangible personal property (§ 3534.1), amendments regarding mutual funds (§§ 7201 and 7314.1) and the Rule Against Perpetuities (§§ 6104 and 6106), and amendments to § 908 (appeals), § 3543 (income on distributive shares), § 3702 (equitable apportionment of Federal estate tax), Chapter 75 (limitations on exercise of trustee powers and powers of beneficiaries to appoint trustees) and Chapter 81 (the Pennsylvania Uniform Principal and Income Act). This report also contains conforming amendments⁹ and transitional provisions to implement the legislation.

⁸ Bracketed language indicates proposed deleted language to current law; underlined language indicates proposed new language to current law.

⁹ In light of the addition of Chapter 77 to Title 20, conforming amendments are proposed to §§ 751 (appointment; purpose), 6101 (definitions), 6114 (rules of interpretation) and 8121 (determination and distribution of net income), and a new § 3384.1 (notice after settlor of revocable trust has died) is proposed.

SUMMARY OF RECOMMENDATIONS

The proposed legislation in this report contains the following recommendations.

- (1) Enact the Pennsylvania Uniform Trust Act as Subchapters A through I of 20 Pa.C.S. Chapter 77, which is summarized below.
- (2) Repeal 20 Pa.C.S. §§ 723, 724, 725, 6102, 6110 and 6112 and Chapter 71.
- (3) Repeal the act of December 9, 2002 (P.L.1379, No.168), known as the Pooled Trust Act, and re-enact it as 20 Pa.C.S. § 7799.3.
- (4) Re-enact, with the necessary technical amendments, 20 Pa.C.S. §§ 7132, 7133, 7136, 7143, 7144, 7145, 7181, 7182, 7183, 7186, 7187 and 7188 as 20 Pa.C.S. §§ 7791 through 7799.2.
- (5) Amend 20 Pa.C.S. § 908 to clarify that parties in interest may challenge or amend a will that has already been probated by the register.
- (6) Enact 20 Pa.C.S. § 3534.1 to provide that, unless the terms of the will directs otherwise, the personal representative shall pay as an expense of administration the reasonable expenses associated with the distribution of tangible personal property to a beneficiary.
- (7) Amend 20 Pa.C.S. § 3543 to replace the references to “interest” with “income.”
- (8) Amend 20 Pa.C.S. § 3702 for technical purposes.
- (9) Amend 20 Pa.C.S. §§ 6104 and 6106 regarding the Rule Against Perpetuities.
- (10) Amend 20 Pa.C.S. §§ 7201 and 7314.1 for technical purposes regarding mutual funds.
- (11) Amend 20 Pa.C.S. §§ 7503, 7504 and 7506 for technical purposes.
- (12) Amend 20 Pa.C.S. § 8102 to provide that Chapter 81 (Pennsylvania Uniform Principal and Income Act), including the power to adjust under § 8104, is applicable to perpetual charitable trusts.
- (13) Amend 20 Pa.C.S. § 8102 to clarify that under § 8105 a parent does not represent a minor for purposes of determining whether a court proceeding is required to convert a trust to a unitrust.

- (14) Amend 20 Pa.C.S. § 8104(c)(4) to specify that the power to adjust is available where a marital trust passes to a charity at death.
- (15) Amend 20 Pa.C.S. § 8105 to provide that the trustee must give written notice of the intention to release the power to adjust and convert the trust into a unitrust and to provide how the unitrust will operate to secondary life tenants in cases where the trust contains succeeding life estates.
- (16) Amend 20 Pa.C.S. § 8105(f) to revise the tax ordering rule for unitrusts.
- (17) Add 20 Pa.C.S. § 8105(g.1) to provide for the reconversion from a unitrust.
- (18) Amend 20 Pa.C.S. § 8105(i) to clarify that a marital trust with a charitable remainder could be converted to a unitrust and that § 8113 is better designed to apply to a trust for which both income and principal are set aside for charity.
- (19) Add 20 Pa.C.S. § 8107 to provide a statutory framework for express unitrusts.
- (20) Amend 20 Pa.C.S. § 8113(c) to specify that a trustee does not need to annually select a payout percentage.
- (21) Add 20 Pa.C.S. § 8113(f) to specify that for a charitable trust taxed as a private foundation, the minimum investment return requirements of the Charitable Instruments Act of 1971 govern instead of § 8113(c).
- (22) Amend 20 Pa.C.S. § 8141 to clarify the criteria for determining a partial liquidation of an entity.

The Pennsylvania Uniform Trust Act, based on the Uniform Trust Code, contains the following statutory provisions.

- Apply a more comprehensive statute to express trusts and trusts to be administered in the manner of an express trust (§ 7702)
- Provide certain mandatory rules for trusts that a trust instrument may not override (§ 7705)
- Expressly allow common law and principles of equity to supplement but not override the provisions of Chapter 77 (§ 7706)
- Except for the mandated statutory rules, allow a settlor to designate a jurisdiction to govern the trust (§ 7707)

- Provide a statutory framework governing the situs of a trust and provide a procedure to transfer a trust's situs (§ 7708)
- Facilitate resolution of disputes by generally allowing nonjudicial settlement agreements (§ 7710.1)
- Extend applicable rules of construction for testamentary trusts to inter vivos trusts (§ 7710.2)
- Permit the court to intervene in the administration of trusts but not require judicial supervision thereof unless so ordered (§ 7711)
- Provide for the personal jurisdiction over trustees and beneficiaries by the courts in Pennsylvania (§ 7712)
- Provide for venue for a judicial proceeding involving a trust (§ 7714)
- More completely address representation of beneficiaries for judicial and nonjudicial proceedings affecting a trust (Subchapter C, §§ 7721 through 7726)
- Require a settlor to sign a writing to validly create a trust (§§ 7731 and 7732)
- Allow a living settlor, the Attorney General, the trust's beneficiaries or other persons who have standing to enforce a charitable trust (§ 7735)
- Refuse to enforce oral trusts created in Pennsylvania (§ 7737)
- Provide for the creation, termination and enforcement of a trust for the care of an animal (§ 7738)
- Provide for the creation and enforcement of a noncharitable trust without an ascertainable beneficiary (§ 7739)
- Specify how a trust terminates and who has standing to seek to terminate, modify, divide or combine trusts (§ 7740)
- Specify how to modify or terminate a noncharitable trust by consent (§ 7740.1)
- Presume that a spendthrift provision in a trust constitutes a material purpose of the trust (§ 7740.1(c))
- Allow a court to modify administrative or dispositive provisions of a noncharitable irrevocable trust, make an allowance from the principal of the trust or terminate it to further its purposes (§ 7740.2)

- Specify what happens if a trust's particular charitable purpose becomes unlawful, impracticable or wasteful (§ 7740.3(a) and (b))
- Permit a court to modify an administrative provision of a charitable trust to preserve the trust (§ 7740.3(c))
- Permit the administrative termination of small charitable trusts (§ 7740.3(d))
- Permit the judicial termination of charitable trusts under certain circumstances (§ 7740.3(e))
- Outline the authority of a trustee and a court to modify or terminate a noncharitable trust (§ 7740.4)
- Permit judicial reformation of a trust instrument to conform to the probable intention of the settlor and correct mistakes of fact or law (§ 7740.5)
- Provide for the division and combination of trusts (§§ 7740.7 and 7740.8)
- Specify the rights of a beneficiary's creditor or assignee (§ 7741), permit a settlor to restrain the transfer of a beneficiary's interest (§ 7742) and specify exceptions to such restraint (§ 7743)
- Address a creditor's ability to reach a beneficiary's discretionary trust interest (§ 7744)
- Subject the property of a revocable trust to a creditor's claim against a living settlor and equate a power of withdrawal with that of revocation when considering a creditor's claim against a settlor (§ 7745)
- Require a settlor to have the same capacity as a testator (§ 7751)
- Provide a statutory framework for how to revoke or amend a revocable trust (§ 7752)
- Specify how to contest the validity of a revocable trust and declare that the grounds for such contest are the same as those for contesting the validity of a will (§ 7754)
- Provide a statutory framework for claims and distribution after the death of a settlor (§ 7755)
- Direct what constitutes acceptance of a trusteeship (§ 7761)
- Outline the standard of performance required by a cotrustee and clarify when a cotrustee may be liable for the action or inaction of another cotrustee (§ 7763)

- Specify how to fill a vacancy in a trusteeship and permit qualified beneficiaries to fill the vacancy if the trust did not designate a successor trustee (§ 7764)
- Specify how a trustee may resign (§ 7765)
- Authorize removal of trustees on various grounds (§ 7766)
- Provide a statutory framework for the compensation of a trustee, whether or not specified in the trust instrument, and identify factors impacting the reasonableness of the compensation (§ 7768)
- Entitle a trustee to reimbursement of expenses (§ 7769)
- Immunize a succeeding trustee from the liability of his predecessor (§ 7770)
- Address the fundamental powers and duties of a trustee, including prudent administration, loyalty, use of skills and expertise and delegation (Subchapter H, §§ 7771 through 7780.7)
- Specify the duty of a trustee to inform and report, including the types and timing of notices to designated persons (§ 7780.3)
- Describe what constitutes a breach of trust by a trustee and specify the remedies for such breach (§ 7781)
- Specify the liability for a breach of trust by a trustee (§ 7782)
- Address damages in the absence of a breach of trust by a trustee (§ 7783)
- Impose an absolute statute of limitations and one that is triggered if a trustee annually reports to the beneficiary (§ 7785)
- Determine the enforceability and validity of a trust's exculpatory provision (§ 7788)
- Immunize persons dealing with a trustee (§ 7790.2)

PENNSYLVANIA UNIFORM TRUST ACT: DETAILED TABLE OF CONTENTS

CHAPTER 77 TRUSTS

Subchapter

- A. General Provisions
- B. Judicial Proceedings
- C. Representation
- D. Creation, Validity, Modification and Termination of Trust
- E. Creditor's Claims; Spendthrift and Discretionary Trusts
- F. Revocable Trusts
- G. Office of Trustee
- H. Duties and Powers of Trustee
- I. Liability of Trustees and Rights of Persons Dealing with Trustees
- J. Miscellaneous Provisions

SUBCHAPTER A GENERAL PROVISIONS

Sec.

- 7701. Short title - UTC 101.
- 7702. Scope - UTC 102.
- 7703. Definitions - UTC 103.
- 7704. Knowledge - UTC 104.
 - (a) When person has knowledge.
 - (b) Employees.
- 7705. Trust instrument controls; mandatory rules - UTC 105.
 - (a) Trust instrument controls.
 - (b) Mandatory rules.
- 7706. Common law of trusts; principles of equity - UTC 106.
- 7707. Governing law - UTC 107.
- 7708. Situs of trust.
 - (a) Specified in trust instrument.
 - (b) Unspecified in trust instrument.
 - (c) Transfer.
 - (d) Notice of transfer.
 - (e) Consent to transfer.
 - (f) Successor trustee.
 - (g) Court-directed change in situs.
 - (h) Claims not discharged.
- 7709. Methods and waiver of notice - UTC 109.
 - (a) Notice generally.
 - (b) Unknown identity or location.

- (c) Waiver.
- (d) Notice of judicial proceeding.
- 7710. Notice; others treated as beneficiaries - UTC 110.
 - (a) Notice.
 - (b) Enforcement by charitable organization expressly named in instrument.
 - (c) Enforcement by others.
 - (d) Office of Attorney General.
- 7710.1. Nonjudicial settlement agreements - UTC 111.
 - (a) (Reserved).
 - (b) General rule.
 - (c) Exception.
 - (d) Matters that may be resolved.
 - (e) Request of court.
- 7710.2. Rules of construction - UTC 112.

SUBCHAPTER B JUDICIAL PROCEEDINGS

- Sec.
- 7711. Role of court in administration of trust - UTC 201.
 - (a) Judicial intervention.
 - (b) Judicial supervision.
 - (c) Scope of proceeding.
- 7712. Jurisdiction over trustee and beneficiary - UTC 202.
 - (a) Personal jurisdiction over trustee.
 - (b) Personal jurisdiction over beneficiary.
 - (c) Additional jurisdictional methods.
- 7713. (Reserved).
- 7714. Venue - UTC 204.
 - (a) General rule.
 - (b) Exceptions.

SUBCHAPTER C REPRESENTATION

- Sec.
- 7721. Scope; definition of trust matter.
 - (a) Scope.
 - (b) Definition.
- 7722. Representation of parties in interest in general.
 - (a) Judicial proceeding.
 - (b) Nonjudicial resolution.
 - (c) Permissible consideration.
- 7723. Representatives and persons represented.
- 7724. Appointment of representative.
- 7725. Notice of representation.
- 7726. Representation ineffective if person objects.

SUBCHAPTER D
CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

- Sec.
- 7731. Creation of trust - UTC 401.
 - 7732. Requirements for creation - UTC 402.
 - (a) Requirements.
 - (b) (Reserved).
 - (b.1) Signature by mark or another.
 - (c) Power to select beneficiary from indefinite class.
 - (d) Definition.
 - 7733. Written trusts created in other jurisdictions - UTC 403.
 - 7734. Trust purposes - UTC 404.
 - 7735. Charitable purposes; enforcement - UTC 405.
 - (a) Purposes.
 - (b) Selection by court.
 - (c) Proceeding to enforce trust.
 - 7736. Creation of trust induced by fraud, duress or undue influence - UTC 406.
 - 7737. Oral trusts unenforceable.
 - 7738. Trust for care of animal - UTC 408.
 - (a) Creation and termination.
 - (b) Enforcement.
 - (c) Limitation.
 - 7739. Noncharitable trust without ascertainable beneficiary - UTC 409.
 - 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.
 - (a) Termination.
 - (b) Proceedings for termination or modification.
 - 7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.
 - (a) Consent by settlor and beneficiaries.
 - (b) Consent by beneficiaries with court approval.
 - (b.1) Spendthrift provision.
 - (c) Distribution upon termination.
 - (d) Consent by some beneficiaries with court approval.
 - 7740.2. Modification or termination of noncharitable irrevocable trust by court - UTC 412.
 - (a) Unanticipated circumstances.
 - (b) Inability to administer effectively.
 - (c) Distribution of property.
 - 7740.3. Charitable trusts - UTC 413.
 - (a) General rule.
 - (b) Exception.
 - (c) Administrative deviation.
 - (d) Administrative termination of small charitable trusts.
 - (e) Judicial termination of charitable trusts.
 - 7740.4. Modification or termination of noncharitable trust - UTC 414.
 - (a) Trustee's authority.
 - (b) Court authority.
 - (c) Distribution of trust property.
 - 7740.5. Reformation to correct mistakes - UTC 415.
 - 7740.6. Modification to achieve settlor's tax objectives - UTC 416.
 - 7740.7. Division of trusts.
 - (a) Without court approval.

- (b) With court approval.
- (c) Separate fund.
- 7740.8. Combination of trusts.
 - (a) With court approval.
 - (b) Without court approval.

SUBCHAPTER E
CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

- Sec.
- 7741. Rights of beneficiary's creditor or assignee - UTC 501.
 - 7742. Spendthrift provision - UTC 502.
 - (a) Validity.
 - (b) Creation.
 - (c) Effect.
 - 7743. Exceptions to spendthrift provision - UTC 503.
 - (a) (Reserved).
 - (b) Who may override.
 - (c) Remedy if unenforceable.
 - (d) Definition.
 - 7744. Discretionary trusts; effect of standard - UTC 504.
 - (a) (Reserved).
 - (b) Distribution not compelled.
 - (c) Exception.
 - (d) Proceeding against trustee.
 - (e) (Reserved).
 - (f) Definition.
 - 7745. Creditor's claims against settlor - UTC 505(a).
 - 7746. Overdue distribution - UTC 506.
 - (a) Distribution not made within reasonable time.
 - (b) Definition.
 - 7747. Personal obligations of trustee - UTC 507.
 - 7748. Property subject to power of withdrawal - UTC 505(b).

SUBCHAPTER F
REVOCABLE TRUSTS

- Sec.
- 7751. Capacity of settlor of revocable trust - UTC 601.
 - 7752. Revocation or amendment of revocable trust - UTC 602.
 - (a) Power to revoke or amend.
 - (b) More than one settlor.
 - (c) How to revoke or amend.
 - (d) Delivery of property.
 - (e) Agent.
 - (f) Guardian.
 - (g) Liability.
 - 7753. Trustee's duties; powers of withdrawal - UTC 603.
 - (a) Power of settlor.

- (b) Holder of power of withdrawal.
- 7754. Actions contesting validity of revocable trust.
 - (a) How action may be commenced.
 - (b) Time limit.
 - (c) Grounds for contest.
- 7755. Claims and distribution after settlor's death.
 - (a) Creditors' rights.
 - (b) Enforcement of claim against revocable trust.
 - (c) No personal representative.
 - (d) Liability of personal representative.
 - (e) Liability to any creditor.
 - (f) Rights of creditors against distributed property.
 - (g) Judicial principles.

SUBCHAPTER G
OFFICE OF TRUSTEE

Sec.

- 7761. Accepting or declining trusteeship - UTC 701.
 - (a) Accepting trusteeship.
 - (b) Rejecting trusteeship.
 - (c) Actions not constituting acceptance of trusteeship.
- 7762. Trustee's bond - UTC 702.
 - (a) When required.
 - (b) Judicial authority.
 - (c) Institutional trustees.
- 7763. Cotrustees - UTC 703.
 - (a) Majority decision.
 - (a.1) When no majority.
 - (b) Vacancy.
 - (c) Performance.
 - (d) Unavailability.
 - (e) (Reserved).
 - (f) Liability.
 - (g) Reasonable care.
 - (h) Dissenting trustee.
- 7764. Vacancy in trusteeship; appointment of successor - UTC 704.
 - (a) When vacancy occurs.
 - (b) Filling of vacancy.
 - (c) Filling vacancy for noncharitable trust.
 - (d) Filling vacancy for charitable trust.
 - (e) Appointment by court.
 - (f) Filing appointment.
- 7765. Resignation of trustee; filing resignation.
 - (a) Court approval.
 - (b) Without court approval if authorized by trust instrument.
 - (c) Without court approval and without authorization in trust instrument.
 - (d) Liability.
 - (e) Filing resignation.
- 7766. Removal of trustee - UTC 706.

- (a) Request to remove trustee; court authority.
 - (b) When court may remove trustee.
 - (c) Court remedies.
 - (d) Procedure.
7767. Delivery of property by former trustee - UTC 707.
- (a) Duties and powers of trustee.
 - (b) Delivery of trust property.
7768. Compensation of trustee - UTC 708.
- (a) If unspecified.
 - (b) If specified; adjustment.
 - (c) Entitlement not barred.
 - (d) Court authority.
 - (e) Cemetery lots.
7769. Reimbursement of expenses - UTC 709.
- (a) Reimbursement from trust property.
 - (b) Advance.
7770. Liability of successor trustee.

SUBCHAPTER H DUTIES AND POWER OF TRUSTEE

Sec.

7771. Duty to administer trust - UTC 801.
7772. Duty of loyalty - UTC 802.
- (a) Duty of trustee.
 - (b) Effect of conflict of interest.
 - (c) What constitutes conflict of interest.
 - (d) Transactions between trustee and beneficiary.
 - (e) Conflict regarding trust opportunity.
 - (f) (Reserved).
 - (g) Business enterprises.
 - (h) Permissible transactions.
 - (i) (Reserved).
7773. Impartiality - UTC 803.
7774. Prudent administration - UTC 804.
7775. Costs of administration - UTC 805.
7776. Trustee's skills - UTC 806.
7777. Delegation by trustee.
- (a) Standards for delegation.
 - (b) Agent's duty.
 - (c) Liability.
 - (d) Jurisdiction.
 - (e) When one trustee may delegate to another.
7778. Powers to direct - UTC 808.
- (a) Direction of settlor.
 - (b) Compliance with power.
 - (c) Modification or termination of trust.
 - (d) Fiduciary relationship.
7779. Control and protection of trust property - UTC 809.
7780. Recordkeeping and identification of trust property - UTC 810.

