

JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

**Probate, Estates and Fiduciaries:
Title 20 of the Pennsylvania Consolidated Statutes**

A PROPOSED DIRECTED TRUST ACT WITH OTHER AMENDMENTS FOR ESTATES AND TRUSTS

Report of the Advisory Committee on Decedents' Estates Laws

June 2021



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

REPORT

*Probate, Estates and Fiduciaries:
Title 20 of the Pennsylvania Consolidated Statutes
A Proposed Directed Trust Act
with other Amendments for Estates and Trusts*

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JOINT STATE GOVERNMENT COMMISSION

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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.¹

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.

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.² 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 contained in a study report.

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

² 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 receives the financial benefit of such volunteerism, along with their shared 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 to construe or apply its provisions.³

Since its inception, the Commission has published over 400 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.

³ 1 Pa.C.S. § 1939.

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To the Members of the General Assembly of Pennsylvania:

The Joint State Government Commission is pleased to announce the release of the report, *A Proposed Directed Trust Act with other Amendments for Estates and Trusts*.

The report includes legislation proposed by the Advisory Committee on Decedents' Estates Laws. It contains proposed statutory amendments covering aspects of probate, estates, and fiduciaries. The first proposal contains legislation developed by the advisory committee to add and harmonize provisions dealing with estates and trusts. Several amendments clarify that the principles concerning modification by circumstances of wills apply also to trusts. The second proposal contains legislation developed by the advisory committee in cooperation with the Pennsylvania Bankers Association, primarily to add a subchapter relating to directed trusts along with some harmonizing provisions throughout the chapter relating to trusts. Additionally, a proposed section relates to nonjudicial account settlement.

On behalf of the Commission, I would like to thank the members of the Advisory Committee for the longstanding contributions of knowledge, expertise, and wisdom they have given to the Decedents' Estates Laws of Pennsylvania.

Sincerely,

Glenn J. Pasewicz
Executive Director

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SUMMARY OF PROPOSED AMENDMENTS TO 20 Pa.C.S.

This report contains proposed statutory amendments covering aspects of probate, estates and fiduciaries. The first proposal contains legislation developed by the advisory committee to add and harmonize provisions dealing with estates and trusts. Several amendments clarify that the principles concerning modification by circumstances of wills apply also to trusts. The second proposal contains legislation developed by the advisory committee in cooperation with the Pennsylvania Bankers Association, primarily to add a subchapter relating to directed trusts along with some harmonizing provisions throughout the chapter relating to trusts. Additionally, a proposed section relates to nonjudicial account settlement.

Penalty Clause for Contest

The proposed amendment of § 2521 (relating to penalty clause for contest)⁴ removes the reference to trusts to place that provision in ch. 77 (relating to trusts) instead of retaining it in ch. 25 (relating to wills). The remainder of the amendment reverses odd wording to make the wording clearer and substitute the term, beneficiary, for the term, interested person.

Proposed Amendments Relating to Pretermitted Spouses

Primarily, revocable trusts substitute for wills. In many cases a testatrix or settlor might intentionally omit a second or third spouse from sharing under a will or trust, having provided for that spouse by means of beneficiary designations directing disposition of life insurance proceeds, retirement assets, and annuities, and *via* pay-on-death accounts and jointly owned property.

Reflecting the societal changes of an increased number of remarriages following divorce and death of a first spouse, it reasonable to assume that most testators would want to continue to provide for children from a prior marriage, and the law should effectuate this intent. The proposed amendment of § 2507 (relating to modification by circumstances)⁵ therefore provides the pretermitted spouse with an intestate share in only that portion of the decedent's estate that neither passes to the decedent's children by a prior marriage nor to such children's descendants. In addition, where the testator is also the settlor of a revocable trust, the amendment provides that there is no modification of the will where the testator has made or amended the revocable trust after marrying the surviving spouse. This reflects an assumption that the omission of the spouse from the will is likely intentional if the testator makes or amends a revocable trust after the marriage and does not change the will. Another amendment proposed for the same section reflects an assumption that the omission of the child from the will is likely intentional if the testator makes

⁴ *Infra* p. 9.

⁵ *Infra* p. 8.

or amends a revocable trust after the birth or adoption of the omitted child and does not change the will.

The primary thrust of the proposed amendment to § 7710.2 (relating to rules of construction and interpretation)⁶ and the addition of § 7710.3 (relating to modification by circumstances)⁷ is to clarify that the principles addressed in § 2507 concerning modification by circumstances also apply to trusts. This deals with how the statute would apply if a decedent included the spouse in either the will or the revocable trust but omitted the spouse from the other document. The presumption should be that omission of the spouse from one document but not the other must have been intentional if the decedent thought to take action as to one document or the other.

Because § 7710.3 is added to clarify that the same circumstances that cause a will to be modified under § 2507 apply to a revocable trust, it statutorily reverses *In re: Trust under Deed of David P. Kulig*⁸ to the extent that *Kulig* held that the provisions of § 2507 do not apply to a revocable trust. The pretermitted spouse provisions in both §§ 2507 and 7710.3 provide a carve out for assets passing to children and issue from a prior relationship. In many such cases, the individual intentionally retains a prior will or trust that provides for the individual's children or issue but not his or her new spouse.

With respect to pretermitted spouses and after-born or adopted children, the proposed amendment applies only to revocable trusts. The proposed amendment to § 2102 (relating to share of surviving spouse)⁹ provides that the \$30,000 spousal intestacy allowance¹⁰ will be paid only once where the spouse is entitled to pretermitted spousal shares under both the will and a trust.

