

**THE PROBATE, ESTATES and
FIDUCIARIES CODE:
PROPOSED AMENDMENTS TO TITLE 20 of the
PENNSYLVANIA CONSOLIDATED STATUTES**

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

OCTOBER 2007



General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
108 Finance Building
Harrisburg, PA 17120

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 or conclusions contained in this report.

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October 2007

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). 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 the 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 large, stylized handwritten signature in black ink, appearing to read "Roger A. Madigan".

Roger A. Madigan,
Chair

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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 (20 Pa.C.S.), 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.

This report contains proposed legislation and official comments recommended by the Advisory Committee. The recommendations include proposed amendments to 20 Pa.C.S. regarding the Uniform Trust Act (Chapter 77), the repeal of the rule against perpetuities (§ 6107.1), the enforcement of the contribution or exoneration of Federal estate tax (§ 3706), the Uniform Principal and Income Act (Chapter 81), death during a divorce proceeding (§§ 2106, 2507, 6111.1 and 6111.2) and powers of attorney (§ 5603). This report also contains conforming amendments to § 3162 (advertisement of grant of letters), technical amendments to the Associations Code (Title 15 of the Pennsylvania Consolidated Statutes) and transitional language (applicability and effective date provisions). The official comments may be used in determining the intent of the General Assembly.¹

This report also contains a list of the Chairs and Members of the Advisory Committee since its inception in 1945.²

On October 17, 2007, 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.

¹ 1 Pa.C.S. § 1939.

² Appendix, *infra* pp. 49-54.

Proposed Amendments to the Uniform Trust Act

In 2001, the Advisory Committee established a subcommittee³ to review Pennsylvania trust law in light of the adoption of the Uniform Trust Code (UTC), promulgated by the National Conference of Commissioners on Uniform State Laws. In December 2003, Senate Bill 978 of 2003 was introduced and was based on the recommendations of the Advisory Committee.⁴ It provided an organized, more comprehensive codification of trust law and provided a statutory framework in 20 Pa.C.S. Chapter 77 for the proposed Pennsylvania Uniform Trust Act. Senate Bill 978 of 2003 was not enacted during the 2003-2004 legislative session.

In April 2005, the Uniform Trust Act was reintroduced as Senate Bill 660 of 2005, with only modest changes from Senate Bill 978 of 2003. Again, the legislation was based on the recommendations of the Advisory Committee.⁵ On July 7, 2006, Senate Bill 660 of 2005 was enacted as amended and became Act No. 98 of 2006. The provisions of 20 Pa.C.S. Chapter 77 became effective on November 6, 2006.

Following the enactment, the need arose to amend several provisions of 20 Pa.C.S. Chapter 77. On February 8, 2007, the Advisory Committee met to discuss and reach consensus on the proposed amendments and comments, which are contained in this report⁶ and concern the following:

- § 7725. Notice of representation.
- § 7745. Creditor's claim against settlor - UTC 505(a).
- § 7754. Actions contesting validity of revocable trusts.
- § 7755. Claims and distribution after settlor's death.
- § 7780.3. Duty to inform and report.
- § 7780.6. Illustrative powers of trustee.
- § 7785. Limitation of action against trustee.

In addition, conforming amendments are proposed for 20 Pa.C.S. § 3162 (advertisement of grant of letters), which are also contained in this report.⁷

³ The Subcommittee consisted of C. Thomas Work (Subcommittee Chair), Judge Calvin S. Drayer, Jr., Robert L. Freedman, Richard L. Grossman, Neil E. Hendershot and Edward M. Watters, III (Advisory Committee Chair).

⁴ The Joint State Government Commission published a report titled *The Proposed Pennsylvania Uniform Trust Act and Amendments to the Probate, Estates and Fiduciaries Code: Report of the Advisory Committee on Decedents' Estates Laws* (November 2003), which contained the proposed recommendations.

⁵ The Joint State Government Commission published a subsequent report titled *The Proposed Pennsylvania Uniform Trust Act and Amendments to the Probate, Estates and Fiduciaries Code: Report of the Advisory Committee on Decedents' Estates Laws* (April 2005), which contained the proposed recommendations.

⁶ *Infra* pp. 11-24.

⁷ *Infra* pp. 43-44.

***Proposed Amendments Regarding the Repeal of the
Rule Against Perpetuities***

Act No. 98 of 2006 also contained amendments regarding the rule against perpetuities.⁸ However, the Advisory Committee revisited the issue and concluded that the total repeal of the rule against perpetuities creates the possibility of an inadvertent triggering of the Delaware tax trap, an arcane and archaic provision in §§ 2041(a)(3) and 2514(d) of the Internal Revenue Code. On February 8, 2007, the Advisory Committee met to discuss and reach consensus on the proposed amendments.

The proposed amendments, along with an explanatory note, are contained in this report⁹ and concern § 6107.1(b) (applicability of rule against perpetuities).

***Proposed Amendments Regarding the Enforcement of the
Contribution or Exoneration of Federal Estate Tax***

On February 8, 2006 and February 8, 2007, the Advisory Committee met to discuss and reach consensus on amendments to 20 Pa.C.S. § 3706 (enforcement of contribution or exoneration of Federal estate tax), in light of the case of *In re Estate of Zambrano*,¹⁰ in which the Superior Court held that a party did not have to pay his apportioned share of Federal estate tax until the fiduciary had first paid the tax in full and the Federal estate tax return had been fully processed by the Internal Revenue Service. The Advisory Committee believed that this holding is inconsistent with the original intent of § 3706.

The proposed amendments and comment regarding § 3706 are contained in this report.¹¹

⁸ The amendments concerned 20 Pa.C.S. §§ 6104 and 6107, which contained technical amendments, and § 6107.1, which contained applicability provisions regarding the rule against perpetuities. As enacted, § 6107.1 specifies that §§ 6104, 6105, 6106 and 6107 apply to every interest created before January 31, 2007 but do not apply to any interest created after December 31, 2006. In addition, for every interest created after December 31, 2006, no interest and no direction or authorization to accumulate income shall be void as a perpetuity. These amendments differ from the recommendation of the Advisory Committee regarding the rule against perpetuities, memorialized in the April 2005 report of the Joint State Government Commission.

