

# JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

**PROBATE, ESTATES AND FIDUCIARIES:  
PROPOSED AMENDMENTS TO  
TITLES 15 & 20 OF THE PENNSYLVANIA  
CONSOLIDATED STATUTES**

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

**JANUARY 2017**



*Serving the General Assembly of the  
Commonwealth of Pennsylvania Since 1937*

**REPORT**

*Probate, Estates and Fiduciaries: Proposed Amendments to  
Titles 15 & 20 of the Pennsylvania Consolidated Statutes*

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.<sup>1</sup>

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission. There was also a Secretary during some years.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.<sup>2</sup> Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations published in a report.

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<sup>1</sup> Act of July 1, 1937 (P.L.2460, No.459); (46 P.S. §§ 65 – 69).

<sup>2</sup> Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth of Pennsylvania receives the financial benefit of such volunteerism, along with the expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used in determining the intent of the General Assembly.<sup>3</sup>

Since its inception, the Commission has published more than 350 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

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<sup>3</sup> 1 Pa.C.S. § 1939 ("The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly").

# **TASK FORCE ON DECEDENTS' ESTATES LAWS**

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The Joint State Government Commission is pleased to announce the release of the report, *Probate, Estates and Fiduciaries: Proposed Amendments to Titles 15 & 20 of the Pennsylvania Consolidated Statutes*. The report includes legislation proposed by the Advisory Committee on Decedents' Estates Laws. The recommendations address such diverse topics as disposition of decedents' remains, fiduciary access to digital assets, transfers to minors, and prudent management of institutional funds.

The report is also available electronically at <http://jsg.legis.state.pa.us/publications>.

Respectfully submitted,

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Executive Director



# TABLE OF CONTENTS

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<b>INTRODUCTION</b> .....	1
<i>Task Force and Advisory Committee on Decedents' Estates Laws</i> .....	1
<i>Spring 2016 Advisory Committee Meeting and Report</i> .....	1
Legislative Recommendations .....	1
Related Activities .....	2
Advisory Committee Legislative Proposals during the 2015-2016 General Assembly .....	4
<b>DISPOSITION OF DECEDENT'S REMAINS</b> .....	5
<i>Proposed Legislation</i>	
An Act Amending Title 20 (Decedents, Estates and Fiduciaries) Disposition of Decedent's Remains .....	7
<b>PENNSYLVANIA REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)</b> .....	15
<i>Proposed Legislation</i>	
An Act Amending Title 20 (Decedents, Estates and Fiduciaries) Digital Assets .....	17
<b>PENNSYLVANIA UNIFORM TRANSFERS TO MINORS ACT</b> .....	33
<i>Proposed Legislation</i>	
An Act Amending Title 20 (Decedents, Estates and Fiduciaries) Uniform Transfers to Minors Act .....	33
<b>PENNSYLVANIA UNIFORM PRUDENT MANAGEMENT OF INVESTMENT FUNDS ACT</b> .....	35
An Act Amending Titles 15 (Corporations and Unincorporated Associations) and 20 (Decedents, Estates and Fiduciaries) .....	35
<b>HISTORICAL MEMBERSHIP OF THE ADVISORY COMMITTEE ON DECEDENTS' ESTATES LAWS</b> .....	47



# INTRODUCTION

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## *The Task Force and Advisory Committee on Decedents' Estates Laws*

Senate Resolution No. 46 of 1945 directed the Commission to study decedents' estates laws in the Commonwealth, and in July 1945, the Commission created the Task Force and Advisory Committee on Decedents' Estates Laws.

The Task Force on Decedents' Estates Laws is a bicameral and bipartisan panel of legislators, currently consisting of Senator Stewart J. Greenleaf (Chair), Senator Patrick M. Browne, Senator Jay Costa, Senator Michael J. Stack, Representative Michael K. Hanna, and Representative C. Adam Harris.

The 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's Probate, Estates and Fiduciaries Code<sup>4</sup> and related statutes. Since 1945, the Advisory Committee has provided expertise and advice to formulate legislation aimed at modernizing Pennsylvania law.

Over the years, the Advisory Committee has formed various subcommittees to assist in reviewing specific topics and developing statutory recommendations involving the Probate, Estates and Fiduciaries Code for consideration by the Advisory Committee and Task Force. Subcommittees in place for the 2015-2016 General Assembly are Decanting, Digital Assets and Technology, Directed Trusts, Disposition of Decedent's Remains, Minors, Orphans' Court Matters, Probate and Estate Administration, Taxation, and Uniform Prudent Management of Institutional Funds Act.

## *Spring 2016 Advisory Committee Meeting and Report*

### *Legislative Recommendations*

At its March 31, 2016 meeting, the subcommittees reported on their activities since the Advisory Committee's last report and offered legislative proposals and topics for further consideration. The Advisory Committee reached consensus<sup>5</sup> on the legislative recommendations

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<sup>4</sup> Title 20 of the Pennsylvania Consolidated Statutes (20 Pa.C.S.).

<sup>5</sup> Consensus does not necessarily reflect unanimity among the Advisory Committee members on each individual legislative recommendation. However, it does reflect the views of a substantial majority of the Advisory Committee, gained after lengthy review and discussion.

regarding disposition of decedent's remains, fiduciary access to digital assets, uniform prudent management of institutional funds, and minors. These recommendations serve as a basis for the legislation contained herein.

In the interim until the Advisory Committee's next meeting, the Subcommittee on Orphans' Court Matters will continue to draft proposed amendments to reconcile the newly adopted Orphans' Court Rules to Title 20. A new subcommittee was created to address the issue of lost wills, and the Subcommittee on Guardianships and Powers of Attorney is being reconstituted as two separate subcommittees, the Subcommittee on Guardianships and the Subcommittee on Powers of Attorney to consider proposals relating to those topics respectively. The remaining subcommittees will continue to work on topics assigned to them at the meeting, several of which involve the study of uniform laws for possible enactment in Pennsylvania, such as directed trusts.

### *Related Activities*

Since the Advisory Committee's last report in 2012, the Subcommittee on Guardianships and Powers of Attorney has had the opportunity to participate in discussions involving the statutory adoption in Pennsylvania of physician orders for life sustaining treatment (POLST). Because of the timing of the proposed introduction of this legislation and this report, the Advisory Committee was not able to adequately review and endorse the proposal, although the subcommittee has endorsed it. Accordingly, the draft legislative language is not included in this report. However, the Advisory Committee generally approves of the need for a POLST statute in Pennsylvania. A brief summary of the process leading to the subcommittee's involvement in the proposed legislation follows.

Act No. 169 of 2006,<sup>6</sup> which was a sweeping revision of 20 Pa.C.S. Chapter 54 governing health care, while not authored by the Advisory Committee, was the product of a working group convened by the Governor's Office and the Joint State Government Commission. 20 Pa.C.S. § 5488 directed the Department of Health to create an advisory committee of stakeholders to examine whether it would be helpful for Pennsylvania to adopt a standardized form of physician order such as the Physician Orders for Life Sustaining Treatment (POLST) which had been officially adopted in some states and used in many other states, including Pennsylvania, on a collaborative basis.

Fundamentally, the POLST is a medical order which may be issued when a patient is approaching the end of life where more specific orders dealing with more immediate medical events are desirable. Generally speaking, the POLST is considered to be appropriate if a clinician would not be surprised if the patient might die within the next year. Under these circumstances it is appropriate to discuss a POLST with the patient so that their wishes for life-sustaining treatment can be formally documented in an actionable physician order.<sup>7</sup>

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<sup>6</sup> Act of November 29, 2006 (P.L.1484, No.169).