The proposed amendment to § 6111.1 (relating to modification by divorce or pending divorce)¹¹ states that the rules addressing modification of conveyances by circumstance in that section (divorce or pending divorce) do not apply to trusts under ch. 77. This mimics the provision in § 6114(b) (relating to rules of interpretation), which provides that the rules of interpretation with respect to conveyances do not apply to trusts under ch. 77. Since the proposed amendments will add Uniform Trust Act rules regarding modification of trusts by circumstances,¹² the companion rules addressing modification of conveyances by circumstances should not apply to trusts.

Other Proposed Amendments to Uniform Trust Act

A key amendment for the entire chapter is the usage of terms of a trust to follow the Uniform Trust Code and recognize how that code and Pennsylvania statutory law facilitate modification of a trust and the use of nonjudicial settlement agreements.

⁶ *Infra* p. 10.

⁷ *Infra* pp. 11-12.

⁸ 175 A.3d 222 (Pa. 2017).

⁹ *Infra* p. 7.

¹⁰ *E.g.*, where the decedent has surviving parents but no issue.

¹¹ *Infra* p. 10.

¹² Including divorce or pending divorce.

This proposed addition of § 7785.1 (relating to nonjudicial account settlement)¹³ is an optional, statutory alternative to simplify the settlement of a trustee's account if the trust terminates or the trustee ceases to serve or seeks discharge for an interim accounting period. If used, it is intended to shorten the period a beneficiary might otherwise need to wait before receiving a distribution from the trust.

Proposed Directed Trust Act

The rest of these remarks focus on the proposed addition of subch. H-1 (relating to directed trusts)¹⁴ because that is the primary, substantive amendment. These proposed amendments would authorize a settlor or testator to unbundle a trustee's responsibilities in two respects. One is to allow a settlor or testator to allocate different trust functions, such as investment management and discretionary distributions, to different trustees. The second is to allocate certain trust functions to persons, known as "trust directors," who are not trustees and might be unavailable or unwilling to serve as trustees, so as to avail a trust's beneficiaries of expertise the trustees do not have. Liability would follow duty, so that the trustee or outside trust director who holds the responsibility would be liable for its discharge, and trustees to whom the duty is *not* allocated would not be liable for the discharge of that duty by others absent the trustees' own willful misconduct. Many states, including Delaware, have enacted statutes that enable such "directed trusts." The following four situations illustrate how the concept most often arises in practice:

John and Mary have successfully relied upon Brother's investment advice. Nearing retirement, Brother is not willing to serve as a trustee for their children after both John and Mary have died. However, Brother is willing to serve as the investment manager for trusts of which the children will be current beneficiaries. John and Mary are prepared to appoint Bank as trustee and to empower Brother to make all investment decisions for the trusts.

Bank is prepared to act as trustee of a trust that will hold a closely-held business interest for which Aunt Mary has particular expertise and the family's confidence. Family is prepared to appoint Bank as trustee and to give authority to Aunt Mary with respect to the business interest. Bank wants to understand its liability in this relationship.

Henry and Agnes have a Troubled Child. Troubled Child has always been close to Uncle John, who has a knack for encouraging Troubled Child to pursue wholesome conduct. Uncle John is not prepared to be a co-trustee and be bothered with the bookkeeping, tax reporting and investment management responsibilities associated with a trust for Troubled Child. He is willing to participate in decisions as to when Troubled Child should receive money from the trust. Henry and Agnes would like to appoint Bank as trustee and to empower Uncle John to veto Bank's proposals to distribute trust assets to or for Troubled Child.

¹³ *Infra* pp. 36-38.

¹⁴ *Infra* pp. 24-36.

Mercurial Entrepreneur blisters at the notion that she may not change an irrevocable trust she has just established for the purpose of acquiring substantial insurance on her life and would like to empower Sister, with whom she has always been close, to change governance, dispositive and administrative provisions. She is describing the role of a “trust protector.”

The issues raised by these fact patterns are:

- 1) Can trustees without express authority given by the trust instrument delegate certain duties, such as investment responsibility, among themselves or hire third parties, such as investment advisors, to perform certain of the trustees’ duties?
- 2) Can a trust instrument prescribe different duties for different trustees and confine liability for violating a particular duty to the trustee charged with that duty?
- 3) How secure is an excluded trustee in his freedom from liability for actions taken by the other trustees?
- 4) Can a trust instrument appoint a person who is not a trustee to have responsibility for certain trustee functions, and can the trust instrument divide liability between the trustees and that person?

Pennsylvania law currently addresses these issues in 20 Pa.C.S. §§ 7763 (relating to cotrustees – UTC 703), 7777 (relating to delegation by trustee) and 7778 (relating to powers to direct – UTC 808). The key section, § 7778, is insufficiently detailed, particularly regarding the liability implications of splitting a trustee’s traditional duties into pieces, to be especially helpful to practitioners or trust companies. For that reason, it is unsatisfactory.

The proposed Directed Trust Act¹⁵ follows the Uniform Directed Trust Act that was approved and recommended for enactment in all the states in 2017¹⁶ by the National Conference of Commissioners on Uniform State Laws. Much like the Uniform Trust Act, the draft would present concepts in sequence with the Uniform Act.