⁹ *Infra* pp. 25-27.

¹⁰ 875 A.2d 307 (Pa. Super. 2005).

¹¹ *Infra* pp. 29-31.

***Proposed Amendments to the
Uniform Principal and Income Act***

On February 8, 2006 and February 8, 2007, the Advisory Committee met to discuss and reach consensus on amendments to 20 Pa.C.S. Chapter 81 (Pennsylvania Uniform Principal and Income Act). First, the Advisory Committee considered proposed language amending the definition of income in § 8105(d)(3) and adding paragraph (5.1) to § 8105(e) to provide that the trustee may, in the trustee's discretion from time to time, determine whether to average the net assets of the trust over a smoothing period of three, four or five years. Second, the Advisory Committee considered amendments to § 8149 (retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments) and a comment stating that the amendments to subsection (c) specifically confirm the power of a trustee to exercise the power to adjust, the power to convert to a unitrust and the power to draft a trust as a unitrust independently with respect to retirement benefits and a trust to which they are payable, as allowed by Federal tax law.

The proposed amendments and comment regarding the Uniform Principal and Income Act are contained in this report.¹²

***Proposed Amendments Regarding
Death During a Divorce Proceeding***

Act 175 of 2004¹³ amended 23 Pa.C.S. (the Domestic Relations Code) and added § 3323(d.1), which provides the following:

(d.1) Death of a party.--In the event one party dies during the course of divorce proceedings, no decree of divorce has been entered and grounds have been established as provided in subsection (g), the parties' economic rights and obligations arising under the marriage shall be determined under this part rather than under 20 Pa.C.S. (relating to decedents, estates and fiduciaries).

The act also added 20 Pa.C.S. § 2203(c), which provides the following:

(c) Nonapplicability.--Pursuant to 23 Pa.C.S. § 3323(d.1) (relating to decree of court), this section shall not apply in the event a married person domiciled in this Commonwealth dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S.

¹² *Infra* pp. 33-36.

¹³ The act of November 29, 2004 (P.L.1357, No.175) became effective in 60 days.

§ 3323 and grounds have been established as provided in 23 Pa.C.S.
§ 3323(g).

However, these amendments only address a surviving spouse's right of election. The amendments do not address intestacy, the modification of a will by circumstance, the modification of a trust by circumstance, and the modification of life insurance and pensions by circumstance. Accordingly, on February 8, 2007, the Advisory Committee, after consultation with the Joint State Government Commission Advisory Committee on Domestic Relations Law, reviewed proposed amendments to 20 Pa.C.S. §§ 2106 (forfeiture), 2507 (modification by circumstances), 6111.1 (modification by divorce) and 6111.2 (effect of divorce on designation of beneficiaries) and reached consensus on the need to amend these provisions.

The proposed amendments regarding §§ 2106, 2507, 6111.1 and 6111.2 are contained in this report.¹⁴

The Advisory Committee did not believe that any amendment to 20 Pa.C.S. § 5605(c) was necessary. That subsection provides the following:

(c) Filing a complaint in divorce.--If a principal designates his spouse as his agent and thereafter either the principal or his spouse files an action in divorce, the designation of the spouse as agent shall be revoked as of the time the action was filed, unless it appears from the power of attorney that the designation was intended to survive such an event.

Furthermore, the Advisory Committee acknowledged that an individual could always draft a provision in his or her will leaving property to his or her spouse, specifying that such a gift is to be effective even though divorce proceedings are commenced. That intention would be given effect, and the testamentary gift would be honored and taken into account in the equitable distribution proceeding.

Proposed Amendments Regarding Powers of Attorney

The Superior Court in *In re Weidner*¹⁵ held that if an individual in a power of attorney authorizes an agent to engage in any transaction authorized by 20 Pa.C.S. Chapter 56, that authorization is not enough to alert the individual that the agent could change the beneficiary of a life insurance policy. The court determined that the power of attorney in this case did not specifically provide the agent with the authority to engage in any matter relating to insurance. Therefore, the court did not hold that the agent possessed the authority but misused it, but rather that the agent did not have it in the first place.

¹⁴ *Infra* pp. 37-40.

¹⁵ 895 A.2d 11 (Pa. Super. 2006), *appeal granted*, 906 A.2d 544 (Pa. 2006).

On February 8, 2007, the Advisory Committee reviewed the implications of this holding and determined that it cast some doubt on the effectiveness of the short form power of attorney permitted by 20 Pa.C.S. § 5602.¹⁶ Accordingly, it reviewed and reached consensus on an amendment to § 5603(p). Subsequently, it determined that similar language should appear in § 5603(q), regarding the power to engage in retirement plan transactions.

The proposed amendments regarding § 5603 are contained in this report.¹⁷

Miscellaneous Provisions

Included in this report are technical amendments to 15 Pa.C.S. (the Associations Code),¹⁸ as well as transitional language (applicability and effective date provisions).¹⁹

¹⁶ Section § 5602(a) provides the following:

(a) Specification of powers.--A principal may, by inclusion of the language quoted in any of the following paragraphs or by inclusion of other language showing a similar intent on the part of the principal, empower an agent to do any or all of the following, each of which is defined in section 5603 (relating to implementation of power of attorney):

* * *

(17) "To engage in insurance transactions."

* * *

Under § 5603(p), the "power to engage in insurance transactions" is defined as follows:

(p) Power to engage in insurance transactions.--A power to "engage in insurance transactions" shall mean that the agent may:

(1) Purchase, continue, renew, convert or terminate any type of insurance (including, but not limited to, life, accident, health, disability or liability insurance) and pay premiums and collect benefits and proceeds under insurance policies.

(2) Exercise nonforfeiture provisions under insurance policies.

(3) In general, exercise all powers with respect to insurance that the principal could if present; however, the agent cannot designate himself beneficiary of a life insurance policy unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal.

¹⁷ *Infra* pp. 41-42.

¹⁸ *Infra* p. 45.

¹⁹ *Infra* p. 47.