- (a) Records.
- (b) Commingling trust property prohibited.
- (c) Designating trust property.
- (d) Investing property of separate trusts.
- 7780.1. Enforcement and defense of claims - UTC 811.
- 7780.2. (Reserved).
- 7780.3. Duty to inform and report.
 - (a) Duty to respond to requests.
 - (b) Notice after settlor of revocable trust has been adjudicated incapacitated.
 - (c) Notice after settlor of revocable trust has died.
 - (d) Notice after settlor of irrevocable trust has been adjudicated incapacitated.
 - (e) Notice after settlor of irrevocable trust has died.
 - (f) Notice to current beneficiaries.
 - (g) Change in trusteeship.
 - (h) Trustee's notice to any beneficiary at any time.
 - (i) Contents of notice.
 - (j) Waiver.
 - (k) Notice to settlor's appointee.
 - (l) Applicability.
- 7780.4. Discretionary powers.
- 7780.5. Powers of trustees - UTC 815.
 - (a) Exercise of power.
 - (b) (Reserved).
- 7780.6. Illustrative powers of trustee.
 - (a) Listing.
 - (b) Effect.
- 7780.7. Distribution upon termination.

SUBCHAPTER I
LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS
DEALING WITH TRUSTEES

- Sec.
- 7781. Remedies for breach of trust - UTC 1001.
 - (a) What constitutes breach of trust.
 - (b) Remedies.
 - 7782. Damages for breach of trust - UTC 1002.
 - (a) Liability for breach of trust.
 - (b) Contribution.
 - 7783. Damages in absence of breach - UTC 1003.
 - (a) Profit.
 - (b) Loss or depreciation.
 - 7784. (Reserved).
 - 7785. Limitation of action against trustee.
 - (a) Imposed by trustee's written reports.
 - (b) Five-year absolute bar.
 - 7786. Reliance on trust instrument - UTC 1006.
 - 7787. Event affecting administration or distribution - UTC 1007.
 - 7788. Exculpation of trustee - UTC 1008.
 - (a) When exculpatory provision unenforceable.

- (b) Exculpatory provision by trustee.
- 7789. Beneficiary's consent, release or ratification - UTC 1009.
- 7790. Limitation on personal liability of trustee - UTC 1010.
 - (a) When trustee not personally liable.
 - (b) When trustee personally liable.
 - (c) Assertion of claim.
- 7790.1. Interest as general partner - UTC 1011.
 - (a) Contractual liability.
 - (b) Tortious liability.
 - (c) When immunity inapplicable.
 - (d) Personal liability of settlor.
- 7790.2. Protection of person dealing with trustee - UTC 1012.
 - (a) (Reserved).
 - (a.1) Protection from liability.
 - (b) No requirement to inquire.
 - (c) (Reserved).
 - (c.1) Ultra vires.
 - (d) Former trustee.
 - (e) Effect of other laws.
- 7790.3. Certification of trust - UTC 1013.
 - (a) Contents of certification.
 - (b) Authentication.
 - (c) Assurance of representations.
 - (d) Dispositive trust provisions.
 - (e) Provisions to be made available upon request.
 - (f) Reliance on certification.
 - (g) Enforcement.
 - (h) Liability.
 - (i) Applicability.

SUBCHAPTER J
MISCELLANEOUS PROVISIONS

- Sec.
- 7791. Abandonment of property.
- 7792. Powers, duties and liabilities identical with personal representatives.
- 7793. Effect of removal, or of probate of later will or codicil.
 - (a) No impeachment.
 - (b) Good faith dealings.
- 7794. Title of purchaser.
- 7795. Reports for school district trustees.
 - (a) Scope.
 - (b) Requirement.
- 7796. Jurisdiction.
- 7797. Filing accounts.
 - (a) When to file.
 - (b) Where to file.
- 7798. Failure to present claim at audit.
 - (a) Applicability.
 - (b) Bar.

- (c) Liens and charges unimpaired.
- 7799. Income on distributive shares.
- 7799.1. Annexation of account of distributed estate or trust.
- 7799.2. Accounts, audits and distribution.
- 7799.3. Pooled trusts for persons with disabilities.
 - (a) Scope.
 - (b) Organization of pooled trust.
 - (c) Pooled trust fund.
 - (d) Reporting.
 - (e) Coordination of services.
 - (f) Notice.
 - (g) Applicability.
 - (h) Definitions.

PENNSYLVANIA UNIFORM TRUST ACT

CHAPTER 77

TRUSTS

Pennsylvania Prefatory Comment

This chapter is based upon the Uniform Trust Code (UTC), approved and recommended by the National Conference of Commissioners on Uniform State Laws. Although the organization of the UTC is retained throughout this chapter, several provisions of the UTC are substantially rewritten, and others are not adopted. The sections of this chapter that are substantially similar to the UTC sections contain a reference in the heading to the relevant UTC section number. Sections that do not substantially incorporate the UTC provisions, but which may contain a similar subject matter, do not contain a reference in the heading to the UTC section. Several sections from the UTC are omitted and their substance is either substantially changed or included elsewhere in this act or title. To parallel the organizational framework of the UTC, several sections, subsections and paragraphs are reserved in this chapter. Changes to the UTC are explained in the Pennsylvania Comments. Where the UTC provisions have been substantially retained in this chapter, the UTC comments are applicable to the extent of the similarity. The uniform provisions are to be construed as directed by 1 Pa.C.S. § 1927. Almost all of Subchapter J is comprised of various sections of 20 Pa.C.S. Chapter 71 that were moved into Chapter 77.

Subchapter

- A. General Provisions
- B. Judicial Proceedings
- C. Representation
- D. Creation, Validity, Modification and Termination of Trust
- E. Creditor's Claims; Spendthrift and Discretionary Trusts
- F. Revocable Trusts
- G. Office of Trustee
- H. Duties and Powers of Trustee
- I. Liability of Trustees and Rights of Persons Dealing with Trustees
- J. Miscellaneous Provisions

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

- 7701. Short title - UTC 101.
- 7702. Scope - UTC 102.
- 7703. Definitions - UTC 103.
- 7704. Knowledge - UTC 104.
- 7705. Trust instrument controls; mandatory rules - UTC 105.
- 7706. Common law of trusts; principles of equity - UTC 106.
- 7707. Governing law - UTC 107.
- 7708. Situs of trust.
- 7709. Methods and waiver of notice- UTC 109.
- 7710. Notice; others treated as beneficiaries - UTC 110.
- 7710.1. Nonjudicial settlement agreements - UTC 111.
- 7710.2. Rules of construction - UTC 112.

§ 7701. Short title - UTC 101.

Subchapters A (relating to general provisions) through I (relating to liability of trustees and rights of persons dealing with trustees) shall be known and may be cited as the Pennsylvania Uniform Trust Act.

§ 7702. Scope - UTC 102.

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

§ 7703. Definitions - UTC 103.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

“Beneficiary.” A person that:

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

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

“Charitable trust.” A trust, or portion of a trust, created for a charitable purpose described in section 7735(a) (relating to charitable purposes; enforcement - UTC 405).

“Current beneficiary.” A person 18 years of age or older to or for whom income or principal of a trust must be distributed currently or a person 25 years of age or older to or for whom income or principal of a trust may, in the trustee’s discretion, be distributed currently.

“Guardian.” A person other than a guardian ad litem who is appointed by the court to make decisions regarding the property of an individual.

“Interests of the beneficiaries.” The beneficial interests provided in the trust instrument.

“Jurisdiction.” With reference to a geographic area, a country, state or county.

“Power of withdrawal.” The unrestricted power of a beneficiary, acting as a beneficiary and not as a trustee, to transfer to himself or herself the entire legal and beneficial interest in all or a portion of trust property. However, a power to withdraw the greater of the amount specified in section 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2041(b)(2), 2503(b) or 2514(e)), or any lesser amount determined by reference to one or more of these provisions, may not be treated as a power of withdrawal.

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

“Qualified beneficiary.” Assuming nonexercise of all testamentary powers of appointment, a beneficiary who on the date the beneficiary’s qualification is determined:

- (1) is a distributee or permissible distributee of trust income or principal;
- (2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) terminated on that date; or
- (3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

“Revocable trust.” A trust is revocable to the extent the settlor, immediately before the time as of which the determination is made, had the power, acting without the consent of the trustee or any person holding an interest adverse to revocation, to prevent the transfer of the trust property at the settlor’s death by revocation or amendment of or withdrawal of property from the trust.

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

“Spendthrift provision.” A provision in a trust instrument that restrains both voluntary and involuntary transfer of a beneficiary’s interest.

“Trust instrument.” A will or other written instrument executed by the settlor that contains trust provisions, including any amendments thereto.

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

Pennsylvania Comment

The definition of “beneficiary” includes a remainderman, who would be protected by a spendthrift clause in the trust instrument.

The term "conservator" as used in the UTC is omitted because the term is not used in Pennsylvania. The term "guardian," defined in the UTC to mean a guardian of the person, is redefined to mean a guardian of the property. The UTC uses the term "conservator" to define the latter function.

Because § 7714 determines venue by a trust's situs and situs may be changed from one county to another, the term "jurisdiction," as it appears in the UTC, is expanded to include counties.

The definitions of “person” and “state” in the UTC are omitted because the terms are defined in 1 Pa.C.S. § 1991.

A power of withdrawal is relevant to the rights of the holder’s creditors, which is addressed in Subchapter E. Examples of a “power of withdrawal” are the right to withdraw a fixed fraction, fixed amount or all the principal of a trust after the holder reaches a certain age. Excepted from the definition of “power of withdrawal” are Crummey powers, defined by reference to the Internal Revenue Code, and powers that are restricted, such as a power limited to an ascertainable standard. Unlike the UTC, Crummey powers are not powers of withdrawal and thus are not subject to the claims of the holder’s creditors either during the period the power may be exercised or thereafter.

The term "revocable trust" is defined in order to streamline Subchapter F and because it is central to the provisions of § 7780.3.

The phrase "terms of a trust" in the UTC is omitted from this chapter because it implies that there may be terms outside the instrument governing the trust, which is undesirable and inconsistent with the approach of this chapter to refuse enforcement of oral trusts. The phrase is not used in the Pennsylvania Uniform Principal and Income Act or the Pennsylvania Prudent Investor Rule.

§ 7704. Knowledge - UTC 104.

(a) When person has knowledge.--For the purposes of this chapter and subject to subsection (b), a person has knowledge of a fact involving a trust if the person has:

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

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

§ 7705. Trust instrument controls; mandatory rules - UTC 105.

(a) Trust instrument controls.--Except as provided in subsection (b), the provisions of a trust instrument prevail over any contrary provisions of this chapter.

(b) Mandatory rules.--Notwithstanding a contrary provision in the trust instrument, the following rules apply:

- (1) The requirements for creating a trust set forth in section 7732 (relating to requirements for creation - UTC 402).

(2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust as set forth in section 7771 (relating to duty to administer trust - UTC 801).

(3) The requirement in section 7734 (relating to trust purposes - UTC 404) that a trust's purpose be lawful and not contrary to public policy.

(4) The power of the court to modify or terminate a trust under sections 7740 (relating to termination of trusts; proceedings for termination or modification of trusts - UTC 410) through 7740.6 (relating to modification to achieve settlor's tax objectives - UTC 416).

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Subchapter E (relating to creditor's claims; spendthrift and discretionary trusts).

(6) The power of the court under section 7762 (relating to trustee's bond - UTC 702).

(7) The power of the court under section 7768(b) (relating to compensation of trustee - UTC 708) to adjust a trustee's compensation specified in the trust instrument.

(8) The duty of a trustee under section 7780.3 (relating to duty to inform and report).

(9) (Reserved).

(10) The effect of an exculpatory term under section 7788 (relating to exculpation of trustee - UTC 1008).

(11) The rights under sections 7790 (relating to limitation on personal liability of trustee - UTC 1010) through 7790.3 (relating to certification of trust - UTC 1013) of a person other than a trustee or beneficiary.

(12) Periods of limitation for commencing a judicial proceeding.

(13) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice.

(14) The subject matter jurisdiction of the court described in Chapter 7 (relating to orphans' court divisions) and venue for commencing a proceeding as provided in section 7714 (relating to venue - UTC 204).

Pennsylvania Comment

The requirements of the UTC that a trust must be for the benefit of its beneficiaries and have purposes possible to achieve are omitted from this chapter because they are likely to provoke unnecessary litigation. The comments to the UTC relating to § 813 are generally irrelevant because § 813 has been completely rewritten as § 7780.3.

§ 7706. Common law of trusts; principles of equity - UTC 106.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this Commonwealth.

§ 7707. Governing law - UTC 107.

The meaning and effect of the provisions of a trust instrument shall be determined by:

(1) the law of the jurisdiction designated in the trust instrument, but the mandatory rules of section 7705(b) (relating to trust instrument controls; mandatory rules - UTC 105) shall govern if different from the law of the jurisdiction designated in the trust instrument; or

(2) in the absence of an effective designation in the trust instrument, the law of the jurisdiction in which the settlor is domiciled when the trust becomes irrevocable.

Pennsylvania Comment

These provisions facilitate a more certain choice of law than the UTC. A strong public policy, to which the UTC alludes, not expressed in § 7705(b), such as the policy expressed in the rule against perpetuities, may nevertheless undermine a settlor's choice of law. A trust becomes irrevocable for the purpose of paragraph (2) when the power to revoke the trust is released or at the settlor's death, but not upon an adjudication of the settlor's incapacity.

§ 7708. Situs of trust.

(a) Specified in trust instrument.--Without precluding other means for establishing a sufficient connection with the designated jurisdiction, provisions of a trust instrument designating the situs of the trust are valid and controlling if:

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

(2) all or part of the trust administration occurs in the designated jurisdiction; or

(3) one or more of the beneficiaries resides in the designated jurisdiction.

(b) Unspecified in trust instrument.--If the trust instrument does not specify a situs:

(1) The situs of a testamentary trust shall be:

(i) in the county where letters were granted to the personal representative;

(ii) if letters under subparagraph (i) have not been granted, in a county where the letters might have been granted; or

(iii) if letters under subparagraph (i) have not been granted and are not subject to being granted, in a county in which any trustee resides or has a place of business.

(2) The situs of an inter vivos trust whose settlor is domiciled in this Commonwealth when the trust becomes irrevocable or, in the case of a revocable trust, when the first application is made to a court concerning the trust shall be:

(i) during the settlor's lifetime, either in the county of the settlor's principal residence or in the county in which any of the trustees resides or has a place of business; and

(ii) after the settlor's death:

(A) in the county in which letters have been granted to the settlor's personal representative;

(B) in a county in which letters might have been granted;

(C) in a county which is the principal place of the trust's administration;

or

(D) in a county in which any trustee resides or has a place of business.

(3) The situs of an inter vivos trust, whose settlor either is living and not domiciled in this Commonwealth at the time when the first application is made to a court concerning the trust or was not domiciled in this Commonwealth at the settlor's death after which the first application to a court concerning the trust is made thereafter, shall be in a county where:

(i) a trustee's principal place of business is located or a trustee is a resident;

(ii) all or part of the trust administration occurs; or

(iii) one or more of the beneficiaries reside.

(c) Transfer.--By complying with subsections (d) and (e), the trustee may transfer the trust's situs to another jurisdiction if either immediately before or immediately after the proposed transfer:

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

(2) all or part of the trust administration occurs in the proposed jurisdiction; or

(3) one or more of the beneficiaries reside in the proposed jurisdiction.

(d) Notice of transfer.--The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's situs at least 60 days before the date as of which the trustee intends to change the situs. The notice of proposed transfer must include the following:

(1) The name of the jurisdiction to which the situs is to be transferred.

(2) The address and telephone number at the new location at which the trustee can be contacted.

(3) The reasons for the proposed transfer.

(4) The date on which the proposed transfer is anticipated to occur.

(5) A statement that if the situs is changed as the trustee proposes, venue will thereafter be in the county of the new situs consistent with section 7714 (relating to venue - UTC 204).

(6) The name and address of the court before which judicial actions involving the trust will be heard after the situs is changed as the trustee proposes.

(7) A statement that the change in situs will occur only if all qualified beneficiaries of the trust consent in writing to the change.

(e) Consent to transfer.--A trustee may transfer a trust's situs under this section without court approval if all the qualified beneficiaries of the trust consent in writing to the change.

(f) Successor trustee.--In connection with a transfer of the trust's situs, the trustee may transfer some or all of the trust property to a successor trustee designated in the trust instrument or appointed pursuant to section 7764 (relating to vacancy in trusteeship; appointment of successor - UTC 704).

(g) Court-directed change in situs.--A court having jurisdiction of a testamentary or inter vivos trust, on application of a trustee or any party in interest, after notice as the court shall direct and aided if necessary by the report of a master, and after an accounting as the court shall require, may direct, notwithstanding any other provision of this chapter, that the situs of the trust shall be changed to any other place within or without this Commonwealth if the court shall find the change necessary or desirable for the proper administration of the trust.

(h) Claims not discharged.--A change in situs under this section does not discharge any claim against the trustee.

Pennsylvania Comment

Although this section addresses the same subject matter as UTC § 108, it differs substantially from the UTC provision. Not appearing in the UTC, subsections (a)(3) and (c)(3) add to the list of jurisdictions in which a trust may have its situs the jurisdiction in which at least one of the trust's beneficiaries resides. UTC § 108(b) is omitted to avoid the implication of a duty that the trustee consider the laws of all conceivable jurisdictions to which the situs of a trust may be moved and establish and re-establish situs accordingly. Subsection (b) retains existing Pennsylvania law, previously reflected in former 20 Pa.C.S. §§ 723 and 724. A trustee's allocation of ministerial functions, such as the preparation of tax returns and production of periodic statements and reports, among jurisdictions does not alone constitute

a change in situs to any such jurisdiction. UTC § 108(e) prohibits the trustee from changing situs without court approval if one of the trust's qualified beneficiaries objects. Tightening that approach, subsection (e) requires the affirmative written consent by or on behalf of all the trust's qualified beneficiaries to change the trust's situs without court approval. The principles of representation set forth in Subchapter C apply. The notice required by subsection (d) is intended to draw to each qualified beneficiary's attention the more significant practical implications of the proposed change in situs, including the automatic change in venue of proceedings with respect to the trust. This section and § 7714 anticipate that situs and venue may be changed from one county to another. Subsection (g) reflects former 20 Pa.C.S. § 725.

§ 7709. Methods and waiver of notice - UTC 109.

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

(b) Unknown identity or location.--Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee, but the trustee shall create and maintain indefinitely a written record of the steps the trustee took to identify or locate the person.

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

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

Pennsylvania Comment

The requirement in subsection (c) that a waiver of notice be in writing is added to promote certainty.

§ 7710. Notice; others treated as beneficiaries - UTC 110.

(a) Notice.--Whenever notice to qualified or current beneficiaries of a trust is required under this chapter, the trustee must also give notice to any other beneficiary who has sent the trustee a written request for notice.

(b) Enforcement by charitable organization expressly named in instrument.--A charitable organization expressly named in the trust instrument to receive distributions from the trust has the rights of a beneficiary under this chapter.

(c) Enforcement by others.--A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 7738 (relating to trust for care of animal - UTC 408) or 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409) has the rights of a beneficiary under this chapter.

(d) Office of Attorney General.--The Office of Attorney General has the rights of a charitable organization expressly named in the trust instrument to receive distributions from a trust having its situs in this Commonwealth.

Pennsylvania Comment

The additions of “notice” in the heading of this section and “or current” in subsection (a) reflect the modifications in § 7780.3 from UTC § 813. A charitable organization described in subsection (b) will have the rights of a current beneficiary under this chapter if the trust instrument requires that income or principal be distributed currently to or for the organization. The organization will have the rights of a qualified beneficiary under this chapter if the organization would satisfy the definition of that term in section 7703 (setting forth definitions for purposes of this chapter) if its character were not charitable. Subsection (b) is intended to avoid an interpretation that a charitable organization expressly named as a distributee in the trust

instrument is not a beneficiary under this chapter because the organization is simply the medium through which the settlor intends to accomplish his charitable purposes.