<sup>7</sup> For a more complete discussion of the theory, history and development of the POLST, *see*, R. Wolf, M. Maag & K. Gallant *The Physician Orders for Life-Sustaining Treatment (POLST) Coming Soon to a Health Care Community Near You*, 49 *Real Property Trust and Estate Law Journal*, No. 1, 79 (Spring 2014), an updated version of which can be found at 40 *ACTEC Journal* 301 (2015). *See also*, the POLST Legislative Guide, at <http://www.polst.org/wp-content/uploads/2014/02/2014-02-20-POLST-Legislative-Guide-FINAL.pdf>

The criteria for the appropriate *execution* of a POLST is intended to be different from the preconditions for the *triggering* of a living will where the patient must be in an end-stage medical condition or permanently unconscious for the living will to take effect. The POLST is appropriate for a broader group of patients who are less clearly defined, and both of these differences are intentional. A 95-year-old resident of a long-term-care facility may well not have an end-stage medical condition or be permanently unconscious, but clearly it would be desirable for them to indicate their preference with respect to resuscitation and the extent to which other interventions should be used should the situation arise. On the other hand, a health care power of attorney and living will is appropriate for *execution* by all adults, while the POLST is appropriate for execution for a relatively small but very important subset of patients.

Pursuant to Act No. 169, the Department of Health convened an advisory committee, the Patient Life-Sustaining Wishes Committee (“PLSW Committee”) which included a member of the Decedents’ Estates Laws Advisory Committee. After considerable study and discussion, the PLSW Committee determined that it would be helpful for Pennsylvania to adopt such a form, and recommended a form of order for use in Pennsylvania. The PLSW Committee’s first recommendation was for a statute to recognize and regulate the use of the POLST, and in the alternative, a regulation to be adopted by the Department of Health. Neither a statute nor a regulation were issued, but the POLST form recommended by the PLSW Committee was approved by the Acting Secretary of Health in 2010.

The POLST form approved by the Department of Health has been used widely throughout Pennsylvania, but because there was no statutory change, the POLST form could not literally be safely followed by an emergency medical provider. Instead the EMS provider would have to contact the medical command physician, inform the physician of the existence of the POLST form and then follow the medical command physician’s orders. And there was no express immunity for medical providers that complied with a POLST as a medical order, as there are in the law protecting those following the directions of a living will or the directions of a health care agent under 20 Pa.C.S. § 5431(a).

After several years it became clear to constituency stakeholder groups, including the Pennsylvania Medical Society, that a statute is necessary to properly authorize, encourage and regulate the use of the POLST with appropriate process and protections. Accordingly, the Pennsylvania Medical Society convened a broad working group beginning in 2013 attempting to have all appropriate constituencies represented to examine the feasibility of a POLST statute in Pennsylvania. It contained representatives from the Advisory Committee, the Pennsylvania Bar Association, the Hospital & Health System Association of Pennsylvania, the Pennsylvania Catholic Conference, the Pennsylvania Association of Medical Directors for long term care facilities, representatives of the disability community and many other diverse organizations and constituencies.

The discussion, advocacy and negotiation in approaching a legislative proposal attempted to take into account all of the concerns of the stakeholder groups. A primary tension and difference in perspective exists between the advocates of patient freedom and the advocates of patient protection, and compromises were sought wherever possible. The resultant proposed statute would take the place of the current Subchapter E of Chapter 54 governing Out-of-Hospital Nonresuscitation.

*Advisory Committee Legislative Proposals during the 2015-2016 General Assembly*

Legislation recommended by the Advisory Committee in the past few years was considered during the 2015-2016 General Assembly. Senate Bill No. 568 (2015) passed the Senate by a vote of 47-0 on February 8, 2016 and was referred to the House Judiciary Committee on February 10, 2016. This bill is based on the recommendations found in the Advisory Committee's June 2011 and October 2012 reports.

Senate Bill No. 1104 (2015) passed the Senate by a vote of 48-0 on April 4, 2016, was amended in, and passed the House of Representatives by a vote 195-0 on June 14, 2016. Following unanimous concurrence, the bill was sent to the Governor and approved by him as the act of July 8, 2016 (P.L.497, No.79). Act No. 79 includes recommendations made in the Advisory Committee's June 2010 report, which included recommendations relating to powers of attorney, powers of appointment, and charitable instruments.

## **DISPOSITION OF DECEDENT'S REMAINS**

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This proposal significantly re-writes 20 Pa.C.S. § 305 to establish a statutory order of preference to determine the right to dispose of a decedent's remains and clarifies the role of the funeral director in resolving conflicts.

- Subsection (a): General rule.
  - Provides funeral directors with more authority to make final disposition of remains, based on the procedures in this section
  
- Subsection (b.1): When written expression exists.
  - If the decedent makes a written expression to dispose or authorize another to dispose of his or her remains, the decedent's written expression is paramount
  
- Subsection (b.2): Priority of written expression.
  - In the event of multiple written expressions, the latest in time controls, unless the latest in time is not properly executed in conformity with section 2504.1, in which case the latest properly executed expression controls
  
- Subsection (b.3): Absence of written expression.
  - Absent a written expression, an order of priority of authorized persons is established. The concept of granting "next of kin," in the absence of an "enduring estrangement," the final decision-making authority is removed. Both terms are deleted and replaced with persons who are reasonably available. This is defined as "readily able to be contacted without undue effort and willing and able to act in a timely manner" and is determined by the funeral director, absent a conflict
  
- Subsection (d.1): Petition and notice.
  - Disputes about the disposition of a decedent's remains are to be resolved by the orphans' court via petition
  - Provides the funeral director with notice of disputes
  
- Subsection (d.2): Judicial determination.
  - The court shall make the final determination in disputed situations, under the following principles:
    - The court shall take into account the decedent's preferences and values, including religious and moral beliefs
    - The court may appoint a mediator
    - The standard of proof is clear and convincing evidence

- Subsection (d.3): Third-party immunity.
  - Immunizes a third party relying in good faith on a decedent's written expression
  - Immunizes funeral directors when determining whose instructions to follow absent a written expression of intent by the decedent
  
- Subsection (e): Definitions.
  - Adds new definitions of "decedent's remains," "funeral director," "reasonably available" and "written expression"
  - Deletes definitions of "contrary intent" and "next of kin"
  
- Other amendments harmonize the section with provisions relating to anatomical gifts and health care agents' authority.

*Proposed Legislation*

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, providing for the disposition of decedent's remains.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 305 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 305. Right to dispose of a decedent's remains.

(a) General rule.—[Except as specified in subsection (a.1) the] The determination of the final disposition of a decedent's remains, whether by burial, entombment, cremation or other disposition, shall be as set forth in this section [unless otherwise specifically provided by waiver and agreement of the person entitled to make such determination under this section, subject to the provisions of a valid will executed by the decedent and section 8611(a) (relating to persons who may execute anatomical gift)]. The funeral director is primarily authorized to carry out the disposition of a decedent's remains in accordance with this section, absent judicial direction or approval.

[(a.1) Exception for members of the armed forces.--The determination of the final disposition of a decedent's remains shall be as set forth in this section unless otherwise specifically provided by a DD Form 93 executed later in time than a valid will executed by the decedent or a waiver and agreement of the person entitled to make such determination under this section, subject to the provisions of section 8611(a).

(b) Disposition of the remains of a deceased spouse.--Absent an allegation of enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear

and convincing evidence, a surviving spouse shall have the sole authority in all matters pertaining to the disposition of the remains of the decedent.

(c) Disposition of the remains of others.--If there is not a surviving spouse, absent an allegation of enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear and convincing evidence, the next of kin shall have sole authority in all matters pertaining to the disposition of the remains of the decedent.]

(b.1) When written expression exists.—An individual may make a written expression as to:

(1) The disposition of the individual's remains.

(2) The designation of another individual who shall be authorized to decide the disposition.