SUMMARY OF RECOMMENDATIONS

This report contains amendments to the following sections of Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code):

- § 2106. Subsection (a)(2) is added to provide that a spouse has no right or interest in the real or personal estate of the other spouse if the other spouse dies during the course of divorce proceedings, no divorce decree has been entered and grounds have been established.
- § 2507. Paragraph (2) is amended to provide that a provision in a testator's will in favor of the testator's spouse becomes ineffective if the testator dies during the course of divorce proceedings, no divorce decree has been entered and grounds have been established, unless it appears from the will that the provision was intended to survive a divorce.
- § 3162. This section is amended for organizational purposes (subsections are added). In addition, new subsection (b) provides that a personal representative who has advertised the grant of letters and received the required notice shall promptly send copies of the proofs of that advertisement to the trustee.
- § 3706. Subsection (a) is amended to provide that parties liable for apportionment of the Federal estate tax shall pay the amounts apportioned against them at the time the tax is due, without regard to any extension of time for paying the tax. Subsection (b) is amended to add a sentence providing that if the fiduciary pays the tax apportioned against another party, the fiduciary may recover from the other party the tax payment so advanced, together with interest of 5% per annum from the date of payment. Subsection (c) is amended to provide that distribution or delivery of property to any party shall not be required of any fiduciary until that party pays the Federal estate tax apportioned to that party. Subsection (d) is amended for technical purposes.
- § 5603. Subsection (p)(3) is amended to provide that an agent and a beneficiary of a life insurance policy are liable to the extent that a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal. Subsection (q) is amended to provide that (1) the agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent or sibling of the principal and (2) an agent and a beneficiary of a retirement plan are liable to the extent that a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

- § 6107.1. Subsection (b) is amended to add new paragraphs (3) and (4). Paragraph (3) provides that if a power of appointment is exercised to create a new power of appointment, any interest created by the exercise of the new power of appointment is invalid if it does not vest within 360 years of the creation of the original power of appointment, unless the exercise of the new power of appointment expressly states that this provision shall not apply to the interests created by the exercise. Paragraph (4) provides that void interests shall be disposed of in the manner provided in § 6105.
- § 6111.1. This section is amended to provide that a provision in a conveyance that was revocable by a conveyor at the time of the conveyor's death in favor of or relating to the conveyor's spouse becomes ineffective if the conveyor dies during the course of divorce proceedings, no divorce decree has been entered and grounds have been established, unless it appears in the governing instrument that the provision was intended to survive a divorce.
- § 6111.2. This section is amended for organizational purposes (subsections are added) and to provide that the designation of an individual's spouse or former spouse as beneficiary of a contractual arrangement (e.g., an insurance policy, annuity contract, pension or profit-sharing plan) providing payments to the spouse, if the designation was revocable by the individual at the time of the individual's death, becomes ineffective if the individual dies during the course of divorce proceedings, no decree of divorce has been entered and grounds have been established. In such an instance, the designation will be construed as if the spouse or former spouse predeceased the individual, unless it appears that the designation was intended to survive the divorce, based on the wording of the designation, a court order or a written contract between the individual and the spouse or former spouse.
- § 7725. This section is amended to replace the provision that "[t]he 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" with the provision that "[a] person to whom the notice is given is presumed to accept the representation unless the person declines the representation in a writing delivered to the trustee no later than 30 days after receipt of the notice."
- § 7745. Paragraph (2) is amended to add the provision that the assets of an irrevocable trust are not subject to the claims of a creditor of the settlor solely because of the existence of the trustee's discretionary power to pay directly to the taxing authorities or to reimburse the settlor for any income tax payable by the settlor attributable to trust income or principal.
- § 7754. Subsection (d) is added to provide that the competency of a witness in an action contesting the validity of a revocable trust shall be governed by the same rules that apply in actions contesting the validity of a will.

- § 7755. Subsection (c) is amended to provide for a trustee's duty to advertise. Paragraph (1) specifies when a trustee of a revocable trust may advertise. Paragraph (2) provides that advertisements by the trustee shall be in the manner set forth in § 3162 and specifies what shall be included in the advertisements. Paragraph (3) provides that the personal representative of the settlor of a revocable trust shall send to the trustee copies of the proof of publication of the advertisement of the grant of letters.
- § 7780.3. Subsection (a) is amended to (1) provide that a trustee shall promptly respond to a settlor's reasonable request for information related to the trust's administration and (2) clarify that a trustee shall promptly respond to a reasonable request by a beneficiary of an *irrevocable* trust for information related to the trust's administration. Subsection (f) is amended to add the following sentence: "With respect to a testamentary trust, the time specified in this subsection commences to run when the trust is first funded, whether or not the trust is completely funded on that date." Subsection (g) is amended for organizational purposes (paragraphs are added) and to provide that (1) each time there is a change in trusteeship of any trust, the trustee shall notify the settlor in writing of the change; (2) each time there is a change in trusteeship of any trust whose settlor is deceased or of an irrevocable trust whose settlor has been adjudicated incapacitated, the trustee shall notify the current beneficiaries in writing of the change and (3) notice shall include the trustee's name, address and telephone number. The introductory language of subsection (i) is amended for technical purposes. In addition, paragraphs (4) and (5) of subsection (i) are amended to add "upon request," and paragraph (5) is amended to clarify that each current beneficiary has the right to receive an annual 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. Subsection (k)(2) is amended to change "60 days" to "30 days." Subsection (l)(2) deletes a reference to subsection (c).
- § 7780.6. Subsection (a) is amended to add a new paragraph (33) ("[t]o exercise elections with respect to Federal, State and local taxes.").
- § 7785. Subsection (a)(1)(i) is amended to clarify that 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 the trustee provided the beneficiary with a single 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 full calendar year or entire part of the calendar year during which the trust was in existence in which the transaction occurred and for each of the four subsequent calendar years. Subparagraphs (iii) and (iv) of subsection (a)(1) are amended for technical purposes.

§ 8105. Subsection (d)(3)(i) is amended to reference “the preceding years in the smoothing period selected by the trustee.” Subsection (e) is amended to add a new paragraph (5.1) (“[w]hether to average the net assets of the trust over a smoothing period of three, four or five years.”).