- 1) The definition for willful misconduct in takes an approach similar to Delaware’s, which has incorporated the “willful misconduct” standard into its directed trust law and defined the term in a similar manner.
- 2) The Directed Trust Act applies to trusts in existence on its effective date and to trusts established thereafter and elaborates upon powers of direction that were enabled by prior law, specifically, § 7778. However, § 7780.13 (relating

¹⁵ Proposed subch. H-1, *id.*

¹⁶ Nat’l Conf. of Commissioners on Unif. State Laws, Unif. Directed Trust Act (2017), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=eedab7b6-8fd9-29f1-835f-ed4f385e12aa&forceDialog=0>.

application – UDTA 3) is not intended to affect or provide a basis to question decisions that were made or actions that were taken by trustees and persons that directed their actions under prior law; the relationships among trustees, persons that directed their actions and a trust’s beneficiaries under prior law; or the allocation of duties and liability between cotrustees under prior law. Powers to direct in § 7778 of the UTA would be replaced by the Directed Trust Act.

- 3) The Uniform Act lists no illustrative powers. A statute that includes default powers typically associated with investment management will help both practitioners and banking institutions. Many statutes, including those of Delaware, Illinois and North Carolina, do that. So does this proposal. However, the Pennsylvania proposal would activate default powers related to investments only if the terms of the trust cite the statute and specifically appoint a trust director for investments. Powers given trust directors for investments may borrow from this list or disregard the list entirely. Powers given trust protectors are much more varied and subject to tax and governance constraints that investment powers seldom present. So the proposal identifies no default powers for trust protectors and instead simply illustrates the breadth of powers that might be given a trust protector. The terms of a trust must specify every power given to a trust protector.
- 4) The proposed statute details the fiduciary duty and potential liability of trust directors and directed trustees so that where fiduciary duty resides for any particular function is always clear.
- 5) The notice required by § 7780.3 (relating to duty to inform and report) would include the names, addresses and telephone numbers of all trust directors so that a trust’s beneficiaries are aware of the directed relationship.

PROPOSED AMENDMENTS TO 20 Pa.C.S. FOR ESTATES AND TRUSTS

Proposed Statutory Amendments¹⁷

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in intestate succession, further providing for share of surviving spouse; in wills, further providing modification by circumstances, further providing for penalty clause for contest; in administration and personal representatives, providing for application to co-personal representatives; in estates, further providing for modification by divorce or pending divorce; in trusts, further providing for rules of construction and interpretation, providing for modification by circumstances, providing for penalty clause for contest; and making conforming amendments.

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

Section 1. Section 2102 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2102. Share of surviving spouse.

The intestate share of a decedent's surviving spouse is:

* * *

(6) If a surviving spouse is entitled to an intestate share under both sections 2507(3) (relating to modification by circumstances) and 7710.3(a)(2) (relating to modification by circumstances), the surviving spouse shall be entitled to only one allowance of \$30,000 under either paragraph (2) or (3), with such amount being paid first from the estate under section 2507(3) before any portion of the \$30,000 allowance is paid under section 7710.3(a)(2).

¹⁷ "Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored." 101 Pa. Code § 15.222.

Comment

Since concurrent amendments to §§ 2507(3) and 7710.3(a)(2) create the possibility that a pretermitted spouse may be entitled to an intestate share of both the decedent's probate estate and revocable trust estate, paragraph (6) is added to clarify that the pretermitted spouse receives only one \$30,000 allowance under § 2102(2) or (3).

Section 2. Section 2507 of Title 20 is amended to read:

§ 2507. Modification by circumstances.

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

* * *

(3) Marriage.--

(i) If the testator marries after making a will, the surviving spouse shall receive the share of the estate [to which he would have been entitled had the testator died intestate] under subparagraph (ii), unless:

(A) the will shall give [him] the surviving spouse a greater share; [or unless]

(B) it appears from the will that the will was made in contemplation of marriage to the surviving spouse; or

(C) upon the testator's death there exists a revocable trust which was made or amended by the testator on or after the date of the testator's marriage to the surviving spouse.

(ii) The share to which the surviving spouse is entitled under this paragraph is the share to which the surviving spouse would have been entitled had the testator died intestate, but if the testator is survived by one or more children who are not children of the surviving spouse, or by issue of such child or children, the share shall be calculated based on, and paid only from, the portion, if any, of the testator's estate not passing to such child or issue.

(4) Birth or adoption.--If the testator fails to provide in [his] the testator's will for [his] the testator's child born or adopted after making [his] the will, [unless it appears from the will that the failure was intentional,] such child shall receive out of the testator's property not passing to a surviving spouse, such share as [he] the child would have received if the testator had died unmarried and intestate owning only that portion of [his] the testator's estate not passing to a surviving spouse, unless:

(i) it appears from the will that the failure was intentional; or

(ii) upon the testator's death there exists a revocable trust which was made or amended by the testator on or after the date such omitted child was born or adopted.

* * *

Comment

The amendment to paragraph (3) reflects societal changes and the increased number of remarriages following the divorce or death of the first spouse. In such situations, it is reasonable to assume that most testators would want to continue to provide for children from a prior marriage, and the law should effectuate this intent. The amendment therefore provides the pretermitted spouse with an intestate share in only that portion of the decedent's estate that neither passes to the decedent's children by a prior marriage nor to such children's descendants. In addition, where the testator is also the settlor of a revocable trust, the amendment provides that there is no modification of the will where the testator has made or amended the revocable trust after marrying the surviving spouse. This reflects an assumption that the omission of the spouse from the will is likely intentional if the testator makes or amends a revocable trust after the marriage and does not change the will.

The application of paragraph (3) can be barred by a marital agreement or waiver.