(b.2) Priority of written expression.—

(1) Subject to section 8613(b) (relating to manner of executing anatomical gifts), a written expression made under subsection (b.1) executed in conformity with section 2504.1 (relating to validity of execution), shall control the disposition of the decedent's remains.

(2) If more than one written expression exists for an individual, the written expression executed later in time shall control, unless the earlier one is executed in conformity with section 2504.1 and the later one is not. Unless it appears that a later written expression was intended to modify a previously designated anatomical gift under section 8611 (relating to persons who may execute anatomical gift) or to permit another individual to do so, the later written expression shall apply only to the portion of the decedent's remains not subject to the anatomical gift.

(b.3) Absence of written expression.—

(1) Absent a written expression made under subsection (b.1), a member of the following classes, in descending order of priority, who is reasonably available may determine the

disposition and direct the funeral director accordingly, subject to the provisions of paragraph (2):

(i) The spouse of the decedent, unless an action for divorce was pending at the time of death.

(ii) The decedent's adult children.

(iii) A decedent's parent.

(iv) The decedent's adult brother or sister.

(v) The decedent's adult grandchild.

(vi) An adult individual who has knowledge of the decedent's preferences and values.

(2) The funeral director shall decline to consider the direction of an individual under paragraph (1) if the funeral director determines that the individual has been in a status of enduring estrangement from the decedent.

(3) An individual under paragraph (1) may waive priority in writing and designate someone with a lower priority to determine the final disposition of a decedent's remains.

(4) If more than two individuals with equal priority under paragraph (1) and without a determination of enduring estrangement under paragraph (2) disagree on the disposition of the decedent's remains, the funeral director may rely on the decision of a majority of the members of that class who have communicated their directions to the funeral director.

(5) If a majority decision is not reached under paragraph (4) and the funeral director is so informed, no determination may be deemed made until the disagreement is resolved judicially under subsection (d.2). The costs and expenses of storing and handling the decedent's remains and any additional expenses caused by the delay in reaching a determination of disposition may be assessed by the court against the appropriate party and shall be collectable from the

party whether or not there is a probate estate. Unless ordered otherwise, the costs and expenses shall be reimbursed to the prevailing party as an administrative expense under section 3392(1) (relating to classification and order of payment).

[(d) Procedure.--Where a petition alleging enduring estrangement, incompetence, contrary intent or waiver and agreement is made within 48 hours of the death or discovery of the body of the decedent, whichever is later, a court may order that no final disposition of the decedent's remains take place until a final determination is made on the petition. Notice to each person with equal or higher precedence than the petitioner to the right to dispose of the decedent's remains and to his attorney if known and to the funeral home or other institution where the body is being held must be provided concurrently with the filing of the petition. A suitable bond may be required by the court.

(1) If the court determines that clear and convincing evidence establishes enduring estrangement, incompetence, contrary intent or waiver and agreement, the court shall enter an appropriate order regarding the final disposition which may include appointing an attorney in fact to arrange the final disposition, with reasonable costs chargeable to the estate.

(2) If two or more persons with equal standing as next of kin disagree on disposition of the decedent's remains, the authority to dispose shall be determined by the court, with preference given to the person who had the closest relationship with the deceased.

(3) If the court determines that the petition is not supported by a clear and convincing evidence, the court may award attorney fees. An award of attorney fees shall constitute a setoff against any claim by the petitioner against the estate.]

(d.1) Petition and notice.--

(1) Within five days after the death of a decedent or the discovery of the decedent's remains, whichever is later, an individual in a class authorized to make disposition of a decedent's remains under subsection (b.3) or the funeral director may file a petition:

(i) Challenging a written expression under subsection (b.1), the priority of written expression under subsection (b.2) or a determination under subsection (b.3).

(ii) Requesting the court to resolve the disagreement under subsection (b.3)(4).

(iii) Challenging the decision by the funeral director in carrying out the disposition.

(2) Notice of the petition under this subsection shall be provided to:

(i) Each individual under subsection (b.3) with equal or higher priority than the petitioner.

(ii) If known, the attorney for each individual under subparagraph (i).

(iii) The funeral director.

(iv) The personal representative of the estate, if one has been appointed.

(d.2) Judicial determination.—Absent a finding of enduring estrangement, if two or more individuals with equal priority under subsection (b.3), disagree on the disposition of the decedent's remains, the court shall determine the authority to dispose of the remains taking into account the decedent's preferences and values, including religious and moral beliefs to the extent presented to the court. A judicial order may delay final disposition of the decedent's remains until a final judicial determination is made. The court is authorized to appoint a mediator pursuant to court rules. If the court determines by clear and convincing evidence to grant the petition under this subsection, it shall enter an appropriate order regarding the disposition of the decedent's remains.

(d.3) Third-party immunity.--

(1) Any person, including a person in possession of a decedent's remains, who relies in good faith on the written expression of a decedent under subsection (b.1) or a determination under subsection (b.3) is not liable for an action conforming with and based upon the good faith reliance.

(2) A funeral director may rely on written information provided under penalty of perjury from the individual acting as informant in the preparation of the death certificate as to the identities of the members of the classes under subsection (b.3). A funeral director's determination that a member of a class under subsection (b.3) is not reasonably available is conclusive absent a judicial proceeding.

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

"Armed forces." The armed forces of the United States, including a reserve component or the National Guard.

["Contrary intent." An explicit and sincere expression, either verbal or written, of a decedent adult or emancipated minor prior to death and not subsequently revoked that a person other than the one authorized by this section determine the final disposition of his remains.]

"DD Form 93." A valid document or a successor form provided by the Department of Defense that is signed by a member of the armed forces and designates [a person] an individual to direct the disposition of the remains of the person who signed the form.

"Decedent's remains." A lifeless human body or such parts that permit a reasonable inference that death occurred.

"Enduring estrangement." A physical and emotional separation from the [deceased] decedent at the time of death of the [person] individual authorized by this section to determine the final

disposition of the decedent's remains, which has existed for a period of time that clearly demonstrates an absence of due affection, trust and regard for the [deceased] decedent.

“Funeral director.” A licensed funeral director or any other individual authorized by the Commonwealth to have charge of the disposition of a decedent’s remains.

["Next of kin." The spouse and relatives by blood of the deceased in order that they be authorized to succeed to the deceased's estate under Chapter 21 (relating to intestate succession) as long as the person is an adult or an emancipated minor.]

“Reasonably available.” Readily able to be contacted without undue effort and willing and able to act in a timely manner.

“Written expression.” Written instructions of intent by an individual regarding the disposition of the decedent’s remains of that individual, which may be contained in a will, DD Form 93, contract with a funeral director, an advance health care directive, an anatomical gift designation, or any other writing, and which may also designate an individual who shall be authorized to decide the disposition of a decedent’s remains.

Section 2. Section 5456 of Title 20 is amended to read:

§ 5456. Authority of health care agent.

\* \* \*

(a) Extent of authority.--Except as expressly provided otherwise in a health care power of attorney and subject to subsection (b) and [section] sections 305 (relating to right to dispose of a decedent’s remains) and 5460 (relating to relation of health care agent to court-appointed guardian and other agents), a health care agent shall have the authority to make any health care decision and to exercise any right and power regarding the principal's care, custody and health care treatment that the principal could have made and exercised. The health care agent's authority may extend

beyond the principal's death to make anatomical gifts, dispose of the remains and consent to autopsies.

Section 3. Effective date. This act shall take effect immediately.