§ 8149. Subsection (c)(1) is amended for technical purposes and to add that “the internal net income of the fund shall be considered to be the income earned by the fund.” Subsection (c)(3) is added to provide that §§ 8104, 8105 and 8107 apply to retirement benefits covered by this subsection which are payable to a trust. The powers may be exercised separately and independently by the payee trustee or in the governing instrument as between the retirement benefits and the trust as if they were separate trusts subject to this chapter.

This report contains amendments to §§ 5547 and 5548 of Title 15 of the Pennsylvania Consolidated Statutes (the Associations Code), by replacing the references to repealed 20 Pa.C.S. Chapter 61 (relating to estates) with references to 20 Pa.C.S. Chapter 77 Subchapter D (relating to creation, validity, modification and termination of trust).

**PROPOSED AMENDMENTS TO THE
UNIFORM TRUST ACT**

Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is amended as follows:

§ 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.] A person to whom the notice is given is presumed to accept the representation unless the person declines the representation in a writing delivered to the trustee no later than 30 days after receipt of the notice.

* * * * *

§ 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. However, the assets of an irrevocable trust are not subject to the claims of a creditor of the settlor solely because of the existence of the trustee's discretionary power to pay directly to the taxing authorities or to reimburse the settlor for any income tax payable by the settlor attributable to trust income or principal.

(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

Confirming existing Pennsylvania law, the third sentence of paragraph (2) is effective as of November 6, 2006.

* * * * *

§ 7754. Actions contesting validity of revocable trusts.

* * *

(d) Competency of witnesses.--The competency of a witness in an action contesting the validity of a revocable trust shall be governed by the same rules that apply in actions contesting the validity of a will.

Pennsylvania Comment

Subsection (d) furthers the general approach of the Uniform Trust Act to equate the rules for actions contesting revocable trusts and wills by applying the same principles to determine the competency of witnesses. An example is the Dead Man's Rule, 42 Pa.C.S. § 5930.

* * * * *

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

* * *

(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).] Trustee's duty to advertise.--

(1) A trustee of a revocable trust:

(i) May advertise at any time after the settlor's death.

(ii) Shall advertise if the first advertisement of the grant of letters by the settlor's personal representative does not occur within 90 days after the settlor's death.

(2) Advertisements by the trustee under this subsection shall be in the manner set forth in section 3162 (relating to advertisement of grant of letters) and shall include:

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

(ii) The trustee's name and address.

(3) The personal representative of the settlor of a revocable trust shall send to the trustee copies of the proof of publication of the advertisement of the grant of letters.

* * *

Pennsylvania Comment

The purpose of advertisement by a trustee of a (formerly) revocable trust is to clear creditors' claims against trust property.

* * * * *

§ 7780.3. Duty to inform and report.

(a) Duty to respond to requests.--A trustee shall promptly respond to a [beneficiary's] reasonable request by the settlor of a trust or by a beneficiary of an irrevocable trust for information related to the trust's administration.

* * *

(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. With respect to a testamentary trust, the time specified in this subsection commences to run when the trust is first funded, whether or not the trust is completely funded on that date.

(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.]

(1) Each time there is a change in trusteeship of any trust, the trustee shall notify the settlor in writing of the change.

(2) Each time there is a change in trusteeship of any trust whose settlor is deceased or of an irrevocable trust whose settlor has been adjudicated incapacitated, the trustee shall notify the current beneficiaries in writing of the change.

(3) Notice under this subsection shall include the trustee's name, address and telephone number.

* * *

(i) Contents of notice.--[Any] Except as provided in subsection (g), 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 upon request a copy of the trust instrument.

(5) [The recipient's] Each current beneficiary's right to receive, [at least annually, a] upon request, an annual 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.

* * *

(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] delivered to the trustee no later than [60] 30 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 November 6, 2006, 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 November 6, 2006, the time limit for notice set forth in that subsection shall be November 6, 2008.

(3) The notice under subsection (f) shall not be required to be completed until two years after November 6, 2006.

Pennsylvania Comment

Because the enforcement of a trust is left largely to its settlor while *sui juris*, subsection (a) clarifies that the settlor is entitled to fundamental information about the trust's administration. Beneficiaries of an irrevocable trust are entitled to request and receive information during the settlor's lifetime, but beneficiaries of a revocable trust are not entitled to request and receive information during the settlor's lifetime. See § 7753(a).

The rule first stated in subsection (f) is clear as applied to trusts under agreement, but unclear as to testamentary trusts without the last sentence in subsection (f). The trustee of a testamentary trust cannot provide much of the information specified in subsection (i) until the trust is funded.

A testamentary trust, after the testator is deceased, is treated the same as an irrevocable trust, except that (1) there is no duty to notify the personal representative, spouse or children, independent of their

status as beneficiaries; and (2) the duty to give notice to current beneficiaries is triggered by the initial funding of the trust.

The reference to subsection (c) in the Uniform Trust Act, as initially adopted, has been eliminated from subsection (1)(2) in order to clarify that no such notice is required where the settlor of a revocable trust died before November 6, 2006.

* * * * *

§ 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 exercise elections with respect to Federal, State and local taxes.

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

* * *

Pennsylvania Comment

Paragraph (33) confirms the authority of a trustee to make elections with respect to taxes, including those which relate to recent changes in the definition of income, such as an election to consider the net gains from the sale of capital assets to be part of distributable net income for federal income tax purposes.

* * * * *

§ 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 single 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 full calendar year or entire part of the calendar year during which the trust was in existence 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 five 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).

* * *

PROPOSED AMENDMENTS REGARDING THE REPEAL OF THE RULE AGAINST PERPETUITIES

Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is amended as follows:

§ 6107.1. Applicability of rule against perpetuities.

(a) Traditional rule.--Sections 6104 (relating to rule against perpetuities), 6105 (relating to rule against perpetuities; disposition when invalidity occurs), 6106 (relating to income accumulations; when valid) and 6107 (relating to income accumulations; disposition when invalidity occurs):

(1) shall apply to every interest created before January 1, 2007; but

(2) shall not apply to any interest created after December 31, 2006.

(b) Modern rule.--All of the following apply to every interest created after December 31, 2006:

(1) [No] Except as provided in paragraph (3), no interest shall be void as a perpetuity.