§ 7710.1. Nonjudicial settlement agreements - UTC 111.

(a) (Reserved).

(b) General rule.--Except as otherwise provided in subsection (c), all beneficiaries and trustees of a trust may enter into a binding nonjudicial settlement agreement with respect to any matter involving the trust. The rules of Subchapter C (relating to representation) shall apply to a settlement agreement under this section.

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

(d) Matters that may be resolved.--Matters that may be resolved by a nonjudicial settlement agreement include the following:

(1) The interpretation or construction of the provisions of a trust instrument.

(2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.

(3) Direction to a trustee to perform or refrain from performing a particular act.

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(5) Transfer of a trust's situs.

(6) Liability or release from liability of a trustee for an action relating to the trust.

(7) The grant to a trustee of any necessary or desirable power.

(8) The exercise or nonexercise of any power by a trustee.

(9) Questions relating to the property or an interest in property held as part of a trust.

(10) An action or proposed action by or against a trust or trustee.

(11) The modification or termination of a trust.

(12) An investment decision, policy, plan or program of a trustee.

(13) Any other matter concerning the administration of a trust.

(e) Request of court.--Any beneficiary or trustee of a trust may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in Subchapter C was adequate or whether the agreement contains terms and conditions the court could have properly approved.

Pennsylvania Comment

In subsection (b), the phrase "all beneficiaries and trustees of a trust" is substituted for the UTC's concept of interested persons for certainty and to eliminate circularity. The waiver of a report or accounting mentioned in subsection (d)(2), release from liability mentioned in subsection (d)(6) and matters described in subsection (d)(7) through (d)(13) are added to the UTC's list of examples of matters that may be resolved by a nonjudicial settlement agreement.

§ 7710.2. Rules of construction - UTC 112.

The rules of construction that apply in this Commonwealth to the provisions of testamentary trusts also apply as appropriate to the provisions of inter vivos trusts.

Pennsylvania Comment

This section imports 20 Pa.C.S. §§ 2507, 2514 and 2517 and other statutory and judicial rules of interpretation that apply to trusts under wills.

SUBCHAPTER B
JUDICIAL PROCEEDINGS

Sec.

7711. Role of court in administration of trust - UTC 201.

7712. Jurisdiction over trustee and beneficiary - UTC 202.

7713. (Reserved).

7714. Venue - UTC 204.

§ 7711. Role of court in administration of trust - UTC 201.

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

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

(c) Scope of proceeding.--A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for declaratory judgment.

§ 7712. Jurisdiction over trustee and beneficiary - UTC 202.

(a) Personal jurisdiction over trustee.--By accepting the trusteeship of a trust having its situs in this Commonwealth or by moving the situs to this Commonwealth, the trustee submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

(b) Personal jurisdiction over beneficiary.--With respect to their interests in the trust, the beneficiaries of a trust having its situs in this Commonwealth are subject to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust. By not releasing or disclaiming the beneficiary's beneficial interest in the trust, a beneficiary of a trust having its situs in this Commonwealth submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

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

Pennsylvania Comment

UTC § 202(b) recognizes personal jurisdiction over a beneficiary who accepts a distribution from a trust. Subsection (b) broadens this concept to recognize personal jurisdiction over a beneficiary who does not release or disclaim an interest in the trust. The difference is potentially significant in trusts, often known as "sprinkling" or "spray" trusts, which have multiple concurrent beneficiaries. The concept derives from 42 Pa.C.S. § 5322(a)(7) and restates existing Pennsylvania law.

§ 7713. (Reserved).

Pennsylvania Comment

UTC § 203 is omitted because similar provisions are set forth in 20 Pa.C.S. §§ 711 and 712.

§ 7714. Venue - UTC 204.

(a) General rule.--Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this Commonwealth in which the trust's situs is located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) Exceptions.--

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

- (i) any county in which a beneficiary resides;
- (ii) any county in which trust property is located; or

(iii) if the trust is created by will, the county in which the decedent's estate was or is being administered.

(2) The venue of proceedings that are pending on the effective date of this section shall not be disturbed.

Pennsylvania Comment

Venue is equated with situs, but subsection (b)(2) clarifies that the venue of proceedings that are pending when this chapter takes effect is not disturbed. Otherwise, like situs, venue may change from county to county.

SUBCHAPTER C REPRESENTATION

Sec.

- 7721. Scope; definition of trust matter.
- 7722. Representation of parties in interest in general.
- 7723. Representatives and persons represented.
- 7724. Appointment of representative.
- 7725. Notice of representation.
- 7726. Representation ineffective if person objects.

Pennsylvania Comment

Article 3 of the UTC, relating to representation of parties in both nonjudicial and judicial proceedings affecting a trust, is completely rewritten. The concept of a "trust matter" incorporates the list of examples set forth in § 7710.1(d). Departing from analogous concepts in the UTC, § 7722(a) and (b) and § 7725 require the trustee to notify the intended representative whom the trustee anticipates that representative will represent and recognize the right of the proposed representative to decline the proposed representation by written notice to the trustee. This subchapter takes no position as to the liability, if any, of a representative to the person or persons represented. Section 7724 reflects 20 Pa.C.S. § 751(6) as it previously applied to trusts.

§ 7721. Scope; definition of trust matter.

(a) Scope.--This subchapter shall apply to this entire chapter unless the context clearly specifies the contrary.

(b) Definition.--As used in this subchapter, the term “trust matter” includes a judicial proceeding and a nonjudicial settlement, agreement or act pertaining to any matter listed in section 7710.1(d) (relating to nonjudicial settlement agreements - UTC 111).

§ 7722. Representation of parties in interest in general.

(a) Judicial proceeding.--In a judicial proceeding involving a trust matter, an order or decree of the court that binds the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 (relating to representatives and persons represented) if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 (relating to notice of representation) and they act in good faith.

(b) Nonjudicial resolution.--In a nonjudicial resolution of a trust matter, notice to, the consent or approval of or the waiver or release by the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 and they act in good faith.

(c) Permissible consideration.--In making decisions, a representative may consider general benefit accruing to the living members of the family of the person represented.

§ 7723. Representatives and persons represented.

The following rules except as set forth in paragraph (7) apply to the extent there is no conflict of interest with respect to the matter at issue between the representative and the

person or persons represented that might affect the impartiality of the representative and, if two or more persons are being represented, to the extent there is no conflict of interest with respect to the matter at issue between or among the persons represented that might affect the impartiality of the representative:

(1) A plenary guardian represents the person whose estate the guardian supervises, and a limited guardian represents the person whose estate the guardian supervises within the scope of authority prescribed by the court order that defines the guardian's authority.

(2) An agent under a general power of attorney represents the agent's principal, and an agent under a limited power of attorney represents the principal within the scope of the agent's authority under the power of attorney.

(3) Where property or an interest in property is vested in a class of persons, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained.

(4) Where property or an interest in property will pass to a class of persons upon the occurrence of a future event, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained. The class members entitled to represent other class members or potential class members are the persons who would take the property or interest in property if the future event had occurred immediately before the commencement of the judicial proceeding relating to the property or interest in property or immediately before the effective date of the nonjudicial resolution of the matter.

(5) Where property or an interest in property will pass to a person, class of persons or both upon the occurrence of a future event, but the property or interest in property will pass to another person, class of persons or both upon the occurrence of an additional future event, the person, class of persons or both who would take upon the occurrence of the first event represents the person, class of persons or both who would take upon the occurrence of the additional event, provided their interests are identical or substantially similar for purposes of the particular trust matter. If a class of persons would take upon the occurrence of the first event, paragraph (4) applies to representation between or among the class.

(6) A person represents all minors or unborn individuals and persons whose identity or location is unknown and not reasonably ascertainable, to the extent such persons are not otherwise represented, if the interests of the person and the person represented are substantially identical with respect to the particular question or dispute involved.

(7) Whether or not there is a conflict of interest described in this section, the sole holder or all coholders of a presently exercisable or testamentary power of appointment represent all potential appointees and all takers in default of exercise of the power of appointment if the holder may appoint to:

(i) the holder's estate, the holder's creditors or the creditors of the holder's estate; or

(ii) anyone other than the holder's estate, the holder's creditors and the creditors of the holder's estate.

(8) The sole holder or all coholders of a presently exercisable or testamentary power of appointment not described in paragraph (7) represent all potential appointees and all takers in default of exercise of the power who are also potential appointees.

(9) Except as provided in paragraph (1), a person represents the person's minor and unborn descendants.

Pennsylvania Comment

The interplay between paragraphs (4) and (5) is illustrated by the following example. Suppose a trust provides that income is payable to testator's spouse and upon the spouse's death the principal is payable to the testator's children (or descendants of deceased children) and in default of descendants to the testator's heirs. If one or more children are sui juris, they represent all the testator's descendants by virtue of paragraph (4), and they represent all heirs by virtue of paragraph (5). Consequently, the sui juris children represent other children, descendants and heirs. If the trust were to continue for the children's lives with remainders to grandchildren, the sui juris children may represent all children but would not represent the class of grandchildren with respect to some financial matters because of the conflict of interest between the life and remainder beneficiaries. The holder of a power of appointment does not represent the takers in default of exercise of the power unless the power is a general power or virtually a general power or unless the takers in default are also potential appointees. See paragraphs (7) and (8).

§ 7724. Appointment of representative.

Notwithstanding any other provision of this subchapter, if in any judicial proceeding involving a trust matter the court determines that the representation provided by section 7723 (relating to representatives and persons represented) is or might be inadequate, the court may appoint a guardian ad litem or trustee ad litem to represent the inadequately represented person, class of persons or both.

Pennsylvania Comment

This section preserves the power of the court to appoint a guardian ad litem or trustee ad litem in appropriate circumstances as provided in § 751(6).

§ 7725. Notice of representation.

A person representing another must be given written notice by the trustee that the person is representing the other person. The person to whom the notice is given may decline the representation by a writing that is given to the trustee no later than 60 days after receipt of the trustee's notice.

Pennsylvania Comment

The requirement that the trustee give notice of proposed representation and the option to decline representation do not appear in the UTC.

§ 7726. Representation ineffective if person objects.

Notwithstanding the provisions of this subchapter, a person may not represent another who is sui juris and files a written objection to representation with the trustee.

Pennsylvania Comment

Representation under this subchapter will be ineffective if the person to be represented is sui juris and objects to the representation. A similar concept appears in UTC § 301(b).

SUBCHAPTER D CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

Sec.

7731. Creation of trust - UTC 401.

7732. Requirements for creation - UTC 402.

7733. Written trusts created in other jurisdictions - UTC 403.

7734. Trust purposes - UTC 404.

7735. Charitable purposes; enforcement - UTC 405.

7736. Creation of trust induced by fraud, duress or undue influence – UTC 406.

- 7737. Oral trusts unenforceable.
- 7738. Trust for care of animal - UTC 408.
- 7739. Noncharitable trust without ascertainable beneficiary - UTC 409.
- 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.
- 7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.
- 7740.2. Modification or termination of noncharitable irrevocable trust by court - UTC 412.
- 7740.3. Charitable trusts - UTC 413.
- 7740.4. Modification or termination of noncharitable trust - UTC 414.
- 7740.5. Reformation to correct mistakes - UTC 415.
- 7740.6. Modification to achieve settlor's tax objectives - UTC 416.
- 7740.7. Division of trusts.
- 7740.8. Combination of trusts.

§ 7731. Creation of trust - UTC 401.

A trust may be created by:

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

(2) written declaration, signed by or on behalf and at the direction of the owner of property as required by section 7732 (relating to requirements for creation - UTC 402), that the owner holds identifiable property as trustee; or

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

§ 7732. Requirements for creation - UTC 402.

(a) Requirements.--A trust is created only if:

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

(2) the settlor signs a writing that indicates an intention to create the trust and contains provisions of the trust;

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

(i) a charitable trust;

(ii) a trust for the care of an animal, as provided in section 7738 (relating to trust for care of animal - UTC 408); or

(iii) a trust for a noncharitable purpose, as provided in section 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409);

(4) the trustee has duties to perform; and

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

(b) (Reserved).

(b.1) Signature by mark or another.--A trust instrument other than a will may be signed by mark or by a person other than the settlor on behalf of and at the direction of the settlor in the same manner as a power of attorney under Chapter 56 (relating to powers of attorney).

(c) Power to select beneficiary from indefinite class.--A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Definition.--As used in this section, the term “definite beneficiary” means a beneficiary that can be ascertained now or in the future, subject to any applicable rule against perpetuities.

Pennsylvania Comment

Departing from the UTC's recognition of oral trusts, §§ 7731 and 7732 require trusts to be in writing. Reflecting the requirement that trusts be written, §§ 7731 and 7732 require more specificity than the UTC to create a trust.

Consistent with the position that a trust agreement is not testamentary, § 7732(b.1) adopts the formalities for execution by mark or by a person other than the settlor on behalf and at the direction of the settlor, required for a Pennsylvania power of attorney rather than the comparable requirements for wills set forth in § 2502 of this title.

§ 7733. Written trusts created in other jurisdictions - UTC 403.

A written trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

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

§ 7734. Trust purposes - UTC 404.

A trust may be created only to the extent its purposes are lawful and not contrary to public policy.

Pennsylvania Comment

The requirements of the UTC that a trust be for the benefit of the beneficiaries and that a trust have purposes possible to achieve are omitted because they are likely to provoke unnecessary litigation.

§ 7735. Charitable purposes; enforcement - UTC 405.

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

(b) Selection by court.--If the provisions of a charitable trust instrument do not indicate or authorize the trustee to select a particular charitable purpose or beneficiary,

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

(c) Proceeding to enforce trust.--A proceeding to enforce a charitable trust may be brought by the settlor during the settlor's lifetime or at any time by the Attorney General, a charitable organization expressly named in the trust instrument to receive distributions from the trust or any other person who has standing to do so.

Pennsylvania Comment

Adopting the position of the UTC and changing existing Pennsylvania law, subsection (c) recognizes the settlor's right to initiate a proceeding to enforce a charitable trust.

§ 7736. Creation of trust induced by fraud, duress or undue influence - UTC 406.

A trust or an amendment to a trust is voidable to the extent its creation was induced by fraud, duress or undue influence.

Pennsylvania Comment

The word "void" in the UTC is changed to "voidable."

§ 7737. Oral trusts unenforceable.

Oral trusts are unenforceable in this Commonwealth.

Pennsylvania Comment

Unlike UTC § 407, this section renders oral trusts unenforceable. The enforcement of oral trusts not created in Pennsylvania is left to case law.

§ 7738. Trust for care of animal - UTC 408.

(a) Creation and termination.--A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the

animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

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

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

§ 7739. Noncharitable trust without ascertainable beneficiary - UTC 409.

Except as otherwise provided in section 7738 (relating to trust for care of animal - UTC 408) or by another statute:

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

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

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise

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

§ 7740. Termination of trusts; proceedings for termination or modification of trusts -

UTC 410.

(a) Termination.--A trust terminates to the extent it is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful or contrary to public policy. In addition, a trust may be terminated by the methods prescribed by sections 7740.1 (relating to modification or termination of noncharitable irrevocable trust by consent - UTC 411) through 7740.4 (relating to modification or termination of noncharitable trust - UTC 414).

(b) Proceedings for termination or modification.--The settlor, the trustee or a beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under sections 7740.1 through 7740.6 (relating to modification to achieve settlor's tax objectives - UTC 416), the division of a trust under section 7740.7 (relating to division of trusts) or the combination of trusts under section 7740.8 (relating to combination of trusts). The settlor of a charitable trust may commence a proceeding to modify the trust under section 7740.3 (relating to charitable trusts - UTC 413).

Pennsylvania Comment

The requirement that a trust's purposes be possible to achieve is omitted from subsection (a) for consistency with § 7734. Changing existing Pennsylvania law, the last sentence of subsection (b) recognizes the settlor's right to commence a proceeding to modify a charitable trust.

§ 7740.1. Modification or termination of noncharitable irrevocable trust by consent -

UTC 411.

(a) Consent by settlor and beneficiaries.--A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by a guardian, an agent under the settlor's general power of attorney or an agent under the settlor's limited power of attorney that specifically authorizes that action. Notwithstanding Subchapter C (relating to representation), the settlor may not represent a beneficiary in the modification or termination of a trust under this subsection.

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

(b.1) Spendthrift provision.--A spendthrift provision in a trust instrument is presumed to constitute a material purpose of the trust.

(c) Distribution upon termination.--Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.

(d) Consent by some beneficiaries with court approval.--If not all the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b),

the modification or termination may be approved by the court only if the court is satisfied that:

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

Pennsylvania Comment

Subsection (b.1) codifies existing Pennsylvania law that a spendthrift clause reflects the settlor's deliberate choice and, consequently, is a material purpose of the trust.

§ 7740.2. Modification or termination of noncharitable irrevocable trust by court -

UTC 412.

(a) Unanticipated circumstances.--The court may modify the administrative or dispositive provisions of a noncharitable irrevocable trust, make an allowance from the principal of the trust or terminate the trust if, because of circumstances that apparently were not anticipated by the settlor, modification, allowance or termination will further the purposes of the trust. To the extent practicable, the modification or allowance shall approximate the settlor's probable intention.

(b) Inability to administer effectively.--The court may modify the administrative provisions of a noncharitable irrevocable trust if adherence to the existing provisions would be impracticable or wasteful or impair the trust's administration.

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

Pennsylvania Comment

This section reflects former 20 Pa.C.S § 6102 and adopts the UTC's position, different from existing Pennsylvania law, that a court may modify the dispositive provisions of a noncharitable irrevocable trust. The findings that the court must make under subsection (a) have been streamlined by deleting from former § 6102 the requirement of a finding that the settlor's original purpose "cannot be carried out or is impractical of fulfillment" in order to recognize the concepts of equitable deviation described in the comment to UTC § 412 and thereby acknowledge that there may be circumstances not addressed by former § 6102 where deviation, under court supervision, is appropriate.

§ 7740.3. Charitable trusts - UTC 413.

(a) General rule.--Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable or wasteful:

- (1) the trust does not fail, in whole or in part;
- (2) the trust property does not revert to the settlor or the settlor's successors in interest; and
- (3) the court shall apply cy pres to fulfill as nearly as possible the settlor's charitable intention, whether it be general or specific.

(b) Exception.--A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres.

(c) Administrative deviation.--A court may modify an administrative provision of a charitable trust only to the extent necessary to preserve the trust.

(d) Administrative termination of small charitable trusts.--A trust solely for charitable purposes having assets of less than \$100,000 may be terminated at its inception or at any time thereafter by the trustee with the consent of the Attorney General and all

charitable organizations that are designated as beneficiaries by name in the trust instrument. Upon termination, the assets, subject to the approval of the Attorney General, shall be delivered to the organizations, if any, designated in the trust instrument or, if none, to organizations selected by the trustee, in either case to be held and applied for the general or specific charitable purposes and on the terms that will, in the trustee's discretion, fulfill as nearly as possible the settlor's intention.

(e) Judicial termination of charitable trusts.--If the separate existence of a trust, whenever created, solely for charitable purposes results or will result in administrative expense or other burdens unreasonably out of proportion to the charitable benefits, the court may, upon application of the trustee or any interested person and after notice to the Attorney General, terminate the trust, either at its inception or at any time thereafter, and award the assets outright, free of the trust, to the charitable organizations, if any, designated in the trust instrument or, if none, to charitable organizations selected by the court, in either case for the purposes and on the terms that the court may direct to fulfill as nearly as possible the settlor's intentions other than any intent to continue the trust, if the court is satisfied that the charitable organizations will properly use or administer the assets.