## **PENNSYLVANIA REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)**

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In 2014, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed its Uniform Fiduciary Access to Digital Assets Act. This act extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

Following release of the act in 2014, the Decedents' Estates Laws Advisory Committee formed a subcommittee to review and draft the act as proposed legislation in Pennsylvania. Fiduciary access to digital assets has been a major concern in estate administration for practitioners and eager proponents introduced the 2014 act as Senate Bill Nos. 518 and 759 in 2015. Shortly thereafter, NCCUSL revised the act, and the revised uniform act was approved and recommended for enactment in all 50 states at the July 2015 annual NCCUSL meeting. The revised act was amended into Senate Bill No. 518 at Printer's No. 1371 on October 27, 2015. The bill passed the Senate 49-0 on November 18, 2015 and was referred to the House Judiciary Committee on November 19, 2015. During the course of these rapid developments in the creation and enactment elsewhere of this act<sup>8</sup> and the haste to adopt a needed law in Pennsylvania, our subcommittee became aware that the entire uniform act's inclusion in Senate Bill 518 does not fully provide for Pennsylvania estate law or drafting conventions. Following its March 31, 2016 meeting, the Advisory Committee approved proposed amendments and submitted them to the House Judiciary Committee.

Because Senate Bill No. 518 was not enacted during the 2015-2016 General Assembly, the Advisory Committee's recommended amendments to the uniform act have been applied to a new draft of proposed legislation introducing the uniform act with appropriate provisions for the uniqueness of Pennsylvania estate law and drafting conventions. The Advisory Committee's proposed legislation is set forth below.

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<sup>8</sup> The act has been enacted in 20 states: Arizona, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Maryland, Michigan, Minnesota, Nebraska, New York, North Carolina, Oregon, South Carolina, Tennessee, Washington, Wisconsin, and Wyoming. It was introduced during the 2016 legislative session in 13 more: Alabama, Iowa, Louisiana, Maine, Mississippi, Missouri, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, and West Virginia. Nat'l Conf. of Comm'rs on Unif. State Laws, "Legislative Fact Sheet," 2016, [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Fiduciary%20Access%20to%20Digital%20Assets%20Act,%20Revised%20\(2015\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Fiduciary%20Access%20to%20Digital%20Assets%20Act,%20Revised%20(2015)).

The Advisory Committee's proposed amendments to the uniform act include:

- § 3901: Short title
  - Changes the short title of act to “Pennsylvania Revised Uniform Fiduciary Access to Digital Assets Act”
- § 3902: Definitions
  - Amends the definition of agent to specifically reference Ch. 56 (powers of attorney)
  - Replaces the term “conservator” with “guardian of the estate” to include persons subject to the court’s jurisdiction under § 711 (mandatory orphan’s court jurisdiction), appointed by the court under Ch. 51 (minors), Ch. 55 (incapacitated persons) or Ch. 59 (adult guardianship and protective proceedings), and to the extent authorized by the court, a temporary guardian ad litem
  - Revises the definition of “protected person” to reference “guardian of the estate” instead of “conservator”
  - Revises the definition of “trustee”
  - Deletes the definitions of “court,” “fiduciary,” “personal representative” and “will” because these terms are already defined in § 102 for this title
- § 3909(3): Disclosure of content of electronic communications of principal; and
- § 3910 (3): Disclosure of other digital assets of principal
  - Adds references to § 5606 (proof of continuance of powers of attorney by affidavit) to certification given by agent to authorize custodian to release contents of electronic communications
- § 3914: Disclosure of digital assets to guardian of the estate
  - Replaces “conservator” with “guardian of the estate”
- The section relating to uniformity of application and construction in previously introduced legislation is omitted because this provision is existent law in 1 Pa.C.S. § 1927.

*Proposed Legislation*

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, enabling uniform fiduciary access to digital assets; and providing for authority, compliance and immunity.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 20 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 39

UNIFORM FIDUCIARY  
ACCESS TO DIGITAL ASSETS

Sec.

3901. Short title of chapter.

3902. Definitions.

3903. Applicability.

3904. User direction for disclosure of digital assets.

3905. Terms-of-service agreement.

3906. Procedure for disclosing digital assets.

3907. Disclosure of content of electronic communications of deceased user.

3908. Disclosure of other digital assets of deceased user.

3909. Disclosure of content of electronic communications of principal.

3910. Disclosure of other digital assets of principal.

3911. Disclosure of digital assets held in trust when trustee is original user.

3912. Disclosure of contents of electronic communications held in trust when trustee not  
original user.

3913. Disclosure of other digital assets held in trust when trustee not original user.

3914. Disclosure of digital assets to guardian of the estate of protected person.

3915. Fiduciary duty and authority.

3916. Custodian compliance and immunity.

3917. Relation to Electronic Signatures in Global and National Commerce Act.

§ 3901. Short title of chapter.

This chapter may be cited as the Pennsylvania Revised Uniform Fiduciary Access to Digital Assets Act (2015).

§ 3902. 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:

“Account.” An arrangement under a terms-of-service agreement in which a custodian:

- (1) carries, maintains, processes, receives or stores a digital asset of the user; or
- (2) provides goods or services to the user.

“Agent.” An agent as defined under section 5601(f) (relating to general provisions) or an attorney-in-fact granted authority under a durable or nondurable power of attorney.

“Carries.” Engages in the transmission of an electronic communication.

“Catalog of electronic communications.” Information which identifies:

- (1) each person that has had an electronic communication with a user;
- (2) the time and date of the electronic communication; and
- (3) the electronic address of the person under paragraph (1).

“Content of an electronic communication.” Information concerning the substance or meaning of the electronic communication which:

- (1) has been sent or received by a user;

(2) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(3) is not readily accessible to the public.

“Custodian.” A person that carries, maintains, processes, receives or stores a digital asset of a user.

“Designated recipient.” A person chosen by a user using an online tool to administer digital assets of the user.

“Digital asset.” An electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

“Electronic.” Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

“Electronic communication.” As defined in 18 U.S.C. § 2510(12) (relating to definitions).

“Electronic communications system.” As defined in 18 U.S.C. § 2510(14).

“Electronic communication service.” A custodian that provides to a user the ability to send or receive an electronic communication.

“Guardian of the estate.” A person appointed to manage the estate of a living individual under any of the following circumstances:

(1) When subject to the court’s jurisdiction under § 711 (relating to mandatory exercise of jurisdiction through orphans’ court division in general).

(2) Appointed by the court under Chapter 51 (relating to minors).

(3) Appointed by the court under Chapter 55 (relating to incapacitated persons).

(4) Appointed by the court in a protective order under Chapter 59 (relating to uniform adult guardianship and protective proceedings jurisdiction).

(5) Appointed as a temporary guardian ad litem, to the extent authorized by the court.

“Information.” Data, text, images, videos, sounds, codes, computer programs, software, databases or the like.

“Online tool.” An electronic service provided by a custodian which allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

“Person.” Any individual; estate; business or nonprofit entity; public corporation; government or governmental subdivision, agency or instrumentality; or other legal entity.

“Power of attorney.” A record which grants an agent authority to act in the place of a principal.

“Principal.” An individual who grants authority to an agent in a power of attorney.

“Protected person.” An individual for whom a guardian of the estate has been appointed. The term includes an individual for whom an application for the appointment of a guardian of the estate is pending or for whom a protective order has been issued under Chapter 59.

“Record.” Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Remote computing service.” A custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system.

“Terms-of-service agreement.” An agreement which controls the relationship between a user and a custodian.

“Trustee.” A fiduciary with legal title to property under an agreement or declaration which creates a beneficial interest in another. The term includes an original, additional or successor trustee and a co-trustee.

"User." A person that has an account with a custodian.

§ 3903. Applicability.

(a) Time.--This chapter applies to:

(1) A fiduciary acting under a will or power of attorney executed before, on or after the effective date of this section;

(2) a personal representative acting for a decedent who died before, on or after the effective date of this section;

(3) a guardianship of the estate proceeding commenced before, on or after the effective date of this section; and

(4) a trustee acting under a trust created before, on or after the effective date of this section.

(b) Residence of user.--This chapter applies to a custodian if the user resides in this Commonwealth or resided in this Commonwealth at the time of the user's death.