(2) No direction or authorization to [accumulated] accumulate income shall be void as a perpetuity.

(3) If a power of appointment is exercised to create a new power of appointment, any interest created by the exercise of the new power of appointment is invalid if it does not vest within 360 years of the creation of the original power of appointment, unless the exercise of the new power of appointment expressly states that this provision shall not apply to the interests created by the exercise.

(4) Void interests shall be disposed of in the manner provided in section 6105.

Note

The wholesale repeal of the rule against perpetuities on January 1, 2007 creates the possibility of an inadvertent triggering of the Delaware tax trap, an arcane and archaic provision in §§ 2041(a)(3) and 2514(d) of the Internal Revenue Code (IRC).

These IRC provisions were a reaction to a 1933 Delaware statute that modified the then Delaware rule against perpetuities by providing that, in the case of powers of appointment, the lives in being and 21-year period permitted by the rule began to run when the power was exercised. At common law, the rule began to run when the power was created.

This 1933 Delaware statute thus permitted perpetual trusts, because a testator could leave his estate in trust for his child for life, remainder as the child might appoint. The child could exercise the power by appointing in further trust for a grandchild for life, remainder as the grandchild might appoint. The grandchild could exercise the power by appointing in trust for a great-grandchild, remainder as the great-grandchild might appoint, and so on, forever. There would never be Federal estate tax due on this perpetual trust as long as the powers were limited and not general.

Against this background, IRC § 2041(a)(3) provides that the value of the gross estate shall include the value of all property over which the decedent:

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

As a result of IRC § 2041(a)(3), in the above example, Federal estate tax would be due every generation in Delaware or, arguably, in any state that repealed the rule against perpetuities rather than extended it to a fixed number of years. The argument is if the rule is changed to, for example, 360 years, there is still a “period” within the meaning of § 2041(a)(3); but with a total repeal, there is no “period” and so Federal estate tax is due every time a power is exercised to create another power.

This would be a tax disaster in a generation-skipping tax exempt trust which, for example, gave income to children, remainder as they appoint by a limited power of appointment, and children appoint income to their children and give their children a limited power of appointment, by imposing Federal estate tax at the children's deaths.

This concern led Florida to extend the period permitted by the rule against perpetuities to 360 years rather than to repeal it altogether.

This proposed change makes Pennsylvania more flexible than Florida because it permits perpetual trusts so long as powers of appointment are not involved.

The opt-out provision in subsection (b)(3) is designed to permit those who want to attract Federal estate tax (and thereby avoid Federal generation-skipping tax) to do so.

PROPOSED AMENDMENTS REGARDING THE ENFORCEMENT OF THE CONTRIBUTION OR EXONERATION OF FEDERAL ESTATE TAX

Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is amended as follows:

§ 3706. Enforcement of contribution or exoneration of Federal estate tax.

(a) Duty to pay.--Parties liable for apportionment of the Federal estate tax, whether residents or nonresidents of this Commonwealth, shall pay the amounts apportioned against them [respectively.] at the time the Federal estate tax is due, without regard to any extension of time for paying such tax.

(b) [Duty] Power of fiduciary.--The fiduciary charged with the duty to pay the Federal estate tax may recover from parties liable to apportionment the amounts of Federal estate tax [apportionable] apportioned to them [respectively]. If the fiduciary pays the tax apportioned against another party, the fiduciary may recover from the other party the tax payment so advanced, together with interest of 5% per annum from the date of payment.

(c) Suspending distribution.--Distribution or delivery of property to any party, other than a fiduciary charged with a duty to pay the Federal estate tax, shall not be required of any fiduciary until [the Federal estate tax apportionable with respect thereto is paid or, if the Federal estate tax has not been determined and apportionment made, until adequate security for payment is furnished to the fiduciary making the distribution or delivery.] that party pays the Federal estate tax apportioned to that party.

(d) Court decrees.--[The] Notwithstanding subsections (a) and (b), the court, upon petition or at an accounting or in any appropriate action or proceeding, shall make such decrees or orders as it shall deem advisable apportioning the Federal estate tax. The court may direct a fiduciary to collect the apportioned amounts from the property or interests in his possession of any parties against whom apportionment has been made and may direct all other parties against whom the Federal estate tax has been or may be apportioned or from whom any part of the Federal estate tax may be recovered to make payment of the apportioned amounts to the fiduciary. When a fiduciary holds property of a party liable to apportionment insufficient to satisfy the apportioned Federal estate tax, the court may direct that the balance of the apportioned amount of Federal estate tax shall be paid to the fiduciary by the party liable. Should an overpayment of the Federal estate tax be made by any party or on his behalf, the court may direct an appropriate reimbursement for the overpayment. If the court apportions any part of the Federal estate tax against any party interested in nontestamentary property or among the respective interests created by any nontestamentary instrument, the court, in its discretion, may assess against those properties or interests an equitable share of the expenses incurred in connection with the determination and apportionment of the Federal estate tax. If the fiduciary cannot recover the Federal estate tax apportioned against a party benefited, the unrecovered amount shall be charged in such manner as the court may determine.

Comment

The addition to subsection (a) clarifies that a party must pay its apportioned amount of Federal estate tax nine months after death. The Superior Court in *In re Estate of Zambrano*, 875 A.2d 307 (Pa. Super. 2005), held that a party did not have to pay his apportioned share of Federal estate tax until the fiduciary had first paid the tax in full and the Federal estate tax return had been fully processed by the

Internal Revenue Service. That holding is inconsistent with the original intent of this section.

The addition to subsection (b) is designed to achieve fairness between the fiduciary and a late-paying other party by assessing interest at the same rate as is used when pre-residuary legacies are paid late. See §§ 3543 and 7799. Contra *In re Estate of Morrell*, 318 A.2d 727 (Pa. 1974), which held that the beneficiary owed interest on his apportioned amount of Pennsylvania inheritance tax, but not on his apportioned amount of Federal estate tax.

If interest and penalties are assessed by the IRS and are attributable to a party not timely paying its apportioned share of Federal estate tax, § 3702(h) authorizes the court to apportion such interest and penalties against such party.