Pennsylvania Comment

UTC § 413(a)(3), directing the court to apply cy pres, is refined to incorporate the position of former 20 Pa.C.S. § 6110(a) that cy pres is available whether the settlor's charitable intent is general or specific. Because the concepts of cy pres are sufficiently developed in Pennsylvania, some explanatory language in UTC § 413(a) is omitted. Subsection (b) reflects a judgment that there is no public policy reason to refuse enforcement of a settlor's expressed intent to divert the assets of a charitable trust to noncharitable beneficiaries. Subsections (c), (d) and (e) are added to the UTC's provisions. Subsection (c) codifies existing Pennsylvania law. Subsection (d)

reflects former 20 Pa.C.S. § 6110(b) but increases the limit from \$10,000 to \$100,000. Subsection (e) reflects former 20 Pa.C.S. § 6110(c).

§ 7740.4. Modification or termination of noncharitable trust - UTC 414.

(a) Trustee's authority.--A trustee of a noncharitable trust may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration, the trustee has given written notice to the qualified beneficiaries at least 60 days before the proposed termination and no qualified beneficiary provides the trustee with a written objection to the proposed termination on or before the date specified in the notice.

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

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

Pennsylvania Comment

The dollar limitation appearing in the UTC is eliminated as unnecessary.

§ 7740.5. Reformation to correct mistakes - UTC 415.

The court may reform a trust instrument, even if unambiguous, to conform to the settlor's probable intention if it is proved by clear and convincing evidence that the settlor's intent as expressed in the trust instrument was affected by a mistake of fact or law, whether in expression or inducement. The court may provide that the modification have retroactive effect.

Pennsylvania Comment

Absent from UTC § 415, the last sentence of this section gives modification retroactive effect if the court so directs and it is consistent with § 7740.6. Permission to reform an unambiguous trust instrument is a change in existing Pennsylvania law and follows the UTC. The requirement that "clear and convincing evidence" of intent be "expressed in the trust instrument" is a clarification of the UTC and consistent with the refusal to recognize oral trusts in Pennsylvania.

§ 7740.6. Modification to achieve settlor's tax objectives - UTC 416.

The court may modify a trust instrument in a manner that is not contrary to the settlor's probable intention in order to achieve the settlor's tax objectives. The court may provide that the modification have retroactive effect.

Pennsylvania Comment

This section follows the UTC and codifies existing Pennsylvania case law.

§ 7740.7. Division of trusts.

(a) Without court approval.--A trustee may, without court approval, divide a trust into separate trusts, allocating to each separate trust either a fractional share of each asset and each liability held by the original trust or assets having an appropriate aggregate fair market value and fairly representing the appreciation or depreciation in the assets of the original trust as a whole. The beneficiaries of the separate trusts may be different so long as their rights are not impaired. If the division reflects disclaimers or different tax elections, the division shall relate back to the date to which the disclaimer or tax election relates.

(b) With court approval.--The court, for cause shown, may authorize the division of a trust into two separate trusts upon such terms and conditions and with notice as the court shall direct.

(c) Separate fund.--A trustee may, without court approval, set aside property in a separate fund prior to actual distribution, after which income earned on the separate fund and appreciation or depreciation of the fund set-aside shall belong to the separate fund.

Pennsylvania Comment

This section clarifies but does not change former 20 Pa.C.S. § 7191.

§ 7740.8. Combination of trusts.

(a) With court approval.--The court, for cause shown, may authorize the combination of separate trusts with substantially similar provisions upon terms and conditions and with notice as the court shall direct notwithstanding that the trusts may have been created by separate instruments and by different persons. If necessary to protect possibly different future interests, the assets shall be valued at the time of the combination and a record made of the proportionate interest of each separate trust in the combined fund.

(b) Without court approval.--A trustee may, without court approval, combine trusts that were created under the same or different instruments if the trusts have identical provisions, tax attributes and trustees.

Pennsylvania Comment

Subsection (a) restates former 20 Pa.C.S. § 7192. Subsection (b), parallel to § 7740.7(a), changes Pennsylvania law by permitting a trustee to combine trusts without court approval in limited circumstances.

SUBCHAPTER E
CREDITOR'S CLAIMS; SPENDTHRIFT AND
DISCRETIONARY TRUSTS

Sec.

- 7741. Rights of beneficiary's creditor or assignee - UTC 501.
- 7742. Spendthrift provision - UTC 502.
- 7743. Exceptions to spendthrift provision - UTC 503.
- 7744. Discretionary trusts; effect of standard - UTC 504.
- 7745. Creditor's claim against settlor - UTC 505(a).
- 7746. Overdue distribution - UTC 506.
- 7747. Personal obligations of trustee - UTC 507.
- 7748. Property subject to power of withdrawal - UTC 505(b).

Pennsylvania Comment

This subchapter preserves and clarifies former 20 Pa.C.S. § 6112 and Pennsylvania case law on spendthrift trusts.

§ 7741. Rights of beneficiary's creditor or assignee - UTC 501.

A judgment creditor or assignee of the beneficiary may reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means to the extent the beneficiary's interest is not subject to a spendthrift provision.

Pennsylvania Comment

Consistent with existing Pennsylvania practice, this section eliminates the UTC's requirement that a judgment creditor or beneficiary's assignee apply to the court to reach the beneficiary's interest in a non-spendthrifted trust.

§ 7742. Spendthrift provision - UTC 502.

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

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

(c) Effect.--A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision. Except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary of a spendthrift trust may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Pennsylvania Comment

The spendthrift protection delimited in this subchapter applies to both present and future interests in both income and principal in a trust.

§ 7743. Exceptions to spendthrift provision - UTC 503.

(a) (Reserved).

(b) Who may override.--A spendthrift provision is unenforceable against:

(1) a beneficiary’s child who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary’s interests in the income and principal of the trust;

(2) any other person who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary’s interest in the trust’s income;

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

(4) a claim of the United States or the Commonwealth to the extent Federal law or a statute of this Commonwealth provides.

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

(d) Definition.--As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this Commonwealth or another state.

Pennsylvania Comment

Deviating from the UTC, this section restricts a spouse and former spouse with a judgment for support to the income of the trust. Alimony constitutes support for the purpose of subsection (b)(2) if awarded as support and not in lieu of or as a form of equitable distribution.

§ 7744. Discretionary trusts; effect of standard - UTC 504.

(a) (Reserved).

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

- (1) the discretion is expressed in the form of a standard of distribution;
- (2) the trustee has abused the discretion; or
- (3) the beneficiary is the trustee or a cotrustee of the trust.

(c) Exception.--To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

- (1) a distribution from the trust's income, principal or both may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or

maintenance of the beneficiary's child to the extent of the beneficiary's interests in the trust's income, principal or both, and the court shall direct the trustee to pay the child from the trust an amount as is equitable under the circumstances, but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion; and

(2) a distribution from trust income may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of any person other than the beneficiary's child to the extent of the beneficiary's interest in the income of the trust, and the court shall direct the trustee to pay the person an amount from the income of the trust as is equitable under the circumstances, but not more than the amount of income the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

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

(e) (Reserved).

(f) Definition.--As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this Commonwealth or another state.

Pennsylvania Comment

Subsection (c)(1) and (2) parallels § 7743(b)(1) and (2) respectively. Alimony constitutes support for the purpose of subsection (c) if

awarded as support and not in lieu of or as a form of equitable distribution.

§ 7745. Creditor's claim against settlor - UTC 505(a).

Whether or not a trust instrument contains a spendthrift provision and notwithstanding section 7744 (relating to discretionary trusts; effect of standard - UTC 504):

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

(2) A judgment creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the creditor or assignee of a particular settlor may reach the portion of the trust attributable to that settlor's contribution.

(3) After the death of the settlor and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a revocable trust is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and the family exemption to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and exemption and no other statute specifically exempts the property from those claims.

Pennsylvania Comment

This section recognizes Federal and Pennsylvania statutes that exempt specific property, such as participations in retirement plans and proceeds of insurance on the settlor's life, from the reach of the settlor's creditors. The concept of UTC § 505(b), equating a beneficiary who holds a power of withdrawal with the settlor to the extent of the property the beneficiary may withdraw from the trust,

has been relocated, with modifications, to the definition of “power of withdrawal” in § 7703 and to § 7748.

§ 7746. Overdue distribution - UTC 506.

(a) Distribution not made within reasonable time.--Whether or not the interest of the beneficiary in the trust is subject to a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

(b) Definition.--As used in this section the term “mandatory distribution” means a distribution of income or principal that the trustee is required by the trust instrument to make to a beneficiary, including a distribution upon the termination of the trust. The term excludes a distribution that is subject to the exercise of the trustee’s discretion regardless of whether the trust instrument includes a support or other standard to guide the trustee in making distribution decisions or provides that the trustee “may” or “shall” make discretionary distributions, including distributions pursuant to a support or other standard.

§ 7747. Personal obligations of trustee - UTC 507.

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

§ 7748. Property subject to power of withdrawal - UTC 505(b).

Trust property that is subject to a power of withdrawal, during the period the power may be exercised and after its lapse, release or waiver, may be reached by a creditor or an assignee of the holder of the power whether or not the interest of the holder in the trust is subject to a spendthrift provision.

Pennsylvania Comment

This section derives from UTC § 505(b), which treats the holder of a power of withdrawal like the settlor of the trust to the extent of the trust property to which the power applies and renders the property available to the holder's creditors, whether or not the interest is spendthrifted. This section does not apply to a power that has been disclaimed as described in 20 Pa.C.S. Chapter 62.

SUBCHAPTER F REVOCABLE TRUSTS

Sec.

- 7751. Capacity of settlor of revocable trust - UTC 601.
- 7752. Revocation or amendment of revocable trust - UTC 602.
- 7753. Trustee's duties; powers of withdrawal - UTC 603.
- 7754. Actions contesting validity of revocable trust.
- 7755. Claims and distribution after settlor's death.

§ 7751. Capacity of settlor of revocable trust - UTC 601.

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

§ 7752. Revocation or amendment of revocable trust - UTC 602.

(a) Power to revoke or amend.--The settlor may revoke or amend a trust unless the trust instrument expressly provides that the trust is irrevocable.

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

- (1) to the extent the trust consists of community property, either spouse alone who notifies the other spouse may revoke the trust, but the trust may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with respect to the portion of the trust property attributable to that settlor's contribution upon notice to each other settlor; and

(3) upon the revocation or amendment of the trust by fewer than all the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) How to revoke or amend.--The settlor may revoke or amend a revocable trust only:

(1) by substantial compliance with a method provided in the trust instrument; or

(2) if the trust instrument does not provide a method or the method provided in the trust instrument is not expressly made exclusive, by a later writing, other than a will or codicil, that is signed by the settlor and expressly refers to the trust or specifically conveys property that would otherwise have passed according to the trust instrument.

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

(e) Agent.--A settlor's powers with respect to revocation or amendment of the nondispositive provisions of or withdrawal of property from a trust may be exercised by an agent under a power of attorney only to the extent expressly authorized by the trust instrument or the power. The agent under a power of attorney that expressly authorizes the agent to do so may amend the dispositive provisions of a revocable trust as the court may direct.

(f) Guardian.--A guardian of the settlor's estate may exercise the settlor's powers with respect to revocation or amendment of or withdrawal of property from a revocable trust as the court may direct.

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

Pennsylvania Comment

Adopting the position of the UTC, subsection (a) reverses prior Pennsylvania law and presumes that a trust created after the effective date of this chapter is revocable unless the trust instrument expressly provides that it shall not be. Consistent with the position that a revocable trust is not testamentary, subsection (c) does not permit a will or codicil to amend or revoke a revocable trust unless the provisions of the trust instrument expressly authorize amendment or revocation by that means. Consistent with the departure from the UTC's recognition of oral trusts, UTC § 602(c)(2)(B), recognizing unwritten amendment or revocation, is not adopted.

§ 7753. Trustee's duties; powers of withdrawal - UTC 603.

(a) Power of settlor.--Regardless of the legal capacity of the settlor, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor while a trust is revocable.

(b) Holder of power of withdrawal.--The holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power during the period the power may be exercised.

Pennsylvania Comment

Subsection (a) places a revocable trust on the same footing as a will, under which no beneficial interest is effective until the testator's death. This differs from the UTC, which gives rights to the

beneficiaries while the settlor is alive if the settlor lacks capacity to revoke the trust.

§ 7754. Actions contesting validity of revocable trust.

(a) How action may be commenced.--A person having standing to do so may contest the validity of a revocable trust by filing a petition with the court.

(b) Time limit.--The petition described in subsection (a) must be filed no later than one year after the date on which the trustee gave the notice required by section 7780.3(c) (relating to duty to inform and report). The court, upon petition of a party in interest and with such notice as the court may direct, may limit the time by which a petition under this section must be filed to six months after the date on which the trustee gave the notice required by section 7780.3(c).

(c) Grounds for contest.--The grounds for contesting the validity of a revocable trust shall be the same as those for contesting the validity of a will.

Pennsylvania Comment

This section and § 7755 replace UTC § 604. Subsections (a) and (b) are based upon UTC § 604(a). The concepts contained in UTC § 604(b) are now part of § 7755. Recognizing that revocable trusts are typically will substitutes, this section and § 7755 apply comparable rules to the two documents as they relate to notice after the settlor has died, procedures for challenging the governing instrument, grounds for challenge, the rights of creditors and the procedures for clearing creditors' claims. In doing so, this subchapter is intended to eliminate any need to probate the trust instrument. Compare *Estate of Pew*, 655 A.2d 521 (Pa. Super. Ct. 1994) and the Non-Precedential Memorandum Opinion issued July 9, 2003 by the Superior Court in *Newhart Estate* (affirming orders issued June 25, 2002 by the Montgomery County Court of Common Pleas, Orphans' Court Division, to file numbers 95-2066 and 89-2836). Because there is no requirement that a trust instrument be filed with the Register of Wills or elsewhere in the public records, the provisions of 20 Pa.C.S. governing actions before the Register of Wills are not applied to such trusts, and a challenge to the validity of a revocable trust must be filed with the court. For the same reason, the one-year period of

limitations applicable to will contests is modified so that it commences with the giving of the notice required by § 7780.3(c) after the settlor's death. That period of time may be reduced by the court if, for example, the trustee seeks to make distributions promptly after the settlor's death.

§ 7755. Claims and distribution after settlor's death.

(a) Creditors' rights.--Creditors of the settlor of a revocable trust shall have the same rights against the trust assets determined immediately before the settlor's death as they have against the settlor's estate, but the assets of the settlor's estate shall be applied first toward satisfaction of the creditors' claims. This subsection shall not expose to creditors' claims trust assets for which other provisions of substantive law provide exemption from the claims of the settlor's creditors.

(b) Enforcement of claim against revocable trust.--A creditor may make a claim against a revocable trust by notifying the settlor's personal representative as provided in section 3384 (relating to notice of claim) or, if no personal representative has been appointed, by notifying the trustee according to the methods set forth in section 3384. A personal representative who receives notice shall within 20 days notify the trustee in writing and upon doing so shall have no liability under this section to the creditor.

(c) No personal representative.--If no personal representative is appointed within 90 days after the settlor's death, the trustee shall advertise the trust's existence and the name and address of the trustee in the manner set forth in section 3162 (relating to advertisement of grant of letters).

(d) Liability of personal representative.--A personal representative who has received the notice required by section 7780.3(c) (relating to duty to inform and report) and does not notify the trustee of a revocable trust of a creditor's claim known to the personal

representative within one year after the first complete advertisement of the grant of letters to the personal representative shall be liable to the creditor to the extent the creditor's interest is prejudiced thereby. A personal representative shall have no liability under this section to a creditor whose claim is not known to the personal representative within one year after the first complete advertisement of the grant of letters to the personal representative. The provisions of this section shall not affect the liability of the settlor's personal representative under other provisions of law.

(e) Liability to any creditor.--At the trustee's own risk and without the filing, audit or confirmation of the trustee's account, a trustee of a revocable trust who has either given the settlor's personal representative the notice required by section 7780.3(c) or given the notice required by subsection (c) may distribute real or personal property of the revocable trust. That distribution shall be without liability to any creditor of the settlor unless the claim of that creditor is known to the trustee within 13 months after the first complete advertisement of the grant of letters to the personal representative or, if no personal representative has been appointed, within one year after the first complete advertisement under subsection (c).

(f) Rights of creditors against distributed property.--

(1) No creditor shall have any claim against personal property distributed by the trustee of a revocable trust at the trustee's own risk under subsection (e) unless the claim of the creditor is known to the trustee within 13 months after the first complete advertisement of the grant of letters to the personal representative or, if no personal representative has been appointed, within one year after the first complete advertisement of the trust under subsection (c).

(2) No creditor shall have any claim against real property distributed by the trustee of a revocable trust at the trustee's own risk under subsection (e) unless the creditor, within one year after the settlor's death, files a written notice of claim with the clerk. The claim against real property shall expire at the end of five years after the settlor's death unless within that time the trustee files an account or the creditor files a petition to compel an accounting.

(g) Judicial principles.--In any proceeding by a creditor against a trustee or beneficiary of a revocable trust, the court shall apply principles analogous to:

- (1) section 3387 (relating to claims not due; certain to become due);
- (2) section 3388 (relating to claims not certain to become due);
- (3) section 3392 (relating to classification and order of payment); and
- (4) section 3393 (relating to notice to Commonwealth and political subdivisions).

Pennsylvania Comment

The clearance of creditors' claims against revocable trusts appears together with the provisions governing challenges to the validity of such trusts in UTC § 604. The two topics are sufficiently unrelated to merit separate provisions, codified in § 7754 and this section, governing claims and distribution after the settlor's death. Recognizing that revocable trusts are often will substitutes, this section borrows the analogous concepts of 20 Pa.C.S. §§ 3162 and 3532. It provides a road map for the clearance of creditors' claims against a settlor or trustee and distributions from revocable trusts after the settlor's death, where there is a parallel administration of the settlor's estate and where there is no such administration. The provisions of UTC § 604(b) and (c) are substantially rewritten to reflect the different approach to trustee reports adopted in § 7780.3 as they apply to revocable trusts. Subsections (e) and (f) adopt the concepts set forth in 20 Pa.C.S. § 3532. This approach differs from the UTC, which allows trustees of revocable trusts to distribute the trust property as soon after the settlor's death as the trustee likes, without trustee liability to creditors. Subsections (e) and (f) impose liability on the trustee with respect to creditor claims known to the trustee within 13 months after advertisement. The UTC version

probably reflects the practice in many other states of using revocable trusts to avoid the delays in distribution that are associated with testamentary bequests in those states.

SUBCHAPTER G
OFFICE OF TRUSTEE

Sec.

- 7761. Accepting or declining trusteeship - UTC 701.
- 7762. Trustee's bond - UTC 702.
- 7763. Cotrustees - UTC 703.
- 7764. Vacancy in trusteeship; appointment of successor - UTC 704.
- 7765. Resignation of trustee; filing resignation.
- 7766. Removal of trustee - UTC 706.
- 7767. Delivery of property by former trustee - UTC 707.
- 7768. Compensation of trustee - UTC 708.
- 7769. Reimbursement of expenses - UTC 709.
- 7770. Liability of successor trustee.

§ 7761. Accepting or declining trusteeship - UTC 701.

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

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

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

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

(c) Actions not constituting acceptance of trusteeship.--A person designated as trustee, without accepting the trusteeship, may:

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

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

§ 7762. Trustee's bond - UTC 702.

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

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

(c) Institutional trustees.--An institution qualified to do trust business in this Commonwealth need not give bond even if required by the trust instrument.

Pennsylvania Comment

Reflecting a modern approach to fiduciary bonds, this section replaces former 20 Pa.C.S. §§ 7111 and 7112.

§ 7763. Cotrustees - UTC 703.

(a) Majority decision.--Cotrustees who do not reach a unanimous decision may act by majority decision.