The amendment to paragraph (4) reflects an assumption that the omission of the child from the will is likely intentional if the testator makes or amends a revocable trust after the birth or adoption of the omitted child and does not change the will.

Section 3. Section 2521 of Title 20 is amended to read:

§ 2521. Penalty clause for contest.

A provision in a will [or trust] purporting to penalize a [an interested person] beneficiary for contesting the will [or trust] or instituting other proceedings relating to the estate [or trust] is [unenforceable] enforceable [if] unless the court finds there was probable cause [exists] for contesting the will or instituting the proceedings.

Section 4. Title 20 is amended by adding a section to read:

§ 3327.1. Application to co-personal representatives.

A will may assign different duties and different standards of care to different personal representatives, and may limit the liability of a personal representative who follows a direction or veto of another personal representative to whom the will gives exclusive authority over the subject of the direction or veto.

Comment

This section enables a testator to apply to personal representatives the same rules that § 7780.23 enables the terms of a trust to apply to cotrustees.

Section 5. Section 6111.1 of Title 20 is amended to read:

§ 6111.1. Modification by divorce or pending divorce.

(a) Effectivity.--Any provision in a conveyance which was revocable by a conveyer at the time of the conveyer's death and which was to take effect at or after the conveyer's death in favor of or relating to the conveyer's spouse shall become ineffective for all purposes, unless it appears in the governing instrument that the provision was intended to survive a divorce, if the conveyer after making the conveyance:

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

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

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

Comment

The rules which apply to the modification of a revocable trust in the event of the settlor's divorce or pending divorce are now covered in § 7710.3(a)(1).

Section 6. Section 7710.2 of Title 20 is amended to read:

§ 7710.2. Rules of construction and interpretation[- UTC 112.

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

Unless the terms of the trust contain contrary rules of construction or interpretation, the rules in section 2514 (relating to rules of interpretation) and other judicial rules of interpretation that apply to wills and testamentary trusts shall be applied in interpreting the terms of all inter vivos trusts, as appropriate. Whenever a provision in section 2514 refers to a "will", "estate", "testator", or a similar term relevant primarily to wills and estates or a taker under a will or an estate, the term shall be modified to mean "terms of the trust", "trust", "settlor", "trust beneficiary", or a similar term to reflect the application of the principles of those provisions to an inter vivos trust.

Comment

This section imports to *inter vivos* trusts § 2514 and other statutory and judicial rules of construction and interpretation that apply to wills and testamentary trusts.

Section 7. Title 20 is amended to by adding sections to read:

§ 7710.3. Modification by circumstances.

(a) Circumstances.--Revocable trusts shall be modified upon the occurrence of any of the following circumstances, among others:

(1) Divorce or pending divorce.--Any provision in a settlor's revocable trust in favor of or relating to the settlor's spouse shall become ineffective for all purposes, unless it appears from the revocable trust that the provision was intended to survive a divorce, if the settlor after making the revocable trust:

(i) is divorced from such spouse; or

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

(2) Marriage.--

(i) If the settlor marries after the later of making or amending a revocable trust, the settlor's surviving spouse shall receive the share of the assets held in the revocable trust under subparagraph (ii) unless:

(A) the revocable trust shall give the surviving spouse a greater share;

(B) it appears from the revocable trust that the trust was made or amended in contemplation of marriage to the surviving spouse; or

(C) the settlor dies with a will which was made or amended on or after the date of the settlor's marriage to the surviving spouse.

(ii) The share to which the surviving spouse is entitled under this paragraph is the share to which the surviving spouse would have been entitled had the settlor died intestate and owning the assets held in the revocable trust, but if the settlor is survived by one or more children who are not children of the surviving spouse, or by issue of such child or children, the share shall be calculated based on, and paid only from, the portion, if any, of the trust estate not passing to such child or issue.

(3) Birth or adoption.--If the settlor fails to provide in the settlor's revocable trust for the settlor's child born or adopted after the later of making or amending a revocable trust, such child shall receive out of the assets held in the revocable trust not passing to a surviving spouse, such share as the child would have received if the settlor died unmarried and intestate owning only that portion of the assets held in the revocable trust not passing to a surviving spouse, unless:

(i) it appears from the revocable trust that the failure was intentional; or

(ii) the settlor dies with a will which was made or amended on or after the date such omitted child was born or adopted.

(b) Slaying.--The provisions of Chapter 88 (relating to slayers) shall apply to all trusts.

(c) Good faith distribution.--No fiduciary without knowledge and when acting in good faith solely in a fiduciary capacity shall be held liable to an aggrieved surviving spouse, intestate heir or beneficiary for making a distribution under this section or under the governing instrument as a result of any will or codicil admitted to probate subsequent to six months after the testator's death.

Comment

This section is a parallel provision to § 2507 and is added to clarify that the same circumstances which cause a will to be modified under § 2507 apply to a revocable trust. In this regard, it statutorily reverses *In re: Trust under Deed of David P. Kulig*, 175 A.3d 222 (Pa. 2017), to the extent that Kulig held that the provisions of § 2507 do not apply to a revocable trust.

§ 7710.4. Penalty clause for contest.

A term of a trust purporting to penalize a beneficiary for contesting the trust or instituting other proceedings relating to the trust is enforceable unless the court finds there was probable cause for contesting the trust or instituting the proceedings.

Section 8. This act shall apply as follows:

(1) The amendment of 20 Pa.C.S. § 2507(3) and (4) and 20 Pa.C.S. § 6111.1 and the addition of 20 Pa.C.S. § 2102(6) and 20 Pa.C.S. § 7710.3(a) and (c) shall apply to estates of decedents and to settlors dying on or after the effective date of this act.