Subsection (d) will continue to be available permitting the court to “make such decrees or orders as it shall deem advisable apportioning the Federal estate tax.”

PROPOSED AMENDMENTS TO THE UNIFORM PRINCIPAL AND INCOME ACT

Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is amended as follows:

§ 8105. Power to convert to unitrust.

* * *

(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 in the smoothing period selected by the trustee;

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.

(5.1) Whether to average the net assets of the trust over a smoothing period of three, four or five years.

(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.

* * *

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§ 8149. Retirement benefits, individual retirement accounts, deferred compensation,
annuities and similar payments.

* * *

(c) Allocation when internal net income of fund is readily ascertained.--

(1) If no portion of a payment from a separate fund held exclusively for the benefit of the trust is allocable to income under subsections (a) and (b) but the internal net income of the fund determined as if the fund were a separate trust subject to Subchapters [B (relating to decedent's estate or terminating income interest)] A (relating to preliminary provisions; power to adjust; power to convert to unitrust) through E (relating to allocation of disbursements during administration of trust) is readily ascertainable by the trustee, the internal net income of the fund shall be considered to be the income earned by the fund, and the portion of the payment equal to the then undistributed net income of the fund realized since the trust acquired its interest in the fund shall be deemed to be a distribution of such income and shall be allocated to the trust income account.

(2) The balance of any such payment shall be allocated to principal.

(3) The power to adjust under section 8104 (relating to trustee's power to adjust), the power to convert to a unitrust under section 8105 (relating to power to convert to unitrust) and the provisions governing express trusts under section 8107 (relating to express trusts) shall apply to retirement benefits covered by this subsection which are payable to a trust. These powers may be exercised separately and independently by the payee trustee or in the governing instrument as between the retirement benefits and the trust as if they were separate trusts subject to this chapter.

* * *

Comment

Subsection (c) specifically confirms the freedom of a trustee to exercise the power to adjust, the power to convert to a unitrust and the power to draft a trust as a unitrust independently with respect to retirement benefits and a trust to which they are payable, as allowed by Federal tax law.

PROPOSED AMENDMENTS REGARDING DEATH DURING A DIVORCE PROCEEDING

Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is amended as follows:

§ 2106. Forfeiture.

(a) Spouse's share.--

(1) A spouse who, for one year or upwards previous to the death of the other spouse, has willfully neglected or refused to perform the duty to support the other spouse, or who for one year or upwards has willfully and maliciously deserted the other spouse, shall have no right or interest under this chapter in the real or personal estate of the other spouse.

(2) A spouse shall have no right or interest under this chapter in the real or personal estate of the other spouse if:

(i) the other spouse dies domiciled in this Commonwealth during the course of divorce proceedings;

(ii) no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court); and

(iii) grounds have been established as provided in 23 Pa.C.S. § 3323(g).

* * *

* * * * *

§ 2507. Modification by circumstances.

Wills shall be modified upon the occurrence of any of the following circumstances, among others:

* * *

(2) Divorce or pending divorce.--[If the testator is divorced from the bonds of matrimony after making a will, any] Any provision in [the] a testator's will in favor of or relating to [his] the testator's spouse [so divorced] shall [thereby] become ineffective for all purposes unless it appears from the will that the provision was intended to survive [the divorce.] a divorce, if the testator:

(i) is divorced from such spouse after making the will; or

(ii) dies domiciled in this Commonwealth during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

* * *

* * * * *

§ 6111.1. Modification by divorce or pending divorce.

[If the conveyer is divorced from the bonds of matrimony after making a conveyance, any] Any provision in [the] a conveyance which was revocable by [him] a conveyer at the time of [his] the conveyer's death and which was to take effect at or after [his] the conveyer's death in favor of or relating to [his spouse so divorced shall thereby] the conveyer's spouse shall become ineffective for all purposes unless it appears in the

governing instrument that the provision was intended to survive [the divorce.] a divorce,
if the conveyor:

(1) is divorced from such spouse after making the conveyance; or

(2) dies domiciled in this Commonwealth during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

* * * * *

§ 6111.2. Effect of divorce or pending divorce on designation of beneficiaries.

[If a person domiciled in this Commonwealth at the time of his death is divorced from the bonds of matrimony after designating his spouse as beneficiary of a life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to his spouse, any designation in favor of his former spouse which was revocable by him after the divorce shall become ineffective for all purposes and shall be construed as if such former spouse had predeceased him unless it appears from the wording of the designation, a court order or a written contract between the person and such former spouse that the designation was intended to survive the divorce.]

(a) Applicability.--This section is applicable if an individual:

(1) is domiciled in this Commonwealth;

(2) designates the individual's spouse as beneficiary of the individual's life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and

(3) either:

(i) at the time of the individual's death is divorced from the spouse; or

(ii) dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

(b) General rule.--Any designation described in subsection (a)(2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on:

(1) the wording of the designation;

(2) a court order; or

(3) a written contract between the individual and the spouse or former spouse.

(c) Liability.--

(1) Unless restrained by court order, no insurance company, pension or profit-sharing plan trustee or other obligor shall be liable for making payments to a spouse or former spouse which would have been proper in the absence of this section.

(2) Any spouse or former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.

PROPOSED AMENDMENTS REGARDING POWERS OF ATTORNEY

Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is amended as follows:

§ 5603. Implementation of power of attorney.

* * *

(p) Power to engage in insurance transactions.--A power to "engage in insurance transactions" shall mean that the agent may:

(1) Purchase, continue, renew, convert or terminate any type of insurance (including, but not limited to, life, accident, health, disability or liability insurance) and pay premiums and collect benefits and proceeds under insurance policies.

(2) Exercise nonforfeiture provisions under insurance policies.

(3) In general, exercise all powers with respect to insurance that the principal could if present; however, the agent cannot designate himself beneficiary of a life insurance policy unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of a life insurance policy shall be liable as equity and justice may require to the extent that, as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

(q) Power to engage in retirement plan transactions.--A power to "engage in retirement plan transactions" shall mean that the agent may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax

qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, exercise all powers with respect to retirement plans that the principal could if present. However, the agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of a retirement plan shall be liable as equity and justice may require to the extent that, as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

* * *

CONFORMING AMENDMENTS

Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is amended as follows:

§ 3162. Advertisement of grant of letters.