(a.1) When no majority.--When a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them,

unless otherwise provided by the trust instrument, the court in its discretion, upon petition filed by any of the trustees or any party in interest, aided if necessary by the report of a master, may direct the exercise or nonexercise of the power as it deems necessary for the best interest of the trust.

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

(c) Performance.--A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under the law or other reason or the cotrustee has properly delegated the performance of the function to another trustee.

(d) Unavailability.--If a cotrustee is unavailable to perform duties and prompt action is necessary to achieve the purposes of the trust or to avoid injury or loss to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) (Reserved).

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

(g) Reasonable care.--Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a breach of trust involving fraud or self-dealing; and

(2) compel a cotrustee to redress a breach of trust involving fraud or self-dealing.

(h) Dissenting trustee.--A dissenting trustee shall join the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court.

A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a breach of trust involving fraud or self-dealing.

Pennsylvania Comment

This section applies the same rules to trustees as 20 Pa.C.S. § 3328 applies to decedents' personal representatives. Subsection (c) clarifies existing Pennsylvania law that every trustee has responsibilities and discourages the view that some trustees are "honorary" or privileged to be inactive for other reasons. In order to avoid uncertainty about what the settlor "reasonably expected," UTC § 703(e) is not adopted. Subsections (g) and (h) of UTC § 703, each referring to a trustee's "serious breach of trust," are narrowed to refer instead to "a breach of trust involving fraud or self-dealing" to clarify when one trustee is vicariously liable for the acts or omissions of another. Subsection (h) borrows the concept applied to dissenting personal representatives in 20 Pa.C.S § 3328(a).

§ 7764. Vacancy in trusteeship; appointment of successor - UTC 704.

(a) When vacancy occurs.--A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a trustee is determined by the court to be incapacitated pursuant to section

5511 (relating to petition and hearing; independent evaluation).

(b) Filling of vacancy.--A vacancy in a trusteeship need not be filled if one or more cotrustees remain in office and the trust instrument does not require that it be filled. A vacancy shall be filled if the trust has no remaining trustee.

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

(1) by a person designated in or pursuant to the provisions of the trust instrument to act as successor trustee;

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

(3) by a person appointed by the court.

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

(1) by a person designated in or under the provisions of the trust instrument to act as successor trustee;

(2) by a person selected by unanimous written agreement of the qualified beneficiaries if the Office of Attorney General concurs in the selection; or

(3) by a person appointed by the court.

(e) Appointment by court.--Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary if the court considers the appointment desirable for the administration of the trust.

(f) Filing appointment.--An appointment of a trustee and an acceptance of an appointment of a trustee may be filed with the clerk of court having jurisdiction over the trust.

Pennsylvania Comment

Subsections (c)(2) and (d)(2) change Pennsylvania law and adopt the position of the UTC that a trust's qualified beneficiaries, joined by the

Office of the Attorney General in the case of a charitable trust, may fill a vacancy in the office of trustee. The option of court appointment in former 20 Pa.C.S. § 7101 is preserved. The substance of former 20 Pa.C.S. § 7103 is addressed by the broader language of subsection (e). Subsection (f) reflects former 20 Pa.C.S. § 7105.

§ 7765. Resignation of trustee; filing resignation.

(a) Court approval.--A trustee may resign with court approval.

(b) Without court approval if authorized by trust instrument.--A trustee may resign without court approval if authorized to resign by the trust instrument.

(c) Without court approval and without authorization in trust instrument.--

(1) Unless expressly provided to the contrary in the trust instrument, an individual trustee may resign without court approval and without authorization in the trust instrument if:

(i) there is at least one cotrustee and all cotrustees consent in writing to the resignation; and

(ii) all the qualified beneficiaries consent in writing to the resignation.

(2) This subsection shall not authorize the sole trustee of a trust to resign unless the trust instrument names a successor trustee or provides a method for appointing a successor trustee, and in either case the resignation shall not be effective until the successor trustee accepts the appointment in writing.

(d) Liability.--The resignation of a trustee shall not by itself relieve the resigning trustee of liability in connection with the administration of the trust.

(e) Filing resignation.--A resignation of a trustee may be filed with the clerk of the court having jurisdiction over the trust.

Pennsylvania Comment

This section reflects former 20 Pa.C.S. §§ 7104 and 7105 but imports the UTC's concept of qualified beneficiaries.

§ 7766. Removal of trustee - UTC 706.

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

(b) When court may remove trustee.--The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and:

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

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

(3) the trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or

(4) there has been a substantial change of circumstances.

(c) Court remedies.--Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under section 7781(b) (relating to remedies for breach of trust - UTC 1001) as may be necessary to protect the trust property or the interests of the beneficiaries.

(d) Procedure.--The procedure for removal and discharge of a trustee and the effect of removal and discharge shall be the same as that set forth in sections 3183 (relating to

procedure for and effect of removal) and 3184 (relating to discharge of personal representative and surety).

Pennsylvania Comment

UTC § 706 is reorganized and largely adopted in substance. The grounds for removal assume an active inquiry and findings by the court as to the three elements set forth in the introduction to subsection (b).

NOTE: UTC § 706(b)(4) provided that the court could under certain circumstances remove a trustee if removal was requested by all the qualified beneficiaries. The Joint State Government Commission Advisory Committee on Decedents' Estates Laws included that concept in its original § 7766(b)(5), replicated in its November 2003 report. That provision was also included in Senate Bill 978 of 2003 (Printer's No. 1329). However, on March 30, 2004, the Senate Judiciary Committee voted to remove paragraph (5). This version of § 7766(b) does not include paragraph (5).

§ 7767. Delivery of property by former trustee - UTC 707.

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

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

§ 7768. Compensation of trustee - UTC 708.

(a) If unspecified.--If neither the trust instrument nor a separate written agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies the trustee's compensation, the trustee is entitled to compensation that is reasonable under the circumstances. Neither a compensation provision in a trust

instrument nor a fee agreement governs compensation payable from trust principal unless it explicitly so provides.

(b) If specified; adjustment.--If a trust instrument or written fee agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies a trustee's compensation, the trustee is entitled to the specified compensation. The court may allow reasonable compensation that is more or less than that specified if:

(1) the duties of the trustee have become substantially different from those contemplated when the trust was created or when the fee agreement was executed;

(2) the compensation specified in the trust instrument or fee agreement would be unreasonable; or

(3) the trustee performed extraordinary services, and the trust instrument or fee agreement does not specify the trustee's compensation for those services.

(c) Entitlement not barred.--None of the following shall bar a trustee's entitlement to compensation from the income or principal of the trust:

(1) The trust is perpetual or for any other reason has not yet terminated.

(2) The trustee's term of office has not yet ended.

(3) The trustee of a testamentary trust also acted as a personal representative of the settlor and was or might have been compensated for services as personal representative from the principal of the settlor's estate.

(d) Court authority.--In determining reasonable compensation, the court may consider, among other facts, the market value of the trust and may determine compensation as a fixed or graduated percentage of the trust's market value. The court

may allow compensation from principal, income or both and determine the frequency with which compensation may be collected.

(e) Cemetery lots.--The authority in this section to pay compensation from trust principal shall not apply to trusts created by cemetery lot owners as endowments for the endowed care and maintenance of burial or cemetery lots if the principal sum involved is less than \$20,000. Compensation shall be paid exclusively from the income of such trusts.

Pennsylvania Comment

This section is an amalgamation of UTC § 708 and former 20 Pa.C.S. § 7185 and codifies existing Pennsylvania law. A trust instrument or fee agreement specifies compensation if it incorporates an extrinsic fee schedule that may change from time to time. This section does not address the measure of compensation payable to a trustee for services, like the administration of a family office or grant-processing as agent for a family foundation, that the trustee renders apart from the trust relationship. Subsection (c)(3) repeals the contrary rule of *In re Williamson's Estate*, 82 A.2d 49 (Pa. 1951), as to the few trusts that might still be affected by the rule. Subsection (e) is based upon former 20 Pa.C.S. § 7185(d), with the amount raised from \$5,000 to \$20,000 to reflect the passage of time since the provision was first adopted.

§ 7769. Reimbursement of expenses - UTC 709.

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

- (1) expenses that were properly incurred in the administration of the trust; and
- (2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

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

Pennsylvania Comment

Subsection (a)(1) authorizes the reimbursement of expenses that the trustee incurs to defend the trustee's administration absent the trustee's breach of trust.

§ 7770. Liability of successor trustee.

A successor trustee shall not be personally liable for the acts or omissions of the trustee's predecessor and shall have no duty to investigate the acts or omissions of the predecessor.

Pennsylvania Comment

This section clarifies existing Pennsylvania law and has no counterpart in the UTC. While a successor trustee is not personally liable for the acts or omissions of the trustee's predecessor or under any duty to investigate the predecessor's acts or omissions as trustee, the successor trustee and the trust's beneficiaries have standing to challenge the predecessor's acts or omissions, and a successor trustee who is aware of a predecessor's breach of trust may nevertheless be obligated to share that information with the trust's beneficiaries so that they may decide whether to take action against the prior trustee.

SUBCHAPTER H DUTIES AND POWERS OF TRUSTEE

Sec.

- 7771. Duty to administer trust - UTC 801.
- 7772. Duty of loyalty - UTC 802.
- 7773. Impartiality - UTC 803.
- 7774. Prudent administration - UTC 804.
- 7775. Costs of administration - UTC 805.
- 7776. Trustee's skills - UTC 806.
- 7777. Delegation by trustee.
- 7778. Powers to direct - UTC 808.
- 7779. Control and protection of trust property - UTC 809.

- 7780. Recordkeeping and identification of trust property - UTC 810.
- 7780.1. Enforcement and defense of claims - UTC 811.
- 7780.2. (Reserved).
- 7780.3. Duty to inform and report.
- 7780.4. Discretionary powers.
- 7780.5. Powers of trustees - UTC 815.
- 7780.6. Illustrative powers of trustee.
- 7780.7. Distribution upon termination.

§ 7771. Duty to administer trust - UTC 801.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its provisions and purposes and the interests of the beneficiaries and in accordance with applicable law.

§ 7772. Duty of loyalty - UTC 802.

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

(b) Effect of conflict of interest.--Subject to the rights of persons dealing with or assisting the trustee as provided in section 7790.2 (relating to protection of person dealing with trustee - UTC 1012), a sale, purchase, exchange, encumbrance or other disposition of property between a trust and either the trustee in the trustee's individual capacity or one of the persons identified in subsection (c) is voidable by a court upon application by a beneficiary affected by the transaction unless:

- (1) the transaction was authorized by the trust instrument;
- (2) the transaction was approved by the court;
- (3) the beneficiary did not commence a judicial proceeding within the time allowed by section 7785 (relating to limitation of action against trustee);

(4) the beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with section 7789 (relating to beneficiary's consent, release or ratification - UTC 1009); or

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

(c) What constitutes conflict of interest.--A sale, purchase, exchange, encumbrance or other disposition of property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's parent or a spouse of the parent;

(3) a descendant of the trustee's parent or a spouse of the descendant;

(4) an agent of the trustee unless the trustee is a corporation and the agent is an affiliate of the corporation or the transaction is authorized by section 7209 (relating to mutual funds);

(5) a corporation or other person or enterprise in which the trustee or a person that owns a significant interest in the trustee has an interest that might affect the trustee's judgment, but this paragraph does not apply to an affiliate of a corporate trustee or to a transaction authorized by section 7209; or

(6) the trustee personally.

(d) Transactions between trustee and beneficiary.--A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from

which the trustee obtains an advantage is voidable by a court upon application by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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

(f) (Reserved).

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

(h) Permissible transactions.--This section does not preclude the following transactions if fair to the beneficiaries:

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

(2) payment of reasonable compensation to the trustee and payment of reasonable compensation to affiliates of a corporate trustee if the compensation is disclosed to the current beneficiaries;

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

- (4) a deposit of trust money in a regulated financial-service institution operated by the trustee;
 - (5) an advance by the trustee of money for the protection of the trust; or
 - (6) a transaction authorized by section 7209.
- (i) (Reserved).

Pennsylvania Comment

Subsection (b) broadens the UTC's definition of a conflict of interest by including purchases by a trust from the trustee. Codifying existing Pennsylvania law, subsection (c)(4) clarifies that transactions between a corporate trustee and its affiliates, and transactions authorized by 20 Pa.C.S. § 7209 are not presumed to be tainted by a conflict of interest. Transactions in mutual funds are also addressed in subsection (h)(6), which does not appear in the UTC. UTC § 802(h)(2) has been broadened to permit the payment of reasonable compensation to affiliates of a corporate trustee if disclosed to the trust's current beneficiaries. UTC § 802(i) was not adopted because its subject matter is already addressed by 20 Pa.C.S. Chapter 43.

§ 7773. Impartiality - UTC 803.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests in light of the purposes of the trust. The duty to act impartially does not mean that the trustee must treat the beneficiaries equally. Rather, the trustee must treat the beneficiaries equitably in light of the purposes of the trust.

Pennsylvania Comment

Because they are central to the statute, some of the comments to UTC § 803 have been incorporated directly into the statute.

§ 7774. Prudent administration - UTC 804.

A trustee shall administer the trust as a prudent person would, by considering the purposes, provisions, distributional requirements and other circumstances of the trust and by exercising reasonable care, skill and caution.

§ 7775. Costs of administration - UTC 805.

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

§ 7776. Trustee's skills - UTC 806.

A trustee who has special skills or expertise relevant to a trust or who is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise relevant to a trust shall use those special skills or expertise in the administration of the trust.

§ 7777. Delegation by trustee.

(a) Standards for delegation.--A trustee may delegate duties and powers that a prudent trustee of comparable skills might delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (1) selecting an agent;
- (2) establishing the scope and specific terms of the delegation, consistent with the purposes and provisions of the trust; and
- (3) reviewing periodically the agent's actions in order to monitor the agent's performance and compliance with the scope and specific terms of the delegation.

(b) Agent's duty.--The agent shall comply with the scope and terms of the delegation and shall exercise the delegated duties and powers with reasonable care, skill and caution

and shall be liable to the trust for failure to do so. An agent who represents having special skills or expertise shall use those special skills or that expertise.

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

(d) Jurisdiction.--An agent who accepts the delegation of duties or powers from a trustee who is subject to the jurisdiction of a court of this Commonwealth shall be deemed to have submitted to the jurisdiction of that court even if the terms of the delegation provide for a different jurisdiction or venue.

(e) When one trustee may delegate to another.--A trustee may delegate duties and powers to another trustee if the delegating trustee reasonably believes that the other trustee has greater skills than the delegating trustee with respect to those duties and powers and the other trustee accepts the delegation. The delegating trustee shall not be responsible for the decisions, actions or inaction of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and that trustee's compliance with the scope and specific terms of the delegation.

Pennsylvania Comment

UTC § 807 was rewritten so as to parallel 20 Pa.C.S. § 7206, which is part of the prudent investor rule.

§ 7778. Powers to direct - UTC 808.

(a) Direction of settlor.--While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the trust instrument.

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

(c) Modification or termination of trust.--A trust instrument may confer upon a trustee or other person a power to modify or terminate the trust.

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

§ 7779. Control and protection of trust property - UTC 809.

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

§ 7780. Recordkeeping and identification of trust property - UTC 810.

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

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

(c) Designating trust property.--Except as otherwise provided in subsection (d) and section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities), a trustee shall cause the trust

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

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

§ 7780.1. Enforcement and defense of claims - UTC 811.

Except as provided in section 7770 (relating to liability of successor trustee), a trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. When one of several trustees is individually liable to the trust, the other trustee or trustees shall take any legal action against that trustee necessary to protect the trust.

Pennsylvania Comment

The second sentence of this section incorporates the concept of 20 Pa.C.S. § 3317, formerly applied to trusts by 20 Pa.C.S. § 7133.

§ 7780.2. (Reserved).

§ 7780.3. Duty to inform and report.

(a) Duty to respond to requests.--A trustee shall promptly respond to a beneficiary's reasonable request for information related to the trust's administration.

(b) Notice after settlor of revocable trust has been adjudicated incapacitated.--No later than 30 days after the date on which the trustee of a revocable trust learns that the settlor has been adjudicated incapacitated, the trustee shall send the notice described in subsection (i) to the settlor's guardian.

(c) Notice after settlor of revocable trust has died.--No later than 30 days after the date on which the trustee of a revocable trust learns that the settlor has died, the trustee shall send the notice described in subsection (i) to:

- (1) the settlor's personal representative;
- (2) the settlor's spouse or, if the settlor's spouse is incapacitated, the spouse's guardian;
- (3) each of the settlor's children who is sui juris and the guardian, if any, of each child who is not sui juris; and
- (4) the trust's current beneficiaries.

(d) Notice after settlor of irrevocable trust has been adjudicated incapacitated. --No later than 30 days after the date on which the trustee of an irrevocable trust learns that the settlor has been adjudicated incapacitated, the trustee shall send the notice described in subsection (i) to the trust's current beneficiaries. A revocable trust shall not be deemed irrevocable for the purposes of this subsection merely because the settlor has been adjudicated incapacitated.

(e) Notice after settlor of irrevocable trust has died.--No later than 30 days after the date on which the trustee of an irrevocable trust learns that the settlor has died, the trustee shall send the notice described in subsection (i) to the trust's current beneficiaries unless the settlor had been adjudicated incapacitated and the trustee sent notices to the current beneficiaries as required by subsection (d).

(f) Notice to current beneficiaries.--No later than 30 days after the date on which the trustee of an irrevocable trust learns that a person who did not previously receive the notice described in subsection (i) is a current beneficiary of the trust, the trustee shall send the notice described in subsection (i) to the current beneficiary if, at that time, the trustee knows that the settlor is then deceased or has been adjudicated incapacitated.

(g) Change in trusteeship.--Apart from the other requirements of this section, the trustee shall send the notice described in subsection (i) to the current beneficiaries each time there is a change in trusteeship.

(h) Trustee's notice to any beneficiary at any time.--Apart from the requirements of this section, the trustee may send the notice described in subsection (i) to any beneficiary of the trust at any time.

(i) Contents of notice.--Any notice under this section shall be written and convey the following information:

(1) The fact of the trust's existence.

(2) The identity of the settlor.

(3) The trustee's name, address and telephone number.

(4) The recipient's right to receive a copy of the trust instrument.

(5) The recipient's right to receive, at least annually, a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements since the date of the last such report.

(j) Waiver.--Any beneficiary may waive in writing the right to receive the notice described in subsection (i) and thereafter may rescind in writing that waiver.

(k) Notice to settlor's appointee.--The settlor of a trust may in the trust instrument appoint one or more persons or a succession of persons to receive, on behalf of one or more named current beneficiaries of the trust, the notices required by this section. The trustee giving the notice required by this section to that appointee satisfies the trustee's duty to give to the named current beneficiary the notice required by this section if:

(1) the trustee notifies the appointee that the notice is being given to the appointee as representing the named current beneficiary; and

(2) the appointee does not decline to receive the notice in a writing that is given to the trustee no later than 60 days after receipt of the trustee's notice.

(l) Applicability.--

(1) If the death or adjudication of incapacity described in subsection (b), (c), (d) or (e) occurs on or after (in preparing this act for printing in the Laws of Pennsylvania and the Pennsylvania Consolidated Statutes, the Legislative Reference Bureau shall insert here, in lieu of this statement, the effective date of this section), the time limit for notice set forth in that subsection shall apply.

(2) If the death or adjudication of incapacity described in subsection (b), (c), (d) or (e) has occurred before (in preparing this act for printing in the Laws of Pennsylvania and the Pennsylvania Consolidated Statutes, the Legislative Reference Bureau shall insert here, in lieu of this statement, the effective date of this section), the time limit for notice set forth in that subsection shall be (in preparing this act for printing in the Laws of Pennsylvania and the Pennsylvania Consolidated Statutes, the Legislative Reference Bureau shall insert here, in lieu of this statement, the date that is two years after the effective date of this section).