(c) Employers.--This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

§ 3904. User direction for disclosure of digital assets.

(a) Use of online tool.—

(1) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications.

(2) If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

(b) Nonuse of online tool.--If a user has not used an online tool to give direction under subsection (a) or if the custodian has not provided an online tool, the user may, in a will, trust, power of attorney or other record, allow or permit disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) User's direction.--A user's direction under subsection (a) or (b) overrides a contrary provision in a terms-of-service agreement which does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

#### § 3905. Terms-of-service agreement.

(a) Alteration of rights under this chapter.--This chapter does not change or impair a right of a custodian or a user under terms-of-service agreement to access and use digital assets of the user.

(b) Additional rights under this chapter.--This chapter does not give a fiduciary any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or a designated recipient acts or represents.

(c) Absence of direction.--A fiduciary's or a designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under section 3904 (relating to user direction for disclosure of digital assets).

#### § 3906. Procedure for disclosing digital assets.

(a) Authority of custodian.--When disclosing digital assets of a user under this chapter, the custodian has the sole discretion to:

(1) grant a fiduciary or designated recipient full access to the user's account;

(2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset which, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) Charge.--A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(c) Deleted digital assets.--A custodian need not disclose under this chapter a digital asset deleted by a user.

(d) Segregation.--If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the digital assets if segregation of the digital assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to do any of the following:

(1) Disclose a subset limited by date of the user's digital assets.

(2) Disclose all of the user's digital assets to the fiduciary or designated recipient.

(3) Disclose none of the user's digital assets.

(4) Disclose all of the user's digital assets to the court for review in camera.

§ 3907. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the content of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letters;

(4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user; or

(iii) a finding by the court that:

(A) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (i);

(B) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701 (relating to unlawful access to stored communications) et seq., section 222 of the Communications Act of 1934 (47 U.S.C. § 222) or other applicable law;

(C) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(D) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

§ 3908. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the personal representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letters; and

(4) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user;

(iii) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(iv) a finding by the court that:

(A) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (i); or

(B) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

§ 3909. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of an electronic communication if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or a copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect under section 5606 (relating to proof of continuance of powers of attorney by affidavit);  
and

(4) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the principal's account; or

(ii) evidence linking the account to the principal.

§ 3910. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalog of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect under section 5606 (relating to proof of continuance of powers of attorney by affidavit);  
and

(4) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the principal's account; or

(ii) evidence linking the account to the principal.

§ 3911. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of electronic communications.

§ 3912. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under section 7790.3 (relating to certification of trust - UTC 1013), which includes consent to disclosure of the content of electronic communications to the trustee;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the trust's account; or

(ii) evidence linking the account to the trust.

§ 3913. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account a catalog of electronic communications sent or received by an original or successor user and stored, carried or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under section 7790.3 (relating to certification of trust - UTC 1013);

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the trust's account; or

(ii) evidence linking the account to the trust.

§ 3914. Disclosure of digital assets to guardian of the estate of protected person.

(a) Access.--After an opportunity for a hearing, the court may grant a guardian of the estate access to the digital assets of a protected person.

(b) Disclosure.--Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian of the estate the catalog of electronic communications sent or received by the protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the guardian of the estate gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the court order that gives the guardian of the estate authority over the digital assets of the protected person; and

(3) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the account of the protected person; or

(ii) evidence linking the account to the protected person.

(c) Account activity.--A guardian of the estate with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this subsection must be accompanied by a certified copy of the court order giving the guardian of the estate authority over the protected person's property.

#### § 3915. Fiduciary duty and authority.

(a) Duties.--The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) the duty of care;

(2) the duty of loyalty; and

(3) the duty of confidentiality.

(b) Authority.--A fiduciary's or a designated recipient's authority with respect to a digital asset of a user:

(1) except as otherwise provided in section 3904 (relating to user direction for disclosure of digital assets), is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

(c) Access.--A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset:

(1) in which the decedent, protected person, principal or settlor had a right or interest; and

(2) which is not held by a custodian or subject to a terms-of-service agreement.

(d) Authorized user.--A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including 18 Pa.C.S. Ch. 76 (relating to computer offenses).

(e) Tangible personal property.--A fiduciary with authority over the tangible personal property of a decedent, protected person, principal or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including 18 Pa.C.S. Ch. 76.

(f) Disclosure by custodian.--A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) Termination of account.--A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user;

(2) a certified copy of the letters, court order, power of attorney or trust, giving the fiduciary authority over the account; and

(3) if requested by the custodian:

(i) any number, username, address or other unique subscriber or account identifier, assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user; or

(iii) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (i).

§ 3916. Custodian compliance and immunity.

(a) Requirement.--Not later than 60 days after receipt of the information required under sections 3907 (relating to disclosure of content of electronic communications of deceased user) through 3915 (relating to fiduciary duty and authority), a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated representative may apply to the court for an order directing compliance.

(b) Court order.--An order under subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702 (relating to voluntary disclosure of customer communications or records).

(c) Notification.--A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(d) Lawful access following termination request.--A custodian may deny a request under this chapter from a fiduciary or designated representative for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(e) Additional court orders.--This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated representative requesting disclosure or termination under this chapter to obtain a court order which:

(1) specifies that an account belongs to the protected person or principal;

(2) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(3) contains a finding required by law other than this chapter.

(f) Immunity.--A custodian and its officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

#### § 3917. Relation to Electronic Signatures in Global and National Commerce Act.

To the extent permitted by section 102 of the Electronic Signatures in Global and National Commerce Act (Public Law 106-30229, 15 U.S.C. § 7002), this chapter may supersede provisions of that act.

# PENNSYLVANIA UNIFORM TRANSFERS TO MINORS ACT

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The Subcommittee on Minors reviewed the Pennsylvania Uniform Transfers to Minors Act<sup>9</sup> (UTMA) with respect to the ability of testators to transfer money to a minor and delay distribution of the funds beyond the age of 21. Under current law, a testator could appoint a custodian under UTMA to receive any funds passed to a minor and specify an age up to 25 during which time the custodianship would continue.<sup>10</sup> The subcommittee recommended and the Advisory Committee agreed that the maximum age should be increased to 30 years of age. When age 25 was originally selected, age 30 was considered and rejected because the novelty of using any age other than 21 made the change appear daring enough. The members no longer feel that it is such a novel idea and wish to give testators more discretion in determining when they believe their minor heirs would be ready to manage their inheritances outright.

## *Proposed Legislation*

### AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, increasing the maximum age at which funds held under a Uniform Transfers to Minors Act designation in a will or trust may be released to the minor.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5321 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5321. Delay in transfer of custodial property after minor attains age 21.

\* \* \*

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<sup>9</sup> 20 Pa.C.S. §§ 5301 – 5321.

<sup>10</sup> *Id.* § 5321.

(c) Transfer authorized by will or trust; nomination of custodian.--The time for transfer to the minor of custodial property transferred under or pursuant to section 5303 or 5305 may be delayed under this section only if the governing will or trust or nomination provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains [25] 30 years of age, and in that case the governing will or trust or nomination shall determine the time to be specified in the transfer pursuant to section 5309.

(d) Transfer by exercise of power appointment.--The time for transfer to the minor of custodial property transferred by the irrevocable exercise of a power of appointment under section 5304 may be delayed under this section only if the transfer pursuant to section 5309 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains [25] 30 years of age.

\* \* \*

Section 2. Applicability. This amendment shall apply to all transfers made on or after the effective date of this act.

Section 3. Effective date. This act shall take effect immediately.