(a) Notice generally.--The personal representative, immediately after the grant of letters, shall cause notice thereof to be given in one newspaper of general circulation published at or near the place where the decedent resided or, in the case of a nonresident decedent, at or near the place where the letters were granted, and in the legal periodical, if any, designated by rule of court for the publication of legal notices, once a week for three successive weeks, together with his name and address; and in every such notice, he shall request all persons having claims against the estate of the decedent to make known the same to him or his attorney, and all persons indebted to the decedent to make payment to him without delay.

(b) Proofs of advertisement to trustee.--A personal representative who has advertised the grant of letters and received the notice required by section 7780.3(c) (relating to duty to inform and report) shall promptly send copies of the proofs of that advertisement to the trustee.

Comment

Because § 7755 (claims and distribution after settlor's death) allows the trustee to piggyback on the protection advertisement affords a personal representative and encourages the trustee to advertise when there is no personal representative or when the personal representative does not advertise, it is important that a

personal representative who has advertised the grant of letters share proof of that fact with the trustee.

TECHNICAL AMENDMENTS

Title 15 of the Pennsylvania Consolidated Statutes (the Associations Code) is amended as follows:

§ 5547. Authority to take and hold trust property.

* * *

(b) Nondiversion of certain property.--Property committed to charitable purposes shall not, by any proceeding under Chapter 59 (relating to fundamental changes) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order under 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D (relating to creation, validity, modification and termination of trust) specifying the disposition of the property.

* * * * *

§ 5548. Investment of trust funds.

* * *

(b) Use and management.--Except as otherwise permitted under 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D (relating to creation, validity, modification and termination of trust), the board of directors or other body shall apply all assets thus received to the purposes specified in the trust instrument. The directors or other body shall keep accurate accounts of all trust funds, separate and apart from the accounts of other assets of the corporation.

* * *

TRANSITIONAL LANGUAGE

APPLICABILITY

The amendment of 20 Pa.C.S. § 6107.1 shall apply to any interest created after December 31, 2006.

EFFECTIVE DATES

- (1) The following provisions be retroactive to November 6, 2006:
 - (i) The amendment of 20 Pa.C.S. § 7745.
 - (ii) The amendment of 20 Pa.C.S. § 7780.3(1)(2).
 - (iii) The amendment of 20 Pa.C.S. § 7780.6(a).
- (2) The amendment of 20 Pa.C.S. § 6107.1 shall be retroactive to January 1, 2007.
- (3) Paragraphs (1) and (2) shall take effect immediately.
- (4) The remainder of this act shall take effect in 60 days.

**Joint State Government Commission
Chairs of the Advisory Committee on Decedents' Estates Laws**

<i>Service</i>	<i>Chair</i>	<i>County</i>
1945 - 1957	Robert Brigham, Esq. ²⁰	Philadelphia
1958 - 1973	Honorable Mark E. Lefever ²¹	Philadelphia
1973 - 1981	William H. Eckert, Esq. ²²	Allegheny
1981 - 1993	George J. Hauptfuhrer, Jr., Esq. ²³	Philadelphia
1993 - 2001	William McC. Houston, Esq. ²⁴	Allegheny
2001 -	Edward M. Watters, III, Esq. ²⁵	Chester

²⁰ He was a member of the Advisory Committee on Decedents' Estates Laws from 1945-1957 and died on December 25, 1957. J. State Gov't Comm'n Minutes, Jan. 29, 1958 Advisory Comm. meeting (on file with the J. State Gov't Comm'n).

²¹ He was a member of the Advisory Committee on Decedents' Estates Laws from 1945-1973 and was elected Chair at the January 29, 1958 Advisory Committee meeting, having previously served as Vice Chair and First Vice Chair. *Id.*

²² He was a member of the Advisory Committee on Decedents' Estates Laws from 1945-1981 and was elected Vice Chair at the January 29, 1958 Advisory Committee meeting, having previously served as Second Vice Chair. *Id.* He subsequently became Chair on June 28, 1973 and died on December 25, 1981 at the age of 81. J. State Gov't Comm'n Minutes, Mar. 25, 1982 Advisory Comm. meeting (on file with the J. State Gov't Comm'n).

²³ He was a member of the Advisory Committee on Decedents' Estates Laws from 1971-1993, was elected Vice Chair in 1973 and became Chair upon the death of Mr. Eckert. J. State Gov't Comm'n Misc. Docs. (on file with the J. State Gov't Comm'n).

²⁴ He was a member of the Advisory Committee on Decedents' Estates Laws from 1971-2001 and was elected Vice Chair in 1981. He died on August 19, 2001 at the age of 78. *Id.*

²⁵ He has been a member of the Advisory Committee on Decedents' Estates Laws since 1992. He became Vice Chair in February 2001 and Chair upon the death of Mr. Houston. *Id.*

**Joint State Government Commission
Members of the Advisory Committee on Decedents' Estates Laws**

<i>Member</i>	<i>County</i>	<i>Service</i>
Honorable Anthony R. Appel	Lancaster	1971 - 1985
Robert W. Archbald, Esq.	Philadelphia	1945 - 1951
Richard J. Ashby, Jr., Esq.	Lancaster	1983 - 1993 2001 -
Thomas A. Beckley, Esq.	Dauphin	1971 -
Paul Bedford, Esq.	Luzerne	1945 - 1951
Honorable John C. Bell	Supreme Court of PA	1945 - 1947
Mark Bookman, Esq.	Allegheny	2000 -
Honorable Hugh C. Boyle	Allegheny	1959 - 1986
Honorable W. Walter Braham	Lawrence	1945 - 1979
Philip A. Bregy, Esq.	Philadelphia	1947 - 1986
Robert Brigham, Esq.	Philadelphia	1945 - 1957
Norman H. Brown, Esq.	Philadelphia	1971 - 1985
Mitchell E. Chadrow, Esq.	Montgomery	2005 -
Paul E. Clouser, Esq.	Dauphin	1971 - 1989
Reuben E. Cohen, Esq.	Philadelphia	1949 - 1988
Ira B. Coldren, Jr., Esq.	Fayette	1992 - 2006
William R. Cooper, Esq.	Montgomery	1997 -
William J. Copeland, Esq.	Allegheny	1971 - 1975
Robert E. Diehl, Jr., Esq.	Northumberland	1992 -
Honorable Calvin S. Drayer	Montgomery	1992 -