(3) The notice under subsection (f) shall not be required to be completed until two years after (in preparing this act for printing in the Laws of Pennsylvania and the Pennsylvania Consolidated Statutes, the Legislative Reference Bureau shall insert here, in lieu of this statement, the effective date of this section).

Pennsylvania Comment

UTC § 813 has been entirely rewritten in order to provide the trustee with a road map describing when and what information the trustee must communicate to the trust's beneficiaries. It is an effort to balance the settlor's likely expectation that the trust relationship will remain substantially private during the settlor's lifetime, like a will, and the reality that a beneficiary cannot protect an interest in the trust without knowledge of the trust's provisions and operations. This section recognizes that most revocable trusts are will substitutes and preserves the privacy associated with wills until the settlor's death. The duty set forth in subsection (a) to respond to beneficiaries' requests does not exist while the settlor is alive. *See* § 7753(a). Mandatory communication after the settlor's death is generally limited to the trust's current beneficiaries, who are persons 18 years of age or older to or for whom trust income or principal must be distributed currently and persons 25 years of age or older to or for whom trust income or principal may, in the trustee's discretion, be distributed currently. The UTC requires much broader notice. The settlor's spouse and children, whether or not they are current beneficiaries of the trust, are entitled to notice of a trust that was revocable immediately before the settlor's death, as they would be of an estate settlement consistent with Pennsylvania Orphans' Court Rule 5.6. This section permits a trustee to share relevant information with any beneficiary of the trust at any time and thereby clarifies existing law. The notice requirements of this section are among the mandatory rules of § 7705(b) that a settlor may not disable by direction in the trust instrument.

§ 7780.4. Discretionary powers.

The trustee shall exercise a discretionary power in good faith and in accordance with the provisions and purposes of the trust and the interests of the beneficiaries, notwithstanding the breadth of discretion granted to a trustee in the trust instrument, including the use of such terms as “absolute,” “sole” or “uncontrolled.”

Pennsylvania Comment

This section is based upon UTC § 814(a). UTC § 814(b), (c) and (d) were not adopted because their subject matter is addressed by 20 Pa.C.S. Chapter 75.

§ 7780.5. Powers of trustees - UTC 815.

(a) Exercise of power.--Except as otherwise provided in the trust instrument or in other provisions of this title, a trustee has all the powers over the trust property that an unmarried competent owner has over individually owned property and may exercise those powers without court approval from the time of creation of the trust until final distribution of the assets of the trust.

(b) (Reserved).

Pennsylvania Comment

The language of this section derives from the Uniform Trustees' Powers Act, not otherwise adopted in Pennsylvania, rather than from the UTC.

§ 7780.6. Illustrative powers of trustee.

(a) Listing.--The powers which a trustee may exercise pursuant to section 7780.5 (relating to powers of trustees - UTC 815) include the following powers:

(1) To accept, hold, invest in and retain investments as provided in Chapter 72 (relating to prudent investor rule).

(2) To pay or contest any claim; settle a claim by or against the trust by compromise, arbitration or otherwise; and release, in whole or in part, any claim belonging to the trust.

(3) To resolve a dispute regarding the interpretation of the trust or the administration of the trust by mediation, arbitration or other alternative dispute resolution procedures.

(4) To prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of the trustee's duties.

(5) To abandon or decline to administer any property which is of little or no value, transfer title to abandoned property and decline to accept title to and administer property which has or may have environmental or other liability attached to it.

(6) To insure the assets of the trust against damage or loss and, at the expense of the trust, protect the trustee, the trustee's agents and the beneficiaries from liability to third persons arising from the administration of the trust.

(7) To advance money for the protection of the trust and for all expenses, losses and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets. The trustee has a lien on the trust assets as against the beneficiary for an advance under this paragraph, including interest on the advance.

(8) To pay taxes, assessments, compensation of the trustee and employees and agents of the trustee and other expenses incurred in the administration of the trust.

(9) To receive additions to the assets of the trust.

(10) To sell or exchange any real or personal property at public or private sale, without obligation to repudiate an otherwise binding agreement in favor of better offers. If the trustee has been required to give bond, no proceeds of the sale of real estate, including proceeds arising by the reason of involuntary conversion, shall be paid to the trustee until:

(i) the court has made an order excusing the trustee from entering additional security; or

(ii) the court has made an order requiring additional security and the trustee has entered the additional security.

(11) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(12) To grant options for sales or leases of a trust asset and acquire options for the acquisition of assets, including options exercisable after the trust terminates.

(13) To join in any reorganization, consolidation, merger, dissolution, liquidation, voting-trust plan or other concerted action of security holders and to delegate discretionary duties with respect thereto.

(14) To vote a security, in person or by general or limited proxy, with or without power of substitution.

(15) To borrow funds and mortgage or pledge trust assets as security for repayment of the funds borrowed, including repayments after the trust terminates.

(16) To make loans to and buy property from the personal representatives of the settlor and the settlor's spouse. Loans under this paragraph shall be adequately secured, and the purchases under this paragraph shall be for fair market value.

(17) To partition, subdivide, repair, improve or develop real estate; enter into agreements concerning the partition, subdivision, repair, improvement, development, zoning or management of real estate; impose or extinguish restrictions on real estate; dedicate land and easements to public use; adjust boundaries; and do anything else regarding real estate which is commercially reasonable or customary under the circumstances.

(18) With respect to possible liability for violation of environmental law:

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

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

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

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

(v) to pay the expense of inspection, review, abatement or remedial action to comply with environmental law.

(19) To operate, repair, maintain, equip and improve any farm or farm operation; to purchase and sell livestock, crops, feed and other property that is normally perishable; and to purchase, use and dispose of farm equipment and employ one or more farm managers and others in connection with farm equipment and pay them reasonable compensation.

(20) To make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish improvements; and raze existing or erect new party walls or buildings.

(21) To enter into a lease or arrangements for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(22) To exercise all rights and incidents of ownership of life insurance policies held by the trust, including borrowing on policies, entering into and terminating split-dollar plans, exercising conversion privileges and rights to acquire additional insurance and selecting settlement options.

(23) To employ a custodian; hold property unregistered or in the name of a nominee, including the nominee of any institution employed as custodian, without disclosing the fiduciary relationship and without retaining possession and control of securities or other property so held or registered; and pay reasonable compensation to the custodian.

(24) To apply funds distributable to a beneficiary who is, in the trustee's opinion, disabled by illness or other cause and unable properly to manage the funds directly for the beneficiary's benefit or to pay such funds for expenditure on the beneficiary's behalf to:

- (i) the beneficiary;
- (ii) a guardian of the beneficiary's estate;
- (iii) an agent acting under a general power of attorney for the beneficiary; or
- (iv) if there is no agent or guardian, a relative or other person having legal or physical custody or care of the beneficiary.

(25) To pay funds distributable to a minor beneficiary to the minor or to a guardian of the minor's estate or to apply the funds directly for the minor's benefit.

(26) To do any of the following:

(i) Pay any funds distributable to a beneficiary who is not 21 years of age or older to:

(A) the beneficiary;

(B) an existing custodian for the beneficiary under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or under any other state's version of the Uniform Transfers to Minors Act;

(C) an existing custodian for the beneficiary under the former Pennsylvania Uniform Gifts to Minors Act or under any other state's version of the Uniform Gifts to Minors Act; or

(D) a custodian for the beneficiary appointed by the trustee under Chapter 53.

(ii) Apply the funds for the beneficiary.

(27) To pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(28) To sell or exercise stock subscription or conversion rights.

(29) To continue or participate in the operation of any business or other enterprise and to effect incorporation, merger, consolidation, dissolution or other change in the form of the organization of the business or enterprise.

(30) To select a mode of payment under a qualified employee benefit plan or a retirement plan payable to the trustee and exercise rights under the plan.

(31) To distribute in cash or in kind or partly in each and allocate particular assets in proportionate or disproportionate shares.

(32) To appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove the appointed trustee.

(33) To execute and deliver instruments which will accomplish or facilitate the exercise of the trustee's powers.

(b) Effect.--The trustee shall have no further responsibility or liability for funds upon any of the following:

- (1) Payment under subsection (a)(24).
- (2) Payment under subsection (a)(25).
- (3) Payment or application under subsection (a)(26).

Pennsylvania Comment

The provisions of UTC § 816 have been rewritten to promote clarity, maintain Pennsylvania's abrogation in 20 Pa.C.S. § 3360 of the "higher offer rule" and address specific matters previously covered by former provisions of 20 Pa.C.S. The provisions of the UTC empowering a trustee to make loans to beneficiaries and to pledge trust property to guarantee loans made by third parties to beneficiaries have been omitted so as not to encourage such transactions. The provisions of the UTC allowing trust funds to be deposited in a regulated financial institution, enabling exercise of tax options, and authorizing trustees to exercise powers appropriate to the termination of trusts have been omitted as unnecessary. The subject matter of former 20 Pa.C.S. § 7131 is covered in § 7771 and paragraphs (4), (6), (7), (8), (17) and (18) of subsection (a). The subject matter of former 20 Pa.C.S. § 7134 is replaced by subsection (a)(1). The subject matter of former 20 Pa.C.S. §§ 7132, 7141, 7142, 7184, 7191 and 7192 is covered by paragraphs (5), (10), (11), (21) and (25) of subsection (a) and §§ 7740.7 and 7740.8. The five-year term limitation on leases in former 20 Pa.C.S. § 7142 is replaced by the general reasonableness standard of §§ 7774 and 7780.4. The provisions of 20 Pa.C.S. § 7133 applying 20 Pa.C.S. §§ 3313, 3314, 3315, 3317, 3319, 3320, 3321(a), (b) and (c), 3327, 3328 and 3331 to trustees are repealed because their subject matter is now addressed in

paragraphs (6), (14) and (29) of subsection (a); §§ 7763(a.1), 7764, 7777, 7780.1 and 7790 and 20 Pa.C.S. § 7206. The provisions of 20 Pa.C.S. § 7133 applying 20 Pa.C.S. §§ 3318, 3322 and 5147 are repealed as unnecessary. Abandonment of property under subsection (a)(5) is also covered by § 7791.

§ 7780.7. Distribution upon termination.

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

Pennsylvania Comment

This section derives from UTC § 817(b), which is not adopted. The substance of UTC § 817(c) overlaps UTC § 1009, incorporated into this chapter as § 7789.

SUBCHAPTER I LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES

Sec.

- 7781. Remedies for breach of trust - UTC 1001.
- 7782. Damages for breach of trust - UTC 1002.
- 7783. Damages in absence of breach - UTC 1003.
- 7784. (Reserved).
- 7785. Limitation of action against trustee.
- 7786. Reliance on trust instrument - UTC 1006.
- 7787. Event affecting administration or distribution - UTC 1007.
- 7788. Exculpation of trustee - UTC 1008.
- 7789. Beneficiary's consent, release or ratification - UTC 1009.
- 7790. Limitation on personal liability of trustee - UTC 1010.
- 7790.1. Interest as general partner - UTC 1011.
- 7790.2. Protection of person dealing with trustee - UTC 1012.
- 7790.3. Certification of trust - UTC 1013.

§ 7781. Remedies for breach of trust - UTC 1001.

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

(b) Remedies.--To remedy a breach of trust that has occurred or may occur, the court may order any appropriate relief, including the following:

- (1) Compelling the trustee to perform the trustee's duties.
- (2) Enjoining the trustee from committing a breach of trust.
- (3) Compelling the trustee to redress a breach of trust by paying money, restoring property or other means.
- (4) Ordering a trustee to file an account.
- (5) Taking any action authorized by Chapter 43 (relating to temporary fiduciaries).
- (6) (Reserved).
- (7) Removing the trustee as provided in section 7766 (relating to removal of trustee - UTC 706).
- (8) Reducing or denying compensation to the trustee.
- (9) Subject to section 7790.2 (relating to protection of person dealing with trustee - UTC 1012):
 - (i) voiding an act of the trustee;
 - (ii) imposing a lien or a constructive trust on trust property; or
 - (iii) tracing trust property wrongfully disposed of and recovering the property or its proceeds.
- (10) (Reserved).

§ 7782. Damages for breach of trust - UTC 1002.

(a) Liability for breach of trust.--A trustee who commits a breach of trust is liable to the beneficiaries affected.

(b) Contribution.--

(1) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.

(2) A trustee is not entitled to contribution if the trustee:

(i) was substantially more at fault than another trustee; or

(ii) committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

(3) A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 7783. Damages in absence of breach - UTC 1003.

(a) Profit.--A trustee is accountable to an affected beneficiary for any profit, excluding reasonable compensation, made by the trustee arising from the administration of the trust, even absent a breach of trust.

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

§ 7784. (Reserved).

§ 7785. Limitation of action against trustee.

(a) Imposed by trustee's written reports.--

(1) A beneficiary may not challenge a transaction or assert a claim against a trustee for breach of trust on the basis of a transaction if:

(i) the trustee provided the beneficiary with a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements for the year in which the transaction occurred and for each of the four subsequent calendar years;

(ii) the transaction was disclosed in the first of the five reports to which subparagraph (i) refers;

(iii) the beneficiary did not notify the trustee in writing within six months after receiving the fifth annual report that the beneficiary objects to the transaction and provide the basis in writing for that objection; and

(iv) all reports were accompanied by a conspicuous written statement describing the effect of this paragraph.

(2) A claim not barred by paragraph (1) may nevertheless be barred by subsection (b).

(b) Five-year absolute bar.--If not previously barred by subsection (a) or section 7798 (relating to failure to present claim at audit):

(1) Except as provided in paragraph (2) or (3), a claim by a beneficiary against a trustee, including a claim preserved by the beneficiary notifying the trustee in the manner described in subsection (a), shall be barred five years after the first to occur of the following events:

(i) the date after the removal, resignation or death of the trustee on which the beneficiary was given the notice required by section 7780.3(g) (relating to duty to inform and report);

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

(iii) the termination of the trust.

(2) Except as set forth in paragraph (3), if the first to occur of the events set forth in paragraph (1) occurred before (in preparing this act for printing in the Laws of Pennsylvania and the Pennsylvania Consolidated Statutes, the Legislative Reference Bureau shall insert here, in lieu of this statement, the effective date of this section), a claim described in paragraph (1) shall be barred five years after (in preparing this act for printing in the Laws of Pennsylvania and the Pennsylvania Consolidated Statutes, the Legislative Reference Bureau shall insert here, in lieu of this statement, the effective date of this section).

(3) A claim described in paragraph (1) is not barred if, prior to the respective date set forth in either paragraph (1) or (2), the trustee has filed an account with the court or the beneficiary has petitioned the court to compel the trustee to file an account.

Pennsylvania Comment

This section imposes two new time limitations on actions for breach of trust, one available to the trustee by taking steps the section specifies and the other absolute. The first, in subsection (a), is an effort to codify in part the laches doctrine by enabling a trustee who has furnished a series of annual reports to the beneficiaries to foreclose actions by those beneficiaries for a breach of trust after a time certain. The assumption underlying the provision is that most trust transactions will be in sufficient context after four full calendar years of subsequent reports to provide the beneficiary with a basis to question them. Subsection (a) is not intended to exhaust application of the laches doctrine. The absolute time limitation appears in subsection (b). A beneficiary's action against a trustee for breach of

trust, if not already barred by a prior adjudication or subsection (a), is barred five years after the earliest of the following events, unless by that time the beneficiary has applied to the court for relief: the beneficiary's receipt of the notice required by § 7780.3(g) on the occasion of the removal, resignation or death of the trustee; the termination of the beneficiary's interest in the trust; or the termination of the trust. However, if any such event has occurred before the effective date of this chapter, the time limit is extended to five years after the effective date of this section.

The principles of Subchapter C (representation) apply to this section.

§ 7786. Reliance on trust instrument - UTC 1006.

A trustee who acts in reasonable reliance on the express provisions of the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 7787. Event affecting administration or distribution - UTC 1007.

If the happening of an event, including marriage, divorce, performance of educational requirements, attaining a specific age or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 7788. Exculpation of trustee - UTC 1008.

(a) When exculpatory provision unenforceable.--A provision of a trust instrument relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

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

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

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

§ 7789. Beneficiary's consent, release or ratification - UTC 1009.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless the consent, release or ratification of the beneficiary was induced by improper conduct of the trustee.

Pennsylvania Comment

UTC § 1009(2) has not been adopted because it would render the validity of consents and releases by beneficiaries uncertain.

§ 7790. Limitation on personal liability of trustee - UTC 1010.

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

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

(c) Assertion of claim.--A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity on an obligation arising from ownership or control of trust property or on a tort committed in the course of administering a trust may be asserted in a

judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 7790.1. Interest as general partner - UTC 1011.

(a) Contractual liability.--Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to 15 Pa.C.S. Ch. 83 (relating to general partnerships) or 85 (relating to limited partnerships).

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

(c) When immunity inapplicable.--The immunity provided by this section does not apply if an interest in the partnership is held by:

- (1) the trustee in a capacity other than that of trustee;
- (2) the trustee's spouse; or
- (3) the trustee's descendant, sibling or parent or the spouse of a descendant, sibling or parent.

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

§ 7790.2. Protection of person dealing with trustee - UTC 1012.

(a) (Reserved).

(a.1) Protection from liability.--Unless a person assisting or dealing with a trustee has actual knowledge that the trustee is committing a breach of trust or has knowledge of such facts that the trustee's conduct amounts to bad faith, the person:

(1) may assume without inquiry the existence of trust powers and their proper exercise by the trustee;

(2) is not bound to inquire whether the trustee has power to act or is properly exercising the power; and

(3) is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise.

(b) No requirement to inquire.--A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) (Reserved).

(c.1) Ultra vires.--A trustee's act may not be set aside or not specifically enforced because the trustee's act was not authorized by section 7780.5 (relating to powers of trustees - UTC 815) or 7780.6 (relating to illustrative powers of trustee) or because the trustee's act was authorized but the authority was improperly exercised. A court's power to set aside a transaction for fraud, accident, mistake or self-dealing is unaffected by this subsection.

(d) Former trustee.--A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without

knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

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

Pennsylvania Comment

Subsection (a.1) derives from the Uniform Trustees' Powers Act rather than from the UTC. Subsections (b), (d) and (e) derive from the UTC.

§ 7790.3. Certification of trust - UTC 1013.

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

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

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

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

(d) Dispositive trust provisions.--A certification of trust need not contain the dispositive provisions of the trust instrument.

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

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

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

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

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

SUBCHAPTER J
MISCELLANEOUS PROVISIONS

Sec.

- 7791. Abandonment of property.
- 7792. Powers, duties and liabilities identical with personal representatives.
- 7793. Effect of removal, or of probate of later will or codicil.
- 7794. Title of purchaser.
- 7795. Reports for school district trustees.
- 7796. Jurisdiction.
- 7797. Filing accounts.
- 7798. Failure to present claim at audit.
- 7799. Income on distributive shares.
- 7799.1. Annexation of account of distributed estate or trust.
- 7799.2. Accounts, audits and distribution.
- 7799.3. Pooled trusts for persons with disabilities.

§ 7791. Abandonment of property.

If any property is so burdensome or is so encumbered or is in such condition that it is of no value to the trust, the trustee may abandon it. If property without value cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the trustee to transfer or renounce it without consideration if it finds that this will be for the best interests of the trust.

Comment: This section is based upon to former § 7132 and supplements the power of the trustee under §§ 7780.5 and 7780.6(5) to abandon property of the trust.

§ 7792. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a trustee shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or a minor's estate:

Section 3184 (relating to discharge of personal representative and surety).

Section 3321(d) and (e) (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3332 (relating to inherent powers and duties).

Section 3353 (relating to order of court).

Section 3354 (relating to power given in governing instrument).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

Section 3359 (relating to record of proceedings; county where real estate lies).

Comment: This section is based upon former § 7133. The reference to § 3184 is new. The following references in former § 7133 are not incorporated into this section because they are covered by other provisions of chapter 77: §§ 3313; 3314; 3315; 3317; 3318; 3319; 3320; 3321(a), (b) and (c); 3322; 3327; 3328; 3331; 3360 and 5147.