# PENNSYLVANIA UNIFORM PRUDENT MANAGEMENT OF INVESTMENT FUNDS ACT

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In order to bring the law governing charitable institutions in line with modern investment and expenditure practice, the National Conference of Commissioners on Uniform State Laws approved and recommended for adoption the Uniform Prudent Management of Institutional Funds Act (UPMIFA) in 2006. The Subcommittee on Uniform Prudent Management of Institutional Funds Act reviewed UPMIFA and recommended adoption of most of its provisions in Pennsylvania. The subcommittee noted that this act required amendment of some provisions of the Nonprofit Corporation Law of 1988.<sup>11</sup> The Advisory Committee adopted the subcommittee's recommended amendments and suggests them for approval by the Task Force for enactment. Further, the Advisory Committee directed the subcommittee to continue reviewing the nonprofit corporation law as it applies to decedents' estates and make further recommendations for modernizing and improving the law. The proposed amendments are as follows:

## AN ACT

Amending Title 15 (Corporations and Unincorporated Associations) and Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, creating uniformity in the regulation of assets committed to charitable purposes in the Commonwealth of Pennsylvania by eliminating disparities between the statutes governing nonprofit corporations and the statutes governing charitable trusts; further providing for nonprofit corporations guidelines for investing charitable assets; further providing for nonprofit corporations for nonjudicial agreements to modify restrictions on charitable contributions, for administrative modification of restrictions on charitable assets and of restrictions on small charitable assets, for court approval of nonjudicial agreements and administrative modifications; further providing for nonprofit corporations for court approval of the modification of impractical or outdated investment restrictions on charitable assets; further providing a definition of an "endowment"; further providing for nonprofit corporations for delegation of investment and management functions; further providing for charitable trusts for the pooling of funds for investment purposes; and further providing for notice to the donor or settlor regarding modifications of restrictions on charitable assets.

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<sup>11</sup> 15 Pa.C.S. Pt. II, Subpt. C. (Chapters 51 to 61).

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of Title 15 is amended to read:

§ 102. Definitions.

(a) Defined terms.--Subject to additional or inconsistent definitions contained in subsequent provisions of this title that are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

“Electronic.” Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

“Endowment” shall have the same meaning as set forth in 20 Pa.C.S. § 102 (relating to definitions).

\* \* \*

Section 2. Sections 5547 and 5548 of Title 15 are amended to read:

§ 5547. Authority to take and hold [trust] property.

(a) General rule.—Every nonprofit corporation [incorporated for a charitable purpose or purposes] may take, receive and hold such real and personal property, including as an endowment, as may be given, devised to, or otherwise vested in such corporation[, in trust] for [the purpose or purposes set forth in its articles] charitable purposes. [The] Such property may be held by the nonprofit corporation as a fund included in the nonprofit corporation’s general assets, including as a particular fund within such assets, or such property may be held in a trust, including a split-interest trust, as defined in the Internal Revenue Code, of which the nonprofit corporation is a named beneficiary or a trust that is not held exclusively for charitable purposes, of which the

nonprofit corporation serves as trustee. In the investment or management of charitable funds, the board of directors or other body of the corporation shall [, as trustees of such property,] be held to the same degree of responsibility and accountability as a trustee under 20 Pa.C.S. Chs. 72 (relating to prudent investor rule) and 77 (relating to trusts) [as if not incorporated, unless a degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or unless the board of directors or such other body remain under the control of the members of the corporation or third persons who retain the right to direct, and do direct, the actions of the board or other body as to the use of the trust property from time to time].

(b) Nondiversion of certain property.—[Property] Except as otherwise provided in subsections (c), (d) and (g), 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] purposes for 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] 77 specifying the disposition of the property.

(c) Nonjudicial settlement agreement.—Except as expressly provided in the gift instrument and as otherwise provided in subsection (e), if an individual or other entity placed restrictions on the use or management of property that was transferred to a nonprofit corporation referred to in subsection (a), such individual or entity, or anyone so appointed by such individual or entity in the gift instrument, and the nonprofit corporation holding such property may enter into a binding nonjudicial settlement agreement with respect to any matter involving the property.

(d) Administrative modification of restrictions on small property.—Except as expressly provided in the gift instrument and as otherwise provided in subsection (e), if a particular charitable purpose or a restriction is imposed upon property that was transferred to a nonprofit corporation

referred to in subsection (a) and such property has a value less than \$100,000, the corporation may modify or terminate the restriction, in whole or part, with the consent of the Office of the Attorney General, if::

(1) the corporation provides written notice of the corporation's intention to modify or terminate the restriction to the donor or donors, but this does not require the nonprofit corporation to provide notice to a donor's heirs or other successors in interest; and

(2) no donor objects to the modification or termination of the restriction in a writing delivered to the nonprofit corporation within 60 days of the mailing of the notice under paragraph (1).

(e) Exception.—A nonjudicial settlement agreement or administrative modification is valid only to the extent that it includes terms and conditions that could be properly approved by the court under this chapter or other applicable law and that the property remains committed to a charitable purpose or purposes.

(f) Request of court.—Any nonprofit corporation may request the court to approve a nonjudicial settlement agreement or administrative modification to determine whether the agreement or modification contains terms and conditions the court could have properly approved.

(g) Court order.—The court may modify or terminate the restriction to the extent and on conditions, if any, as the court may deem appropriate where the instrument governing property transferred to a nonprofit corporation under subsection (a) contains a restriction and the court having jurisdiction over the nonprofit corporation or property finds:

(1) the nonprofit corporation has given written notice to the donor at least 60 days before the proposed modification or termination of the restriction; and

(2) adherence to the restriction is impractical or that the existing or reasonably foreseeable economic conditions are so far different from those prevailing at the creation of the instrument that adherence to the restriction might deprive the corporation of the full benefits intended by the individual or entity making such transfer; or

(3) the restriction or the purpose described in the instrument has become unlawful, impractical or wasteful.

(h) Proceeding to enforce gift instrument.—A proceeding to enforce a gift instrument related to assets held by a nonprofit corporation for a charitable purpose may be brought by the donor during the donor’s lifetime or at any time by the Office of the Attorney General, a charitable organization expressly named in the gift instrument to receive any portion of the assets governed by the gift instrument, or any other person who has standing to do so, which may include anyone appointed in the gift instrument.

### **Official Comment**

The provisions of this section are not intended to relieve the directors of a nonprofit corporation from any fiduciary obligations and liability, as may be imposed under 15 Pa.C.S. Ch. 57, Subch. B. It is expected that the standards and obligations that apply to the directors of a nonprofit corporation are those applicable to a trustee under 20 Pa.C.S. Ch. 72. These standards and obligations apply to funds held for charitable purposes, which include any fund in which a nonprofit corporation or charitable trust has a substantial financial interest.

The Uniform Prudent Management of Institutional Funds Act provision regarding funds more than 20 years old is not adopted.

The proceeding to enforce a gift instrument provision is found in 20 Pa.C.S. § 7735(c). The notice provisions here are intended to correspond with those in 20 Pa.C.S. §§ 7709(c) and 7740.3 and are intended to give notice to a donor who is alive and whose location is reasonably ascertainable.

§ 5548. Investment of [trust] funds.

(a) General rule.—Unless otherwise specifically directed in the [trust] gift instrument, the board of directors or other body of a nonprofit corporation [incorporated for charitable purposes] shall have power to invest any assets vested in the corporation by such instrument or the proceeds thereof separately or together with other assets of the corporation, in the manner authorized for fiduciaries by 20 Pa.C.S. Ch. 72 (relating to prudent investor rule), and to retain any investments heretofore so made. Any such nonprofit corporation may, by appropriate action of its board of directors or other body, keep any investments or fractional interests in any investments, held by it or made by it, in the name of the corporation or in the name of a nominee of the corporation.