(2) The addition of 20 Pa.C.S. § 7710.3(b) shall apply to all trusts and settlors whether the trust was made before, on or after the effective date of this act, or the settlor died before, on or after the effective date of this act.

(3) The amendment of 20 Pa.C.S. § 7710.2 shall apply to trusts made before, on or after the effective date of this act.

Section 9. This act shall take effect in 90 days.

PROPOSED AMENDMENTS TO 20 Pa.C.S. FOR DIRECTED TRUSTS

Proposed Statutory Amendments¹⁸

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in trusts, further providing for definitions, providing for directed trusts, providing for nonjudicial account settlement; and making conforming amendments.

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

Section 1. Section 7703 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 7703. Definitions - UTC 103.

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

* * *

“Breach of trust.” A violation by a trustee or trust director of a duty the trustee or trust director owes to a beneficiary of the trust.

* * *

"Interests of the beneficiaries." The beneficial interests provided in the terms of the trust [instrument].

* * *

“Power of appointment.” A power given to a person by the terms of the trust, exercisable in a non-fiduciary capacity, to grant and define a beneficial interest in trust property or to grant a power of appointment over the trust property.

* * *

"Spendthrift provision." A [provision in] term of a trust [instrument] that restrains both voluntary and involuntary transfer of a beneficiary's interest.

¹⁸ “Language intended to be taken out of an existing provision is enclosed in brackets and new language to be added is underscored.” 101 Pa. Code § 15.222.

“Terms of a trust.”

(1) Except as otherwise provided in paragraph (2), the manifestation of the settlor’s intent expressed in the trust instrument; or

(2) the trust’s provisions, as established, determined, or amended by a trustee or other person in accordance with applicable law, by a court order, or by a nonjudicial settlement agreement under section 7710.1 (relating to nonjudicial settlement agreements – UTC 111), or rules of construction.

* * *

Comment

“Terms of a trust” is introduced into the Uniform Trust Act to follow the Uniform Trust Code and recognize how both statutes facilitate modification of a trust and the use of nonjudicial settlement agreements. Lawful modifications and agreements are as much “terms of a trust” as the writing by which the trust was established. The “terms of a trust” also reflect the application of rules of construction.

The Uniform Trust Code would include among the terms of a trust manifestations of the settlor’s intent by evidence outside the trust instrument “that *would* be admissible in a judicial proceeding” (emphasis added). This concept is not adopted in Pennsylvania. Because paragraph (2) includes among the “terms of a trust” “the trust’s provisions, as established [or] determined ... by a ... court order,” the rejected language is redundant where a court ordered a modification or approved a settlement agreement, and introduces uncertainty if it did not.

Section 2. Section 7705 of Title 20 is amended to read:

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

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

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

* * *

(2) Subject to sections 7780.20 (relating to duty and liability of directed trustee - UDTA 9), 7780.22 (relating to no duty to monitor, inform, or advise - UDTA 11) and 7780.23 (relating to application to cotrustee - UDTA 12),[The] the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust as set forth in section 7771 (relating to duty to administer trust - UTC 801).

* * *

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

* * *

Section 3. Section 7707 of Title 20 is amended to read:

§ 7707. Governing law - UTC 107.

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

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

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

Section 4. Section 7708 of Title 20 is amended to read:

§ 7708. Situs of trust.

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

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

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

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

(4) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction.

(b) Unspecified in trust [instrument].--If the terms of a trust [instrument does] do not specify a situs:

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

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

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

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

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

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

(ii) after the settlor's death:

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

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

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

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

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

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

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

(iii) one or more of the beneficiaries reside.

* * *

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

* * *

Section 5. Section 7710.1 of Title 20 is amended to read:

§ 7710.1. Nonjudicial settlement agreements - UTC 111.

(a) (Reserved).

(b) General rule.--Except as otherwise provided in subsection (c), all beneficiaries, [and] all trustees, [of] and such other persons, if any, who have an interest in a matter relating to a trust may enter into a binding nonjudicial settlement agreement with respect to the matter. The rules of Subchapter C (relating to representation) shall apply to a settlement agreement under this section. Persons having interests in the matter shall be the same as indispensable parties to a court action seeking the same result.

* * *

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

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

* * *

Section 6. Section 7735 of Title 20 is amended to read:

§ 7735. Charitable purposes; enforcement - UTC 405.

* * *

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

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

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

Section 7. Section 7738 of Title 20 is amended to read:

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

* * *

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

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

Section 8. Section 7739 of Title 20 is amended to read:

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

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

* * *

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

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

Section 9. Section 7740.5 of Title 20 is amended to read:

§ 7740.5. Reformation to correct mistakes - UTC 415.

The court may reform the terms of a trust [instrument], even if unambiguous, to conform to the settlor's probable intention if it is proved by clear and convincing evidence that both the settlor's intent [as expressed in] and the terms of the trust [instrument was] were affected by a

mistake of fact or law, whether in expression or inducement. The court may provide that the modification have retroactive effect.

Section 10. Section 7740.6 of Title 20 is amended to read:

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

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

Section 11. Section 7742(b) of Title 20 is amended to read:

§ 7742. Spendthrift provision - UTC 502.

* * *

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

* * *

Section 12. Section 7745 of Title 20 is amended to read:

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

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

* * *

Section 13. Section 7746(b) of Title 20 is amended to read:

§ 7746. Overdue distribution - UTC 506.