§ 7793. Effect of removal, or of probate of later will or codicil.

(a) No impeachment.--No act of administration performed by a testamentary trustee in good faith shall be impeached by the subsequent:

- (1) revocation of the probate of the will from which the trustee derives authority;
- (2) probate of a later will or of a codicil; or
- (3) dismissal of the trustee.

(b) Good faith dealings.--Regardless of the good or bad faith of the testamentary trustee, no person who deals in good faith with a testamentary trustee shall be prejudiced by the occurrence of any of the contingencies set forth in subsection (a).

Comment: This section is based upon former § 7136.

§ 7794. Title of purchaser.

If the trustee has given a bond as required in accordance with this title, any sale, pledge, mortgage or exchange by a trustee, whether pursuant to a decree or to the exercise of a power conferred by the trust instrument or of a power under this title, shall pass the full title of the trust in the property, unless otherwise specified. Persons dealing with the trustee shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the trust. A sale or exchange by a trustee pursuant to a decree under section 3353 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law if the holder of the mortgage consents by writing filed in the proceeding. No sale, mortgage, exchange or conveyance shall be prejudiced by the subsequent dismissal of the trustee. No sale, mortgage, exchange or conveyance by a testamentary trustee shall be prejudiced by the terms of a will or codicil thereafter probated if the person dealing with the trustee did so in good faith.

Comment: This section is based upon former § 7143.

§ 7795. Reports for school district trustees.

(a) Scope.--This section applies if a school district is a trustee of land in accordance with all of the following:

(1) The land is held for the benefit of the public.

(2) The land is not used directly for school purposes.

(b) Requirement.--

(1) By January 30, the school district shall prepare a report for the prior year concerning the trust.

(2) The report shall detail all of the following:

(i) Revenues generated.

(ii) Expenses incurred.

(iii) Balance of funds held by the school district as trustee.

(iv) A statement regarding the activities taken by the trustee during the prior year to advance the purposes of the trust.

(3) The report must be certified as correct by the district superintendent.

(4) The report shall be made public as follows:

(i) The report shall be published in 14-point type in a newspaper of general circulation in each county in which the land is located.

(ii) The report shall be available during business hours for inspection and copying at the office of the district superintendent. A reasonable fee may be charged for copying.

Comment: This section is based upon former § 7144.

§ 7796. Jurisdiction.

Notwithstanding 42 Pa.C.S. § 931 (relating to original jurisdiction and venue), jurisdiction over an action involving land referred to in section 7795 (relating to reports

for school district trustees) shall be vested in the court of common pleas in the judicial district where:

- (1) all of the land is located; or
- (2) more than 50% of the land is located.

Comment: This section is based upon former § 7145.

§ 7797. Filing accounts.

(a) When to file.--A trustee shall file an account of his administration if directed to do so by the court and may file an account at any other time.

(b) Where to file.--All accounts of trustees shall be filed in the office of the clerk.

Comment: Subsection (a) is based upon former § 7181. Subsection (b) is based upon former § 7182.

§ 7798. Failure to present claim at audit.

(a) Applicability.--This section applies to a person that, at the audit of a trustee's account, has a claim that:

- (1) arose out of the administration of trust property or arises out of the distribution of trust property upon any interim or final accounting of the trust; and
- (2) is not reported to the court as an admitted claim.

(b) Bar.--A person that fails, at the call for audit or confirmation, to present a claim under subsection (a) shall be forever barred from making a claim against:

- (1) trust property distributed pursuant to the audit or confirmation;
- (2) a distributee of trust property distributed pursuant to the audit or confirmation; and

(3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), trust property awarded back upon further trust pursuant to the audit or confirmation.

(c) Liens and charges unimpaired.--Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the trust existing at the time of the audit.

Comment: This section is based upon former § 7186.

§ 7799. Income on distributive shares.

Except as otherwise provided by the trust instrument or by the provisions of section 3543 (relating to income on distributive shares):

(1) If a sum of money is directed to be set aside at a specified time as a separate trust, it shall be entitled to income at the annual rate of 5% from the date it was to be set aside until it is set aside. If a sum of money is directed to be paid outright, it shall be entitled to income at the annual rate of 5% from three months after it became payable until it is paid.

(2) A donee of a gift of specific real or personal property directed to be distributed from a trust shall be entitled to the net income from property given to the donee accrued from the date it became distributable.

(3) All income from real and personal property earned during the administration of a trust and not payable to others pursuant to the governing instrument or the provisions of this section shall be distributed pro rata among the income beneficiaries of a continuing trust and other persons entitled to residuary shares of the trust.

Comment: This section is based upon former § 7187. The term “interest” is replaced with “income” to reflect the rule under this

section and § 3543 that payments under such provisions constitute a first charge against earned income and, consequently, carry out distributable net income (DNI) as a tier one distribution. Computation at the fixed rate of 5% is retained for simplicity in place of the proration of income suggested by the Uniform Principal and Income Act. Under § 8121(2), if income is insufficient to make the 5% payment, the deficiency is made up from principal.

§ 7799.1. Annexation of account of distributed estate or trust.

A trustee who has received property from a personal representative or from another trustee in distribution of an estate or another trust may annex a copy of an account of the administration of the estate or other trust to an account filed by the trustee covering the administration of the trust under the trustee's management. If notice of the annexation of the account of the estate or other trust is given to the persons required to be notified of the filing of the trustee's account of the principal trust, confirmation of the principal account shall relieve both the trustee of the principal trust and the personal representative or trustee of the distributed estate or other trust of all liability to beneficiaries of the principal trust for transactions shown in the account so annexed to the same extent as if the annexed account had been separately filed and confirmed. If the fund covered by the annexed account has itself received property from another source under circumstances that would have permitted annexation of an account under this section or under section 3501.2 (relating to annexation of account of terminated trust, guardianship or agency), accounts for both funds may be annexed.

Comment: This section is based upon former § 7188.

§ 7799.2. Accounts, audits and distribution.

The provisions concerning accounts, audits and distributions in trust estates shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to a statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3533 (relating to award upon final confirmation of account).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3538 (relating to distributions involving persons born out of wedlock).

Section 3539 (relating to change in law after pattern of distribution established).

Section 3540 (relating to absentee and additional distributees).

Section 3541 (relating to order of abatement).

Section 3545 (relating to transcripts of balances due by personal representative).

Comment: This section is based upon former § 7183. The following references in former § 7183 are not incorporated into this section because they are covered by other provisions of Chapter 77: §§ 3503, 3504, 3532(c), 3534 and 3544.

§ 7799.3. Pooled trusts for persons with disabilities.

(a) Scope.--This section relates to pooled trusts.

(b) Organization of pooled trust.--

(1) A pooled trust shall be administered by a trustee governed by a board. The trust may employ persons as necessary.

(2) The members of a board and employees of a trustee, if any, shall stand in a fiduciary relationship to the beneficiaries and the trustee regarding investment of the trust and shall not profit, either directly or indirectly, with respect to the investment.

(3) A trustee shall maintain a separate account for each beneficiary of a pooled trust; but, for purposes of investment and management of funds, the trustee may pool these accounts. The trustee shall have exclusive control and authority to manage and invest the money in the pooled trust in accordance with this section, subject, however, to the exercise of that degree of judgment, skill and care under the prevailing circumstances that persons of prudence, discretion and intelligence who are familiar with investment matters exercise in the management of their affairs, considering the probable income to be derived from the investment and the probable safety of their capital. The trustee may charge a trust management fee to cover the costs of administration and management of the pooled trust.

(4) A board member shall disclose and abstain from participation in a discussion or voting on an issue if a conflict of interest arises with the board member on a particular issue or vote.

(5) No board member may receive compensation for services provided as a member of the board. No fees or commissions may be paid to a board member. A board member may be reimbursed for necessary expenses incurred which are in the

best interest of the beneficiaries of the pooled trust as a board member upon presentation of receipts.

(6) The trustee shall disburse money from a beneficiary's account only on behalf of the beneficiary. A disbursement from a beneficiary's account shall be in the best interest of the beneficiary.

(c) Pooled trust fund.--All money received for pooled trust funds shall be deposited with a court-approved corporate fiduciary or with the State Treasury if no court-approved corporate fiduciary is available to the trustee. The funds shall be pooled for investment and management. A separate account shall be maintained for each beneficiary, and quarterly accounting statements shall be provided to each beneficiary by the trustee. The court-approved corporate fiduciary or the State Treasury shall provide quarterly accounting statements to the trustee. The court-approved corporate fiduciary or the State Treasury may charge a trust management fee to cover the costs of managing the funds in the pooled trust.

(d) Reporting.--

(1) In addition to reports required to be filed under 15 Pa.C.S. Pt. III (relating to partnerships and limited liability companies), the trustee shall file an annual report with the Office of Attorney General, along with an itemized statement which shows the funds collected for the year, income earned, salaries paid, other expenses incurred and the opening and final trust balances. A copy of this statement shall be available to the beneficiary, settlor or designee of the settlor upon request.

(2) The trustee shall prepare and provide each settlor or the settlor's designee annually with a detailed individual statement of the services provided to the settlor's

beneficiary during the previous 12 months and of the services to be provided during the following 12 months. The trustee shall provide a copy of this statement to the beneficiary upon request.

(e) Coordination of services.--

(1) In the determination of eligibility for medical assistance benefits, the interest of a disabled beneficiary in a pooled trust shall not be considered as a resource for purposes of determining the beneficiary's eligibility for medical assistance.

(2) No State agency may reduce the benefits or services available to an individual because that person is a beneficiary of a pooled trust. The beneficiary's interest in a pooled trust is not reachable in satisfaction of a claim for support and maintenance of the beneficiary.

(f) Notice.--The Office of Attorney General shall make available information on the treatment of pooled trusts for the persons with disabilities in the medical assistance program.

(g) Applicability.--This section shall apply to all of the following:

(1) Pooled trusts established after March 8, 2003.

(2) Accounts of individual beneficiaries established after March 8, 2003, in pooled trusts created before March 9, 2003.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Beneficiary." An individual with a disability who has the right to receive services and benefits of a pooled trust.

"Board." A group of persons vested with the management of the business affairs of a trustee.

"Disability." A physical or mental impairment as defined in section 1614 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1382c).

"Pooled trust." A trust which meets all of the following:

(1) The trust contains assets of more than one beneficiary.

(2) Each beneficiary has a disability.

(3) The trust is managed by a nonprofit corporation.

(4) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

Accounts in the trust may be established by the parent, grandparent or legal guardian of the individual with a disability, by the individual with a disability or by a court.

(5) Upon the death of a beneficiary, amounts remaining in the beneficiary's accounts are:

(i) retained by the trust for the benefit of other beneficiaries or other individuals with disabilities; or

(ii) used to reimburse the Commonwealth in an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.

"Trustee." A nonprofit organization that manages a pooled trust.

Comment: The substance of this section is identical to that of the former act of Dec. 9, 2002 (P.L.1379, No.168), known as the Pooled Trust Act. The sole purpose of this section is to relocate the Pooled Trust Act into this chapter. Technical amendments were made to the extent necessary to relocate the former act into this section. Subsection (g) reflects the applicability provision contained in the

former act; the former act was signed into law on Dec. 9, 2002 and contained a provision that the act shall take effect in 90 days.

CONFORMING AMENDMENTS TO TITLE 20

§ 751. Appointment; purpose.

The orphans' court division may appoint:

* * *

(6) Representation of parties in interest.--Persons interested in an estate [or trust] as beneficiary or heir, if minors or otherwise legally incapacitated, and possible unborn or unascertained persons, may be represented in a judicial proceeding by a guardian or trustee ad litem if the court deems necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person who is a minor or otherwise legally incapacitated, unborn or unascertained if there is a living person sui juris having a similar interest or if such person is or would be issue of a living ancestor sui juris and interested in the estate [or trust] whose interest is not adverse to his. If the whereabouts of any beneficiary or heir is unknown or if there is doubt as to his existence, the court shall provide for service of notice and representation in the judicial proceeding as it deems proper.

Comment: The reference to a trust has been deleted because § 7724 addresses the same subject as applied to trusts.

§ 3384.1. Notice after settlor of revocable trust has died.

No later than 30 days after the date on which the trustee of a revocable trust learns that a personal representative has been appointed for the deceased settlor's estate, the trustee shall send to the settlor's personal representative the notice described in section 7780.3(i) (relating to duty to inform and report).

Comment: This section restates the rule from Chapter 77 and is added for convenience.

§ 6101. Definitions.

The following words and phrases, when used in this chapter, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

["Charity" or "charitable purposes." Includes but is not limited to the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental or municipal purposes, and other purposes the accomplishment of which is beneficial to the community.]

"Conveyance." An act by which it is intended to create an interest in real or personal property whether the act is intended to have inter vivos or testamentary operation. It shall include an act by which a power of appointment whenever given is exercised.

§ 6114. Rules of interpretation.

[In] (a) General rule.--Except as provided in subsection (b), in the absence of a contrary intent appearing therein, conveyances shall be construed, as to real and personal estate, in accordance with the following rules:

(1) Meaning of "heirs" and "next of kin," etc.; time of ascertaining class.--A conveyance of real or personal property, whether directly or in trust, to the conveyor's or another designated person's "heirs" or "next of kin" or "relatives" or "family" or to "the persons thereunto entitled under the intestate laws," or to persons described by words of similar import, shall mean those persons, including the spouse, who would take under the intestate laws if such conveyor or other designated person were to die intestate at the time when such class is to be ascertained, a resident of the

Commonwealth, and owning the property so conveyed: Provided, That the share of a spouse other than the spouse of the conveyer, shall not include the allowance under the intestate laws. The time when such class is to be ascertained shall be when the conveyance to the class is to take effect in enjoyment.

(2) Time for ascertaining class.--In construing a conveyance to a class other than a class described in paragraph (1) of this section, the class shall be ascertained at the time the conveyance is to take effect in enjoyment, except that the issue then living of any member of the class who is then dead shall take per stirpes the share which their deceased ancestor would have taken if he had then been living.

(3) Meaning of "die without issue" and similar phrases.--In any conveyance of real or personal estate, the words "die without issue," "die without leaving issue," "have no issue," or other words importing either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at his death, and not an indefinite failure of his issue.

(4) Adopted children.--In construing a conveyance to a person or persons described by relationship to the conveyer or to another, any adopted person shall be considered the child of his adopting parent or parents, except that, in construing the conveyance of a conveyer who is not the adopting parent, an adopted person shall not be considered the child of his adopting parent or parents unless the adoption occurred during the adopted person's minority or reflected an earlier parent-child relationship that existed during the child's minority. An adopted person who is considered the child of his adopting parent or parents under this paragraph shall not be considered as

continuing to be the child of his natural parents except in construing the conveyance of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person shall also be considered the child of such natural parent.

(5) Persons born out of wedlock.--In construing a conveyance to a person or persons described by relationship to the conveyor or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father if the paternity of the natural father has been determined according to the provisions of section 2107 (relating to persons born out of wedlock).

(6) Inheritance tax.--The inheritance tax imposed by the Inheritance and Estate Tax Act of 1961 upon the conveyance of any estate, income or interest, for a term of years, for life, or for other limited period, shall be paid out of the principal of the property by which the estate, income or interest is supported.

(7) Employee benefits.--Benefits received by a trust under a Federally qualified profit sharing, pension or stock bonus plan shall not be available for the payment of obligations of the decedent or of his estate.

(8) Corporate fiduciaries.--Provisions authorizing or restricting investment in the securities or common trust funds of a corporate fiduciary or the exercise of voting rights in its securities shall also apply to the securities or common trust funds of any corporation which is an affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504).

(b) Exception.--This section does not apply to trusts under Chapter 77 (relating to trusts).

Comment: The rules of interpretation as applied to trusts are now covered in § 7710.2.

§ 8121. Determination and distribution of net income.

After a decedent dies in the case of an estate or after an income interest in a trust ends, the following rules apply:

* * *

(2) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright and shall allocate to a pecuniary amount in trust the [interest, other] income or other amount provided by the governing instrument or, in the absence of any such provision, the income provided in section 3543 (relating to [interest or] income on distributive shares) or [7187] 7799 (relating to income on distributive shares) from net income determined under paragraph (3) or from principal to the extent that net income is insufficient.

* * *

TRANSITIONAL PROVISIONS FOR THE PENNSYLVANIA UNIFORM TRUST ACT AND CONFORMING AMENDMENTS TO TITLE 20

REPEALERS

Sections 723, 724, 725, 6102, 6110 and 6112 and Chapter 71 of Title 20 are repealed. The act of December 9, 2002 (P.L.1379, No.168), known as the Pooled Trust Act, is also repealed.¹⁰

APPLICABILITY

(1) Except as provided in paragraph (2), the addition of 20 Pa.C.S. Ch. 77 shall apply to all trusts created before, on or after the effective date of this paragraph.

(2) The following apply:

(i) The addition of 20 Pa.C.S. § 7737 shall not apply to oral trusts created before the effective date of this paragraph.

(ii) The addition of 20 Pa.C.S. § 7752(a) shall not apply to trusts created before the effective date of this paragraph.

Comment: Sections 7780.3(i) and 7785(b) dictate when the rules of their respective sections become applicable. Under the common law, the past actions of trustees, beneficiaries and others regarding trusts are governed by the legal principle in effect when the actions occurred. Chapter 77 does not change those common law concepts.

¹⁰ The addition of 20 Pa.C.S. § 7799.3 is a consolidation of the act of December 9, 2002 (P.L.1379, No.168), known as the Pooled Trust Act. Any differences between 20 Pa.C.S. § 7799.3 and the Pooled Trust Act are intended only to conform to the style of the Pennsylvania Consolidated Statutes and are not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Pooled Trust Act.

EFFECTIVE DATES

Chapter 77 and its conforming amendments and the repealers shall take effect in 120 days.¹¹

¹¹ The statement in note 10, *supra*, shall take effect immediately.

OTHER PROPOSED AMENDMENTS TO TITLE 20

Appeals

§ 908. Appeals.

(a) When allowed.--Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to three months.

* * *

Comment: The addition of the phrase “seeking to challenge the probate of a will” in subsection (a) is designed to preserve the intent of the original enactments of this section and § 3138, which was to provide parties in interest with a way to challenge a will that had already been probated by the register, including the ability to offer a later will or codicil even though the period for the register to amend the record under § 3138 has expired. The assertion in footnote five of *In re Estate of Peles*, 739 A.2d 1071, 1074 (Pa. Super. Ct. 1999) that this section “does not govern the time period in which to submit a later codicil for probate” was inconsistent with the intent of this section and § 3138, which set forth alternative and not exclusionary procedures. It brought an unintended result in *Schrader Will*, 21 Fiduc. Rep. 2d 197-98 (Orphans’ Ct. Div., Bradford Ct. Com. Pl. 2001). Therefore, the addition of the phrase is intended explicitly to overrule the holding in *Schrader Will* regarding such interpretation of this section. Section 3138 was originally enacted as an additional remedy to the process under § 908. A petitioner who seeks to amend or challenge a probated will may under § 3138 submit a later will or codicil directly to the register within three months of the testator’s death. If the petitioner cannot meet the three-month deadline, the

later will or codicil may still be admitted if the one-year statute of limitations period under § 908 has not yet expired.

Cost of Distribution of Tangible Personal Property

§ 3534.1. Cost of distribution of tangible personal property.

Except as otherwise provided in the will, if any, the personal representative shall pay as an expense of administration the reasonable expenses of storage, insurance, packing and delivery of tangible personal property to a beneficiary.

Comment: Because practice varies across the Commonwealth, the intent of this section is to provide uniformity regarding the distribution of tangible personal property to a beneficiary.

Income on Distributive Shares

§ 3543. [Interest or income] Income on distributive shares.