(b) Use and management.—Except as otherwise permitted under 20 Pa.C.S. Ch.[61] 77 (relating to [estates] trusts), the board of directors or other body shall apply all assets thus received to the purposes specified in the [trust] gift instrument. In so doing, the board of directors or other body may consider the activities and purposes of the nonprofit corporation. The directors or other body shall keep accurate accounts of all [trust] such funds, separate and apart from the accounts of other assets of the corporation.

(c) Determination of income.—

(1) Unless otherwise specifically directed in the [trust] gift instrument, the board of directors or other body may elect to be governed by this subsection with respect to assets thus received, including any endowment or any participation in any common trust fund.

\* \* \*

(3) If an election is made to be governed by this subsection, the term "income" shall mean a percentage of the value of the assets so held by or for the corporation. The board of directors or other body shall, in a writing maintained as part of the permanent records of the

corporation [annually] select [a] the percentage and determine that it is consistent with the long-term preservation of the real value of the assets, but in no event shall the percentage be less than 2% nor more than 7% per year. The selection may be different for separate funds and may be made either annually or subject to change only when the board of directors or other body deems such change necessary and prudent.

\* \* \*

(c.1) Delegation.—The board of directors or other body may delegate investment and management functions with the same authority as fiduciaries under 20 Pa.C.S. Ch. 72, provided that any investment agent who accepts the delegation of such functions shall be subject to the same duties and jurisdiction of a court of this Commonwealth as an investment agent accepting delegation of such duties from a fiduciary under 20 Pa.C.S. Ch. 72.

### **Official Comment**

This section applies the standards and obligations applicable to a trustee under 20 Pa.C.S. Ch. 72 to the directors of a nonprofit corporation. This is intended to retain Pennsylvania law with regard to the standards that apply to the directors of a nonprofit corporation in the supervision of charitable assets. The standard of the business judgment rule that would apply under the Uniform Prudent Management of Institutional Funds Act (UPMIFA) is not adopted with regard to the investment and management of charitable funds; the nonprofit corporation and its board of directors are held to the standard of a trustee.

These provisions are also intended apply the standards and obligations applicable to a trustee under 20 Pa.C.S. Ch. 81 to the directors of a nonprofit corporation. For example, in determining whether, and how, to apply the election described herein, a trustee may look to factors such as those described in 20 Pa.C.S. § 8105(c) as are relevant for a charitable entity and a charitable trust under 20 Pa.C.S. § 8113. The concept of the long term preservation of the real value of the assets is intended to take into account the effects of inflation and deflation as described in 20 Pa.C.S. § 8105(c)(9) and reflect an investment policy seeking a total return for the fund's investments described in 20 Pa.C.S. § 8105(d)(1).

The rebuttable presumption of imprudence for spending over 7% under UPMIFA is not adopted. The election provided under Pennsylvania law does not permit a spending election above 7%. The law should not be read to imply that spending levels at 6% or 7%, if applied on a sustained basis, are likely to preserve the real value of the assets.

A requirement to use quarterly values in determining the value of the asset is not included; unlike UPMIFA, Pennsylvania law only requires the use of annual values averaged over a period of three or more years. Requiring the use of quarterly values would be unnecessarily burdensome, especially for smaller charities, as it does not provide significant benefit in the financial analysis. Studies show that longer annual periods, such as five years, improve the stability of the income distributions without increasing risk to the corpus of the investment assets.

Section 3. Sections 102, 7202, 7203, 7710.1, 7740.3 and 8113 of Title 20 are amended to read:

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

“Court, orphans' court, or orphans' court division.” Means the court of common pleas exercising the jurisdiction referred to in this title through its orphans' court division.

“Endowment.” A fund, or part of a fund, that, under the terms of a gift instrument, is not wholly available to spend on a current basis. Terms in a gift instrument designating a gift as an “endowment,” or a direction or authorization in the gift instrument to use only “income,” “interest,” “dividends,” or “rents, issues or profits,” or “to preserve the principal intact,” or words of similar import create an “endowment,” unless other language in the gift instrument clearly evidences another intent. The term does not include “board restricted funds” or assets upon which a corporation or trust rather than a donor has imposed restrictions.

### Official Comment

An endowment may be created by use of the language described above in the gift instrument as well as in charitable solicitation materials distributed by a nonprofit corporation or charitable trust in fundraising. Charities should distinguish, for accounting and reporting purposes, between endowments and board restricted funds. For example, the determination by a board of directors that a certain fund will be held for a particular purpose, which may create a “quasi-endowment,” does not alone create an endowment under this statute. Such a quasi-endowment could, however, become an endowment if the nonprofit corporation holding such fund solicits additional contributions to the fund based on the representation that the entire fund will thereafter be held in perpetuity. As a further example, where a board denominates a fund as an endowment fund, including assets that are not restricted as to the use of income or principal, then the board may remove such denomination at its discretion, provided that any funds received from new donors relying on the “endowment” label are subject to the rules applicable to an endowment hereunder.

§ 7202. Default rule.

\* \* \*

(b) Exception.—Where the instrument establishing a trust contains a restriction on the fiduciary's power of investment and the court having jurisdiction over the trust finds that adherence to the restriction is impractical or that the existing or reasonably foreseeable economic conditions are so far different from those prevailing at the creation of the trust that adherence to the restriction might deprive the respective beneficiaries of income and principal of the full benefits the testator or settlor intended them to enjoy, the court may release the fiduciary from the restriction to the extent and on conditions, if any, as the court may deem appropriate. In the case of a trust created solely for charitable purposes, the fiduciary must provide 60 days' notice to the settlor, but this does not require the fiduciary to provide notice to the testator's or settlor's heirs or other successors in interest.

\* \* \*

§ 7203. Prudent investor rule.

\* \* \*

(c.1) Pooling of funds for charitable trusts.—Unless otherwise specifically directed in the trust instrument, a fiduciary may pool the funds of two or more charitable trusts for the purposes of management and investment, provided that the fiduciary shall keep accurate accounts of each and every trust fund, separate and apart from the accounts of other trust funds with which such funds are pooled.

\* \* \*

§ 7710.1. Nonjudicial settlement agreements – UTC 111.

\* \* \*

(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 and that property committed to a charitable purpose remains committed to a charitable purpose or purposes.

\* \* \*

§ 7740.3. Charitable trusts – UTC 413.

\* \* \*

(f) Notice to testator or settlor.—In any proceeding to apply *cy pres* under subsection (a), to modify an administrative provision under subsections (c) or (d), or to terminate a trust under subsections (d) or (e), the fiduciary must provide 60 days' notice to the settlor, but this does not require the fiduciary to provide notice to the testator's or settlor's heirs or other successors in interest.

**Official Comment**

The Uniform Prudent Management of Institutional Funds Act provision regarding funds more than 20 years old is not adopted.

§ 8113. Charitable trusts and endowments.

(a) Election.—Notwithstanding the foregoing provisions of this chapter, the trustee of a trust held exclusively for charitable purposes, including an endowment, may elect to be governed by this section unless the governing instrument expressly provides that the election provided by this section shall not be available.