* * *

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

Section 14. Section 7752 of Title 20 is amended to read:

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

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

* * *

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

(1) by substantial compliance with a method provided in the terms of the trust [instrument];

or

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

* * *

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

* * *

Section 15. Section 7753 of Title 20 is amended to read:

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

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

* * *

(c) Direction contrary to trust terms.--While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with other persons, the trustee may follow a written direction from the settlor and those persons that is contrary to the terms of the trust.

Section 16. Section 7761(a) of Title 20 is amended to read:

§ 7761. Accepting or declining trusteeship - UTC 701.

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

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

(2) if the terms of the trust [instrument does] do not provide a method or the method provided in the [trust instrument] terms is not expressly made exclusive, by accepting delivery

of the trust property, exercising powers or performing duties as trustee or by otherwise indicating acceptance of the trusteeship.

Section 17. Section 7762 of Title 20 is amended to read:

§ 7762. Trustee's bond - UTC 702.

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

* * *

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

Section 18. Section 7763 of Title 20 is amended to read:

§ 7763. Cotrustees - UTC 703.

* * *

(a.1) When no majority.--When a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them, unless otherwise provided by the terms of the trust [instrument], the court in its discretion, upon petition filed by any of the trustees or any party in interest, aided if necessary by the report of a master, may direct the exercise or nonexercise of the power as it deems necessary for the best interest of the trust.

* * *

(c) Performance.--Subject to section 7780.23 (relating to application to cotrustee - UDTA 12), a [A] cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under the law or other reason or the cotrustee has properly delegated the performance of the function to another trustee.

* * *

(g) Reasonable care.--Subject to section 7780.23, each [Each] trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a breach of trust involving fraud or self-dealing;
- and
- (2) compel a cotrustee to redress a breach of trust involving fraud or self-dealing.

* * *

Section 19. Section 7764 of Title 20 is amended to read:

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

* * *

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

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

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

* * *

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

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

* * *

Section 20. Section 7765(a.1) of Title 20 is amended to read:

§ 7765. Resignation of trustee; filing resignation.

* * *

(a.1) General rule.--A trustee may resign:

* * *

(2) without court approval if authorized to resign by the terms of the trust [instrument];

or

* * *

Section 21. Section 7768 of Title 20 is amended to read:

§ 7768. Compensation of trustee - UTC 708.

(a) If unspecified.--If neither the terms of the trust [instrument] nor a separate written agreement signed by the settlor or anyone who is authorized by the terms of the trust [instrument] to do so specifies the trustee's compensation, the trustee is entitled to compensation that is reasonable under the circumstances. Neither a compensation provision in [a] the terms of a trust [instrument] nor a fee agreement governs compensation payable from trust principal unless it explicitly so provides.

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

* * *

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

(3) the trustee performed extraordinary services, and the [trust instrument or fee agreement does not specify the] trustee's compensation for those services is not specified in the terms of the trust or fee agreement.

* * *

Section 22. Section 7772(b) of Title 20 is amended to read:

§ 7772. Duty of loyalty - UTC 802.

* * *

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

(1) the transaction was authorized by the terms of the trust [instrument];

* * *

Section 23. Section 7778 of Title 20 is amended to read:

§ 7778. Powers to direct [- UTC 808.

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

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

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

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

(e) Directed trust.--If the terms of a trust provide that a person who is not a trustee may direct a trustee to take or not take certain actions, or that a person who is not a trustee may change the terms of the trust, Subchapter H-1 (relating to directed trusts) applies.

Section 24. Section 7780.3 of Title 20 is amended to read:

§ 7780.3. Duty to inform and report.

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

administration. A trustee shall promptly respond to the Department of [Public Welfare's] Human Services' reasonable request for information related to the trust's administration when a settlor or beneficiary is a resident in a State-owned facility or an applicant for or recipient of cash or medical assistance from the Commonwealth and the department certifies in writing that it has obtained a currently valid consent for the disclosure of such information from the settlor or beneficiary of the trust. A trustee may rely upon the department's certification without investigating its accuracy.

* * *

(i) Contents of notice.--Except as provided in subsection (g), any notice under this section shall be written and convey the following information:

* * *

(6) The name, address and telephone number of each trust director.

* * *

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

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

(2) the appointee does not decline to receive the notice in a writing delivered to the trustee no later than 30 days after receipt of the trustee's notice.

* * *

Section 25. Section 7780.4 of Title 20 is amended to read:

§ 7780.4. Discretionary powers.

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

Section 26. Section 7780.5(a) of Title 20 is amended to read:

§ 7780.5. Powers of trustees - UTC 815.

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

Section 27. Chapter 77 of Title 20 is amended by adding a subchapter to read:

SUBCHAPTER H-1
DIRECTED TRUSTS

Sec.

7780.11. Short title of subchapter.

7780.12. Definitions - UDTA 2.

7780.13. Application - UDTA 3.

7780.14. Exclusions - UDTA 5.

7780.15. Powers of trust director; shared powers - UDTA 6.

7780.16. Trust director for investments.

7780.17. Trust protector.

7780.18. Limitations on powers of trust director - UDTA 7.

7780.19. Duty and liability of trust director - UDTA 8.

7780.20. Duty and liability of directed trustee - UDTA 9.

7780.21. Duty to provide information to trust director or directed trustee - UDTA 10.

7780.22. No duty to monitor, inform, or advise - UDTA 11.

7780.23. Application to cotrustee - UDTA 12.

7780.24. Limitation of action against trust director - UDTA 13.

7780.25. Defenses in action against trust director - UDTA 14.

7780.26. Jurisdiction over trust director - UDTA 15.

7780.27. Office of trust director - UDTA 16.

§ 7780.11 Short title of subchapter.