(a) Pecuniary legacy.--A pecuniary legacy bequeathed in trust shall [bear interest] be entitled to income at the rate of 5% per annum from the death of the decedent until the payment of the legacy, and when not in trust [shall bear interest at the rate of 5% per annum] from one year after the death of the decedent until the payment of the legacy.

(b) Specific legacy or devise.--A specific legatee or devisee shall be entitled to the net income from property given to him accrued from the date of the death of the decedent.

(c) Demonstrative legacy.--A demonstrative legacy shall [bear interest] be entitled to income from the death of the decedent until the payment of the legacy at the rate earned by the property out of which it is primarily payable, and to the extent that it is not paid

from that source, [shall bear interest] at the rate of 5% per annum from one year after the death of the decedent until the payment of the legacy.

(d) Residuary legacy or devise.--All income from real and personal estate earned during the period of administration and not payable to others pursuant to the governing instrument or this section shall be distributed pro rata among the income beneficiaries of any trust created out of the residuary estate and the other persons entitled to the residuary estate.

(e) Future date.--A legacy payable at a future date, unless earlier set aside as a separate trust, shall not begin to bear [interest or] income until three months after the date fixed for payment or delivery.

(f) Relationship.--[Interest or income] Income shall be paid on distributive shares with no distinction because of the relationship of the distributee to the decedent.

(g) Testamentary provisions.--All rules set forth in this section are subject to the provisions of the decedent's will.

Comment: The term “interest” is replaced with “income” to reflect the rule under this section and § 7799 (formerly 20 Pa.C.S. § 7187) that payments under such provisions constitute a first charge against earned income and, consequently, carry out distributable net income (DNI) as a tier one distribution. Computation at the fixed rate of 5% is retained for simplicity in place of the proration of income suggested by the Uniform Principal and Income Act. Under § 8121(2), if income is insufficient to make the 5% payment, the deficiency is made up from principal.

Interest and Penalties

§ 3702. Equitable apportionment of Federal estate tax.

* * *

(h) Interest and penalties.--Interest and penalties shall be apportioned in the same manner as the principal amount of the Federal estate tax unless the court finds it inequitable to do so by reason of special circumstances in which case the court may direct a different apportionment of interest and penalties. To the extent the interest or penalties are apportioned to or are payable out of a residuary estate or a trust, they shall be paid from income or principal in the same manner as the Federal estate tax, subject to a fiduciary's power to adjust under Chapter 81 (relating to principal and income).

* * *

Rule Against Perpetuities

§ 6104. Rule against perpetuities.

* * *

(b) Void interest; exceptions.--Upon the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events, any interest not then vested and any interest in members of a class the membership of which is then subject to increase shall be void. This subsection shall not apply to:

(1) Interest exempt at common law.--Interests which would not have been subject to the common law rule against perpetuities.

(2) Cemetery trusts.--Interests which are directed to be used for the maintenance, care, or adornment of any cemetery, churchyard, or other place for the burial of the dead, or any portion thereof, or any grave therein or any improvement on or about the same, and which are subject to no condition precedent at the end of the period described in subsection (b).

(3) Pension or profit-sharing plans.--Interests created by a bona fide trust inter vivos primarily for the benefit of business employees, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employee-benefit plan.

(4) Administrative powers.--Powers which contribute to the effective management of trust assets, including powers to sell, mortgage, or lease trust assets, powers relating to investment of trust assets, powers to determine what is principal and what is income, and powers to name successor trustees.

(5) One hundred fifty years.--Interests that vest not more than 150 years after the date provided in subsection (c).

* * *

Comment: Subsection (b)(5) is intended to allow more flexible planning opportunities and greater simplicity in applying the Rule Against Perpetuities.

§ 6106. Income accumulations; when valid.

* * *

(b) Void accumulations; exceptions.--Upon the later of the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events and the expiration of 150 years from the date at which one person who while living had the unrestricted power to transfer to himself the entire legal and beneficial interest in the property from which the income is derived, any direction or authorization to accumulate income shall be void. This subsection shall not apply to:

(1) Directions or authorizations to accumulate income in a trust for any charitable purpose or purposes.

(2) Directions or authorizations to accumulate income in a bona fide trust inter vivos primarily for the benefit of business employees, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employee-benefit plan.

* * *

Comment: See § 6104 and its comment.

Mutual Funds

§ 7201. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Mutual fund." The securities of an [open-end or closed-end management] investment company [or investment trust] registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

Comment: The amendments to the definition of “mutual fund” are technical in nature and provide a more accurate and precise definition. An investment company under the definition of “mutual fund” is intended to include a face-amount certificate company, a unit investment trust and an open-end or closed-end management company registered under the Investment Company Act of 1940.

§ 7314.1. Mutual funds.

Notwithstanding that a bank or trust company or an affiliate provides services to the investment company or investment trust, including that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor or manager, and receives

reasonable compensation for those services and notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, agent or otherwise may invest and reinvest in the securities of an [open-end or closed-end management] investment company [or investment trust] registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. Sec. 80a-1 et seq.) if the portfolio of the investment company or investment trust consists substantially of investments not prohibited by the governing instrument. With respect to any funds invested, the basis upon which compensation is calculated, expressed as a percentage of asset value or otherwise, shall be disclosed by prospectus, account statement or otherwise to all persons to whom statements of the account are rendered.

Comment: The amendments to this section are technical in nature and reflect the more accurate and precise definition of “mutual fund” under § 7201. It is intended that an investment company under this section includes a face-amount certificate company, a unit investment trust and an open-end or closed-end management company registered under the Investment Company Act of 1940.

***Limitations on Exercise of Trustee Powers and
Powers of Beneficiaries to Appoint Trustees***

§ 7503. Application of chapter.

* * *

(b) Exclusion.--This chapter shall not apply to:

(1) Any trust during the time that the trust is revocable or amendable by its settlor.

(2) A spouse of a decedent or settlor where the spouse is the trustee of a testamentary or inter vivos trust for which a marital deduction has been allowed.

[(3) A trustee who possesses in his individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust.]

(4) A trust under a governing instrument that by specific reference expressly rejects the application of this chapter.

[(5) A trust created under a governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would be included in the gross estate of the trustee for Federal estate tax purposes if the trustee had died on March 21, 1999, without having exercised the power under the governing instrument to make discretionary distributions of principal or income to or for the benefit of the trustee, the trustee's estate or the creditors of either.]

§ 7504. Certain trustee powers not exercisable.

* * *

(c) Exceptions.--This section shall not apply to:

(1) A trustee who possesses in his individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust.

(2) A trust created under a governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would have been included in the gross estate of the trustee for Federal estate tax purposes if the trustee had died on March 21, 1999, without having exercised the power under the governing instrument to make discretionary distributions of principal or income to or for the benefit of the trustee, the trustee's estate or the creditors of either.

Comment: Subsection (c)(1) and (2) are identical to former § 7503(b)(3) and (5) (relating to application of chapter). Because the exceptions do not apply to the entire chapter, they were moved from § 7503 and placed in subsection (c).

§ 7506. Certain powers of beneficiaries not exercisable.

(a) General rule.--No beneficiary of a trust in an individual, trustee or other capacity may appoint himself or herself as trustee or remove a trustee and appoint in place of the trustee so removed a trustee who is related or subordinate to the beneficiary within the meaning of section 672(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 672(c) [(relating to definitions and rules)] in each case unless:

(1) the trustee's discretionary power to make distributions to or for the beneficiary is limited by an ascertainable standard relating to the beneficiary's health, education, support or maintenance within the meaning of sections 2041 and 2514 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 2041 [(relating to powers of appointment)] and 2514 [(relating to powers of appointment)];

(2) the trustee's discretionary power may not be exercised to satisfy any of the beneficiary's legal obligations for support or other purposes; and

(3) the trustee's discretionary power may not be exercised to grant to the beneficiary a general power to appoint property of the trust to the beneficiary, the beneficiary's estate or the creditors [thereof] of either within the meaning of section 2041 of the Internal Revenue Code of 1986 (26 U.S.C. § 2041).

(b) [Exception] Exceptions.--This section shall not apply:

(1) if the appointment of the trustee by the beneficiary may be made only in conjunction with another person having a substantial interest in the property of the

trust subject to the power which is adverse to the exercise of the power in favor of the beneficiary within the meaning of section 2041(b)(1)(C)(ii) of the Internal Revenue Code of 1986 (26 U.S.C. § 2041(b)(1)(C)(ii)) or the appointment is in conformity with a procedure governing appointments approved by the court before December 21, 1998[.];

(2) to any beneficiary who possesses in an individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust; or

(3) to a trust created under a governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would have been included in the gross estate of the beneficiary for Federal estate tax purposes if the beneficiary had died on March 21, 1999.

Comment: Subsection (b)(2) and (3) are derived from former § 7503(b)(3) and (5). Because the exceptions do not apply to the entire chapter, they were moved from § 7503, placed in subsection (b) and amended for technical purposes.

Principal and Income

§ 8102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Principal.” Property held in trust for distribution to a remainder beneficiary when the trust terminates or property held in trust in perpetuity.

* * *

“Sui juris beneficiary.” Includes:

- (1) a court-appointed guardian of an incapacitated beneficiary;
- (2) an agent for an incompetent beneficiary; and
- (3) a court-appointed guardian of a minor beneficiary’s estate [or, if none, the parents of the minor beneficiary].

* * *

Comment: The addition of the phrase “or property held in trust in perpetuity” in the definition of principal is intended to carry over the concept found in former Chapter 81, added June 30, 1972 (P.L.508, No.164) and repealed May 16, 2002 (P.L.330, No.50), that the Pennsylvania Uniform Principal and Income Act, including the power to adjust under § 8104, is applicable to perpetual charitable trusts. The deletion of the phrase “or, if none, the parents of the minor beneficiary” in paragraph (3) of the definition of sui juris beneficiary is intended to make clear that under § 8105, a parent does not represent a minor for purposes of determining whether a court proceeding is required to convert a trust to a unitrust.

§ 8104. Trustee’s power to adjust.

* * *

(c) Prohibited adjustments.--A trustee may not make an adjustment under this section if any of the following apply:

* * *

- (4) The adjustment is from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax charitable deduction has been taken unless both income and principal are so set aside.

* * *

§ 8105. Power to convert to unitrust.

(a) Conversion.--Unless expressly prohibited by the governing instrument, a trustee may release the power under section 8104 (relating to trustee's power to adjust) and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

(i) are currently eligible to receive income from the trust; [and]

(ii) would be eligible to receive, if no powers of appointment were exercised, income from the trust if the interest of all those eligible to receive income under subparagraph (i) were to terminate immediately prior to the giving of notice; and

(iii) would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

(3) There is at least one sui juris beneficiary under paragraph (2)(i) and at least one sui juris beneficiary under either paragraph (2)(ii) or (iii).

(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under paragraph (2).

(b) Judicially approved conversion.--

(1) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

(i) A beneficiary timely objects to the conversion to a unitrust.

(ii) There are no sui juris beneficiaries under subsection (a)(2)(i).

(iii) There are no sui juris beneficiaries under either subsection (a)(2)(ii) or (iii).

(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(c) Consideration.--In deciding whether to exercise the power conferred by subsection (a), a trustee may consider, among other things, all of the following:

(1) The size of the trust.

(2) The nature and estimated duration of the trust.

(3) The liquidity and distribution requirements of the trust.

(4) The needs for regular distributions and preservation and appreciation of capital.

(5) The expected tax consequences of the conversion.

(6) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary.

(7) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument.

(8) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(9) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(d) Post conversion.--After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

- (i) from appreciation of capital;
- (ii) from earnings and distributions from capital; or
- (iii) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(3) The term "income" in the governing instrument shall mean an annual distribution (the unitrust distribution) equal to 4% (the payout percentage) of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) the three preceding years; or

(ii) the period during which the trust has been in existence.

(e) Discretion of trustee.--The trustee may, in the trustee's discretion from time to time, determine all of the following:

(1) The effective date of a conversion to a unitrust.

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

(3) The frequency of unitrust distributions during the year.

(4) The effect of other payments from or contributions to the trust on the trust's valuation.

(5) Whether to value the trust's assets annually or more frequently.

(6) What valuation dates to use.

(7) How frequently to value nonliquid assets and whether to estimate their value.

(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(9) Any other matters necessary for the proper functioning of the unitrust.

(f) Allocation.--

(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be considered to have been paid from [net income as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital

gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust] the following sources in order of priority:

(i) net income determined as if the trust were not a unitrust;

(ii) ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);

(iii) net realized short-term capital gains for Federal income tax purposes;

(iv) net realized long-term capital gains for Federal income tax purposes; and

(v) the principal of the trust estate.

(g) Court orders.--The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

(1) Select a payout percentage different than 4%.

(2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

(3) Average the valuation of the trust's net assets over a period other than three years.

(4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 8104 shall be revived.

(g.1) Reconversion from unitrust.--A trustee may reconvert a unitrust following the same procedures as in subsection (a) for converting a trust into a unitrust with the

exception that the written notice shall state that the intent is to reconvert the unitrust into a trust for which income is defined under this chapter. Upon a reconversion, the power to adjust under section 8104 shall be revived.

(h) Application.--A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(i) Prohibited conversions.--A trustee may not convert a trust into a unitrust in any of the following circumstances:

(1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(2) If the unitrust distribution would be made from [any amount] trust funds which [is] are permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax charitable deduction has been taken, unless both income and principal are so set aside. If both income and principal are so set aside, then section 8113 (relating to charitable trusts) and not this section shall be available.

(3) If:

(i) possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for Federal income tax purposes; and

(ii) the individual would not be treated as the owner if the trustee did not possess the power to convert.

(4) If:

(i) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to Federal estate or gift tax with respect to an individual; and

(ii) the assets would not be subject to Federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(5) If the conversion would result in the disallowance of a Federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(6) If the trustee is a beneficiary of the trust.

(j) Permissible conversion when otherwise prohibited.--

(1) If subsection (i)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(2) If subsection (i)(3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

(k) Release of the power to convert.--

(1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i)(3), (4) or (5).

(ii) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i).

(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.

Comment: The notice requirement prior to conversion to a unitrust includes life tenants and remaindermen under subsection (a)(2)(i) and (iii). Subsection (a)(2)(ii) includes secondary life tenants in a case where the trust contains succeeding life estates (for example, “pay income for life to A, then pay income for life to B, then pay the principal to C”) and makes it clear that the group of successor income beneficiaries must receive notice. Under subsection (a)(3), there needs to be at least one sui juris beneficiary under either subsection (a)(2)(ii) or (iii), but not necessarily both, to avoid the requirement of court approval of the conversion.

§ 8107. Express unitrusts.

(a) General rule.--In the absence of a contrary intent appearing in the governing instrument of an express unitrust, the governing instrument shall be construed in accordance with the following rules:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from:

(i) appreciation of capital;

(ii) earnings and distributions from capital; or

(iii) both.

(2) The unitrust distribution shall be an annual distribution of an amount equal to 4% of the net fair market value of the trust’s assets, whether the assets would be

considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) the three preceding years; or

(ii) the period during which the trust has been in existence.

(3) The trustee may, in the trustee's discretion from time to time, determine all of the following:

(i) The provisions for prorating a unitrust distribution for a short year in which the beneficiary's right to payments commences or ceases.

(ii) The frequency of unitrust distributions during the year.

(iii) The effect of other payments from or contributions to the trust on the trust's valuation.

(iv) Whether to value the trust's assets annually or more frequently.

(v) What valuation dates to use.

(vi) How frequently to value nonliquid assets and whether to estimate their value.

(vii) Whether to omit from the calculations residential real estate, tangible personal property or other trust property used, occupied or possessed by a beneficiary.

(viii) Any other matters necessary for the proper functioning of the unitrust.

(4) Expenses which would be deducted from income if the trust were not a unitrust shall not be deducted from the unitrust distribution.

(5) The unitrust distribution shall be considered to have been paid from the following sources in order of priority:

- (i) net income determined as if the trust were not an express unitrust;
- (ii) ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);
- (iii) net realized short-term capital gains for Federal income tax purposes;
- (iv) net realized long-term capital gains for Federal income tax purposes; and
- (v) the principal of the trust estate.

(b) Definition.--As used in this section, the term “express unitrust” shall mean a trust which by its governing instrument creates a trust, other than a trust solely for charitable purposes or a qualified charitable split interest trust under section 664(d) or 170(f)(2)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 664(d) or 170(f)(2)(B)), and provides for an annual distribution, the unitrust distribution, equal to a fixed percentage of the net fair market value of the trust’s assets, valued at least annually, and computed with reference to such value in one or more years. If the fixed percentage is not less than 3% nor more than 5%, the unitrust distribution shall be considered the income of the trust for the purposes of this chapter.

§ 8113. Charitable trusts.

* * *

(c) Effect of election.--If an election is made to be governed by this section, the term “income” shall mean a percentage of the value of the trust. The trustee shall, in a writing maintained as part of the permanent records of the trust, [annually] select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust, but in no event shall the percentage be less than 2% nor more than 7% per year. The term “principal” shall mean all other assets held by the trustee with

respect to the trust. The selection may be made either annually or subject to change only when the trustee deems such change necessary and prudent.

* * *

(f) Charitable organizations.--For a charitable organization defined under the act of June 17, 1971 (P.L.181, No.23), known as the Charitable Instruments Act of 1971, the provisions of that act shall supersede subsection (c) if necessary to comply with the minimum investment return requirements.

§ 8141. Character of receipts.

* * *

(c) When received in partial liquidation.--Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property [received] distributed by the entity to its owners in [a] one distribution or a series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(d) When not received in partial liquidation.--Money is not received in partial liquidation nor may it be taken into account under subsection (c)(2) to the extent that it does not exceed the amount of income tax that a [trustee or] trust beneficiary must pay on taxable income of the entity that distributes the money.

* * *

TRANSITIONAL PROVISIONS FOR OTHER PROPOSED AMENDMENTS TO TITLE 20

APPLICABILITY

- (1) The addition of 20 Pa.C.S. § 3534.1 shall apply to the estates of decedents who die on or after the effective date of this paragraph.
- (2) The amendment of 20 Pa.C.S. § 3702(h) shall apply to the estates of decedents who die on or after the effective date of this paragraph.
- (3) The amendments of 20 Pa.C.S. §§ 6104(b) and 6106(b) shall apply to any trust that is not irrevocable on the effective date of this paragraph.

EFFECTIVE DATES

- (1) The following provisions shall take effect in 60 days:
 - (i) The amendment of 20 Pa.C.S. § 908(a).
 - (ii) The addition of 20 Pa.C.S. § 3534.1.
 - (iii) The amendment of 20 Pa.C.S. § 3543.
 - (iv) The amendment of 20 Pa.C.S. § 7503(b).
 - (v) The addition of 20 Pa.C.S. § 7504(c).
 - (vi) The amendment of 20 Pa.C.S. § 7506.
 - (vii) The amendment of the definitions of “principal” and “sui juris beneficiary” in 20 Pa.C.S. § 8102.
 - (viii) The amendment of 20 Pa.C.S. § 8104(c).

- (ix) The amendment of 20 Pa.C.S. § 8105.
 - (x) The amendment of 20 Pa.C.S. § 8107.
 - (xi) The amendment of 20 Pa.C.S. § 8113.
 - (xii) The amendment of 20 Pa.C.S. § 8141.
 - (xiii) Paragraph (1) of the applicability section above.
- (2) The following provisions shall take effect immediately:
- (i) The amendment of 20 Pa.C.S. § 3702(h).
 - (ii) The amendment of 20 Pa.C.S. § 6104(b).
 - (iii) The amendment of 20 Pa.C.S. § 6106(b).
 - (iv) The amendment of the definition of “mutual fund” in 20 Pa.C.S. § 7201.
 - (v) The amendment of 20 Pa.C.S. § 7314.1.
 - (vi) Paragraphs (2) and (3) of the applicability section above.
 - (vii) Paragraphs (1) and (2) of this effective dates section.