\* \* \*



## HISTORICAL MEMBERSHIP OF THE ADVISORY COMMITTEE ON DECEDENTS' ESTATES LAWS

<b>ADVISORY COMMITTEE CHAIRS</b>		
<b>Service</b>	<b>Chair</b>	<b>County</b>
1945-1957	Robert Brigham, Esquire	Philadelphia
1958-1973	The Honorable Mark E. Lefever	Philadelphia
1973-1981	William H. Eckert, Esquire	Allegheny
1981-1993	George J. Hauptfuhrer, Jr., Esquire	Philadelphia
1993-2001	William McC. Houston, Esquire	Allegheny
2001-2013	Edward M. Watters, III, Esquire	Chester
2013-	William Campbell Ries, Esquire	Allegheny

<b>ADVISORY COMMITTEE MEMBERS</b>		
<b>Member</b>	<b>County</b>	<b>Service</b>
The Honorable Anthony R. Appel	Lancaster	1971-1985
Robert W. Archbald, Esquire	Philadelphia	1945-1951
Richard J. Ashby, Jr., Esquire	Lancaster	1983-1993 2001-2008
Thomas A. Beckley, Esquire	Dauphin	1971-
Paul Bedford, Esquire	Luzerne	1945-1951
The Honorable John C. Bell	Pennsylvania Supreme Court	1945-1947
Mark Bookman, Esquire	Allegheny	2000-2013
The Honorable Hugh C. Boyle	Allegheny	1959-1986
The Honorable W. Walter Braham	Lawrence	1945-1979
Philip A. Bregy, Esquire	Philadelphia	1947-1986
Robert Brigham, Esquire	Philadelphia	1945-1957
Norman H. Brown, Esquire	Philadelphia	1971-1985
Mitchell E. Chadrow, Esquire	Montgomery	2005-
Robert Clofine, Esquire	York	2010-
Paul E. Clouser, Esquire	Dauphin	1971-1989
Reuben E. Cohen, Esquire	Philadelphia	1949-1988
Ira B. Coldren, Jr., Esquire	Fayette	1992-2006
William R. Cooper, Esquire	Montgomery	1997-2013
William J. Copeland, Esquire	Allegheny	1971-1975
Robert E. Diehl, Jr., Esquire	Northumberland	1992-2016

<b>ADVISORY COMMITTEE MEMBERS</b>		
<b>Member</b>	<b>County</b>	<b>Service</b>
The Honorable Stephanie Domitrovich	Erie	2009-
The Honorable Calvin S. Drayer, Jr.	Montgomery	1992-2016
Robert F. Duguay, Esquire	Dauphin	1971-1982
Charles H. Ealy, Esquire	Somerset	1948-1949
William H. Eckert, Esquire	Allegheny	1945-1981
Karen A. Fahrner, Esquire	Delaware	2007-
Robert C. Fernandez, Esquire	Montgomery	1977-1994
The Honorable Roger M. Fischer	Erie	1992-2004
Julia B. Fisher, Esquire	Philadelphia	2003-
Roland Fleeer, Esquire	Montgomery	1945-1975
Robert L. Freedman, Esquire	Philadelphia	1982-
Robert I. Friedman, Esquire	Philadelphia	2009-
The Honorable Ethan A. Gearhart	Lehigh	1945-1983
J. Frederick Gehr, Esquire	Lycoming	1971-1990
G. Donald Gerlach, Esquire	Allegheny	1975-2000
W. Pitt Gifford, Esquire	Erie	1945-1961
Jay C. Glickman, Esquire	Montgomery	2002-
H. Amos Goodall, Jr., Esquire	Centre	2011-
Edward J. Greene, Esquire	Allegheny	1992-2003
Richard L. Grossman, Esquire	Montgomery	1971-
George J. Hauptfuhrer, Jr., Esquire	Philadelphia	1971-1993
Neil E. Hendershot, Esquire	Dauphin	1992-
Thomas O. Hiscott, Esquire	Montgomery	2007-
The Honorable Andrew Hourigan	Luzerne	1945-1951
William McC. Houston, Esquire	Allegheny	1971-2001
James A. Humphreys, III, Esquire	Lancaster	1984-1998
The Honorable David G. Hunter	Philadelphia	1945-1961
A.J. White Hutton, Esquire	Franklin	1945-1961
Frederick F. Jones, Esquire	Erie	1971-1977
David J. Kaufman, Esquire	Philadelphia	1985-2009
The Honorable Robert A. Kelly	Allegheny	2002-2010
William H. Latimer, Jr., Esquire	Allegheny	1975-1981
The Honorable Anne E. Lazarus	Pennsylvania Superior Court	2004-
The Honorable Mark E. Lefever	Philadelphia	1945-1973
Robert P. Leiby, Jr., Esquire	Philadelphia	1975-1996
Shippen Lewis, Esquire	Philadelphia	1945-1951
The Honorable William W. Litke	Centre	1945-1991
John J. Lombard, Jr., Esquire	Philadelphia	1992-
Alan S. Loose, Esquire	Carbon	1945-1972
The Honorable J. Paul MacElree	Chester	1945-1971

<b>ADVISORY COMMITTEE MEMBERS</b>		
<b>Member</b>	<b>County</b>	<b>Service</b>
James F. Mannion, Esquire	Montgomery	2006-
The Honorable Frederick A. Marx	Berks	1945-1961
Benjamin G. McFate, Esquire	Venango	1975-1983
Edwin L.R. McKean, Esquire	Erie	1992-2007
Ralph D. McKee, Esquire	Allegheny	1945-1975
Richard G. Miller, Esquire	Washington	1945-1949
John F. Meck, Esquire	Allegheny	2001-
Michael J. Mullaugh, Esquire	Allegheny	1994-
R. Thomas Murphy, Esquire	Franklin	2010-
The Honorable Lawrence O'Toole	Allegheny	2010-
The Honorable Paula Francisco Ott	Pennsylvania Superior Court	2001-
The Honorable Stanley R. Ott	Montgomery	2010-
The Honorable Edmund S. Pawelec	Philadelphia	1978-2004
Richard L. Placey, Esquire	Dauphin	1985-
Raymond M. Remick, Esquire	Philadelphia	1945-1949
The Honorable Karl E. Richards	Dauphin	1945-1961
William Campbell Ries, Esquire	Allegheny	1983-
William M. Robinson, Esquire	Allegheny	1945-1961
Bruce A. Rosenfield, Esquire	Philadelphia	1992-
Michael J. Saile, Esquire	Bucks	2003-
The Honorable Edwin H. Satterthwaite	Bucks	1971-1985
James G. Schmidt, Esquire	Philadelphia	1949-1995
Pam H. Schneider, Esquire	Philadelphia	1992-2011
Dean John J. Sciuлло	Allegheny	1978-2000
Arthur M. Scully, Esquire	Allegheny	1945-1949
Clarence L. Shaver, Esquire	Somerset	1945-1961
The Honorable Louis Sherman	Philadelphia	1977-1984
K.L. Shirk, Jr., Esquire	Lancaster	1983-2006
M. Paul Smith, Esquire	Montgomery	1947-1998
Boyd Lee Spahr, Esquire	Philadelphia	1945-1961
Thomas Stokes, Esquire	Philadelphia	1945-1951
J. Pennington Straus, Esquire	Philadelphia	1971-1996
The Honorable Lee F. Swope	Dauphin	1971-1991
The Honorable Alfred L. Taxis	Montgomery	1971-1985
Regina O. Thomas, Esquire	Philadelphia	1985-2011
The Honorable Robert W. Tredinnick	Montgomery	1985-1987
The Honorable Thomas P. Trimble	Allegheny	1945-1951
The Honorable Edward L. Van Roden	Delaware	1949-1972
Paul C. Wagner, Esquire	Philadelphia	1945-1979
Donald R. Waisel, Esquire	Dauphin	1978-2008

**ADVISORY COMMITTEE MEMBERS**

<b>Member</b>	<b>County</b>	<b>Service</b>
Edward M. Watters, III, Esquire	Chester	1992-
Robert B. Wolf, Esquire	Allegheny	2000-2016
Lenard Wolffe, Esquire	Philadelphia	1977-1978
The Honorable Lawrence E. Wood	Chester	1992-2002
W. Steven Woodward, Esquire	Chester	2011-
C. Thomas Work, Esquire	Berks	1985-
The Honorable A. Kirk Wrenshall	Washington	1945-1972
The Honorable J. Colvin Wright	Pennsylvania Superior Court	1945-1978
The Honorable Vincent X Yakowicz	Cumberland	1971-2010
The Honorable Paul R. Zavarella	Allegheny	1985-2002
Adolph L. Zeman, Esquire	Washington	1945-1976