Robert F. Duguay, Esq.	Dauphin	1971 - 1982
Charles H. Ealy, Esq.	Somerset	1948 - 1949
William H. Eckert, Esq.	Allegheny	1945 - 1981
Karen A. Fahrner, Esq.	Delaware	2007 -
Robert C. Fernandez, Esq.	Montgomery	1977 - 1994
Honorable Roger M. Fischer	Erie	1992 - 2004
Julia B. Fisher, Esq.	Philadelphia	2003 -
Roland Fleer, Esq.	Montgomery	1945 - 1975
Robert L. Freedman, Esq.	Philadelphia	1982 -
Honorable Ethan A. Gearhart	Lehigh	1945 - 1983
J. Frederick Gehr, Esq.	Lycoming	1971 - 1990
G. Donald Gerlach, Esq.	Allegheny	1975 - 2000
W. Pitt Gifford, Esq.	Erie	1945 - 1961
Jay C. Glickman, Esq.	Montgomery	2002 -
Edward J. Greene, Esq.	Allegheny	1992 - 2003
Richard L. Grossman, Esq.	Montgomery	1971 -
George J. Hauptfuhrer, Jr., Esq.	Philadelphia	1971 - 1993
Neil E. Hendershot, Esq.	Dauphin	1992 -
Honorable Andrew Hourigan	Luzerne	1945 - 1951
William McC. Houston, Esq.	Allegheny	1971 - 2001
James A. Humphreys, III, Esq.	Lancaster	1984 - 1998
Honorable David G. Hunter	Philadelphia	1945 - 1961
A.J. White Hutton, Esq.	Franklin	1945 - 1961

Frederick F. Jones, Esq.	Erie	1971 - 1977
David J. Kaufman, Esq.	Philadelphia	1985 -
Honorable Robert A. Kelly	Allegheny	2002 -
William H. Latimer, Jr., Esq.	Allegheny	1975 - 1981
Honorable Anne E. Lazarus	Philadelphia	2004 -
Honorable Mark E. Lefever	Philadelphia	1945 - 1973
Robert P. Leiby, Jr., Esq.	Philadelphia	1975 - 1996
Shippen Lewis, Esq.	Philadelphia	1945 - 1951
Honorable William W. Litke	Centre	1945 - 1991
John J. Lombard, Jr., Esq.	Philadelphia	1992 -
Alan S. Loose, Esq.	Carbon	1945 - 1972
Honorable J. Paul MacElree	Chester	1945 - 1971
James F. Mannion, Esq.	Montgomery	2006 -
Honorable Frederick A. Marx	Berks	1945 - 1961
Benjamin G. McFate, Esq.	Venango	1975 - 1983
Edwin L.R. McKean, Esq.	Erie	1992 - 2007
Ralph D. McKee, Esq.	Allegheny	1945 - 1975
Richard G. Miller, Esq.	Washington	1945 - 1949
John F. Meck, Esq.	Allegheny	2001 -
Michael J. Mullaugh, Esq.	Allegheny	1994 -
Honorable Paula Francisco Ott	Chester	2001 -
Honorable Edmund S. Pawelec	Philadelphia	1978 - 2004
Richard L. Placey, Esq.	Dauphin	1985 -

Raymond M. Remick, Esq.	Philadelphia	1945 - 1949
Honorable Karl E. Richards	Dauphin	1945 - 1961
William Campbell Ries, Esq.	Allegheny	1983 -
William M. Robinson, Esq.	Allegheny	1945 - 1961
Bruce A. Rosenfield, Esq.	Philadelphia	1992 -
Michael J. Saile, Esq.	Bucks	2003 -
Honorable Edwin H. Satterthwaite	Bucks	1971 - 1985
James G. Schmidt, Esq.	Philadelphia	1949 - 1995
Pam H. Schneider, Esq.	Philadelphia	1992 -
Dean John J. Sciallo	Allegheny	1978 - 2000
Arthur M. Scully, Esq.	Allegheny	1945 - 1949
Clarence L. Shaver, Esq.	Somerset	1945 - 1961
Honorable Louis Sherman	Philadelphia	1977 - 1984
K.L. Shirk, Jr., Esq.	Lancaster	1983 - 2006
M. Paul Smith, Esq.	Montgomery	1947 - 1998
Boyd Lee Spahr, Esq.	Philadelphia	1945 - 1961
Thomas Stokes, Esq.	Philadelphia	1945 - 1951
J. Pennington Straus, Esq.	Philadelphia	1971 - 1996
Honorable Lee F. Swope	Dauphin	1971 - 1991
Honorable Alfred L. Taxis	Montgomery	1971 - 1985
Regina O. Thomas, Esq.	Philadelphia	1985 -
Honorable Robert W. Tredinnick	Montgomery	1985 - 1987
Honorable Thomas P. Trimble	Allegheny	1945 - 1951

Honorable Edward L. Van Roden	Delaware	1949 - 1972
Paul C. Wagner, Esq.	Philadelphia	1945 - 1979
Donald R. Waisel, Esq.	Dauphin	1978 -
Edward M. Watters, III, Esq.	Chester	1992 -
Robert B. Wolf, Esq.	Allegheny	2000 -
Lenard Wolffe, Esq.	Philadelphia	1977 - 1978
Honorable Lawrence E. Wood	Chester	1992 - 2002
C. Thomas Work, Esq.	Berks	1985 -
Honorable A. Kirk Wrenshall	Washington	1945 - 1972
Honorable J. Colvin Wright	Superior Court of PA	1945 - 1978
Honorable Vincent X Yakowicz	Cumberland	1971 -
Honorable Paul R. Zavarella	Allegheny	1985 - 2002
Adolph L. Zeman, Esq.	Washington	1945 - 1976