This subchapter shall be known and may be cited as the Directed Trust Act.

Comment

The Directed Trust Act is derived from the Uniform Directed Trust Act that the Uniform Law Commission, also known as the “National Conference of Commissioners on Uniform State Laws,” approved in 2017. References to “UDTA __” in the Directed Trust Act are to the corresponding section of the Uniform Directed Trust Act. Comments to the UDTA supplement the Directed Trust Act and the Pennsylvania Comments to it to the extent the Directed Trust Act follows the UDTA.

The Prefatory Note to the UDTA describes the context in which directed trust statutes operate: “In a directed trust, the terms of the trust grant a person other than the trustee a power over some aspect of the trust’s administration.” A directed trust essentially unbundles a trustee’s duties and responsibilities and allocates them between two or more persons.

Section 7778 of this chapter and former § 808 of the Uniform Trust Code enable directed trusts but do not elaborate upon their legal implications.

Particularly troublesome in practice is the absence of crisp rules that align duty, responsibility and ultimately, liability. The UDTA and the Directed Trust Act are intended to address the implications of a directed trust comprehensively.

§ 7780.12. Definitions - UDTA 2.

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

“Directed trust.” A trust for which the terms of the trust grant a power of direction.

“Directed trustee.” A trustee that is subject to a trust director’s power of direction.

“Power of direction.” A power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration, and, in the case of a trust protector, may include powers to modify the terms of the trust. A power of direction includes incidental powers that are appropriate and necessary to the exercise or non-exercise of the power of direction. The rules set forth in this subchapter govern the exercise of such incidental powers.

“Trust director.” A person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. A beneficiary or settlor of a trust may serve as a trust director of the trust.

“Trust protector.” A trust director authorized by the terms of a trust to modify one or more terms of the trust.

“Willful misconduct.” Intentional conduct that is malicious, designed to defraud, or unconscionable. Mere negligence, gross negligence and recklessness do not constitute “willful misconduct.”

Comment

Like the Uniform Directed Trust Act from which it was derived, the Directed Trust Act recognizes a power to direct any aspect of the trust including its investment, distributions and administration and, through a trust protector, to make lawful changes to the terms of the trust. Among many examples are the management of a trust’s investments and the management of a trust’s closely-held business interests.

The definitions of a “power of direction” and a “trust protector” introduce some clarification of the UDTA. Unlike other trust directors, trust protectors are typically authorized by the terms of a trust to change the terms

of the trust and not necessarily, or merely, to direct a trustee how to administer some aspect of the trust.

The concept of “willful misconduct” is relevant later in this subchapter to define the duty of a directed trustee to follow direction and the directed trustee’s protection from liability for doing so, and the liability of a directed trustee or a trust director for acting in reliance upon information the other provides. The Comment to UDTA § 9 reports that states having directed trust statutes are about evenly split between states fully exonerating a directed trustee that follows a direction and states that except from exoneration “willful misconduct,” a term few statutes define, or a similar standard. The definition in this subchapter takes an approach similar to Delaware’s, which has incorporated the “willful misconduct” standard into its directed trust law and defined the term in a similar manner. *See* Del. Code Ann. tit. 12, § 3301(g).

§ 7780.13. Application - UDTA 3.

(a) General rule.--This subchapter applies to a trust, whenever and wherever created, that is governed by Pennsylvania law.

(b) Exclusion.--This subchapter has no application to decisions or actions that occurred before its effective date.

Comment

The Directed Trust Act applies to trusts in existence on its effective date and to trusts established thereafter and elaborates upon powers of direction that were enabled by prior law, specifically, § 7778. However, § 7780.13 is not intended to affect or provide a basis to question decisions that were made or actions that were taken by trustees and persons that directed their actions under prior law; the relationships among trustees, persons that directed their actions and a trust’s beneficiaries under prior law; or the allocation of duties and liability between cotrustees under prior law.

This subchapter applies if the trust’s governing law is Pennsylvania law, whether or not Pennsylvania is the trust’s situs. What law governs the trust is determined by reference to § 7707.

§ 7780.14. Exclusions - UDTA 5.

This subchapter does not apply to:

- (1) A power of appointment.
- (2) A power held by the settlor or a beneficiary of a trust to appoint or remove a trustee or a trust director unless the terms of the trust provide that the power is exercisable by the settlor or beneficiary acting as a trust director.
- (3) A settlor’s power over a trust to the extent the settlor may revoke the trust.

(4) A power of a beneficiary over a trust to the extent the exercise or non-exercise of the power affects the beneficial interest of:

(i) the beneficiary; or

(ii) another beneficiary who is represented by the beneficiary under Subchapter C (relating to representation) with respect to the exercise or non-exercise of the power.

(5) A power over a trust that must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986, as amended, and regulations issued thereunder, as amended.

Comment

The term “power of appointment” is defined in § 7703.

A power of appointment exercisable by a trust director is governed by this subchapter. The mere grant of a power of appointment does not give the donee of the power the status of a trust director.

If the terms of a trust give a trust director the power to appoint or remove a trustee, the duty imposed by § 7780.19 applies to the exercise or non-exercise of the power. For that duty to attach, the terms of the trust must be clear that the holder of the power is a trust director. If the terms of a trust give the settlor or a beneficiary who is *not* a trust director the same power, Pennsylvania law apart from this subchapter might nevertheless impose a fiduciary duty upon the beneficiary not to exercise the power capriciously or to appoint as trustee a person that is manifestly unfit for the role.

An example of a power to which paragraph (5) refers is the administrative power described in § 675(4)(C) of the Internal Revenue Code of 1986, as amended, to reacquire the trust *corpus* by substituting other property of an equivalent value which, if exercisable in a nonfiduciary capacity without the approval or consent of any person in a fiduciary capacity, will cause the grantor that holds the power to be treated as the trust's owner for federal income tax purposes.

§ 7780.15. Powers of trust director; shared powers - UDTA 6.

(a) Grant of powers.--The terms of a trust may grant a power of direction to one or more trust directors. A power of direction may extend to any one or more of a trustee's powers, subject to section 7780.18 (relating to limitations on powers of trust director - UDTA 7).

(b) Shared Powers.--Trust directors that share powers act by majority decision unless the terms of the trust provide otherwise.

Comment

The most common applications of trust direction are the management of a trust's investments, closely-held business interests, and real estate

interests. A trust protector's role typically differs from other applications of trust direction in that a trust protector may modify the dispositive, administrative or governance provisions of a trust rather than merely direct a trustee what to do. The terms of a trust may authorize a trust protector to do both. Subsection (a) is intended to make clear that all of a trustee's powers are eligible for direction and that the Act is not limited to the situations just illustrated. For examples of a trustee's powers, *see* §§ 7780.5 and 7780.6.

Subsection (b) applies to co-trust directors the same rule of decision that § 7763(a) applies to cotrustees. As the rule in § 7763(a) is not among the mandatory rules § 7705(b) forbids a settlor to modify, the terms of a trust may provide for a different rule of decision where co-trust directors do not reach consensus.

§ 7780.16. Trust director for investments.

The explicit appointment by the terms of a trust of a "trust director for investments," accompanied by a citation to this section, grants to the trust director the following powers unless the terms of the trust provide otherwise:

(1) to direct the trustee, or veto the trustee's recommendations, as to the investment of the trust's assets;

(2) to direct the trustee, or veto the trustee's recommendations, as to the voting of proxies and the exercise of other voting powers associated with the trust's assets;

(3) to select, change, and determine reasonable compensation of one or more investment advisors or managers, and authorize or engage them to perform any of the investment duties of a trustee or trust director;

(4) to determine the frequency and methodology for valuing trust assets;

(5) to exercise, or veto the trustee's exercise of, any other investment power the trustee has or might have; and

(6) to perform such other acts relating to the investment of the trust's assets as the terms of the trust specify.

Comment

Delegation of investment authority to a non-trustee is a common application of trust direction. This section illustrates powers that are often helpful in that context. A settlor that wants to incorporate the list of powers set forth in the section must cite to the section. The list of powers is not exclusive. A settlor may cite to the section but delete one or more of the powers listed in the section, may cite to the section and add powers that are not listed in the section, or may disregard the list entirely and customize what the trust director for investments may do.

Powers to direct or veto distributions and other aspects of trust administration, such as the management of a closely-held business or real estate in which the trust has an interest, are less common and less uniform

and require custom drafting to reflect the settlor's intent. For that reason, this subchapter does not include comparable lists of any such powers.

§ 7780.17. Trust protector.

(a) General rule.--The terms of a trust may expressly grant to a trust director powers, alone or together with powers to direct a trustee's actions, to modify the terms of a trust. In that event, the trust director is a trust protector.

(b) Illustrative Powers.--Among the powers the terms of a trust may grant explicitly to a trust protector are the following:

(1) to increase, decrease or otherwise modify what is distributable to one or more beneficiaries of the trust;

(2) to terminate the trust and direct how the trustee shall distribute the trust property to or in further trust for any one or more of the beneficiaries;

(3) to expand, modify, limit or terminate a power of appointment, and to grant a power of appointment to a beneficiary of the trust on such terms as the trust protector specifies;

(4) the powers described in section 8104 (relating to trustee's power to adjust) to adjust between income and principal and to convert the trust to a unitrust pursuant to section 8105 (relating to power to convert to unitrust);

(5) to convert a trust in whole or in part to a special needs trust, or provide that a special needs trust shall arise or be established at a specific time or upon the occurrence of an event with respect to some or all of the trust's assets;

(6) to appoint or remove trustees, investment advisors and investment managers, and prescribe a plan of succession for future holders of any such office;

(7) to appoint or remove trust directors, specify their powers, and modify the powers of any trust director;

(8) to appoint one or more successor trust protectors, and prescribe a plan of succession for future holders of that office;

(9) to renounce, release, limit or modify any power given to a trustee by the terms of the trust or by law;

(10) to resolve disagreements among trustees;

(11) to change the trust's situs, governing law, or both;

(12) to apply to a court of competent jurisdiction to interpret any terms of the trust or pass upon any action the trust protector, another trust director or a trustee proposes to take or not take; and

(13) any other or different power the settlor expressly grants to the trust protector.

(c) Limitation.--Unless the terms of the trust expressly provide otherwise, no trust protector may exercise any power in a manner that would benefit the trust protector personally or vest in the trust protector a taxable power of appointment described in section 2041 or section 2514 of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any later federal tax statute.

(d) Notice to qualified beneficiaries.--A trust protector shall notify the trustees and the qualified beneficiaries of the trust in writing of the trust protector's exercise of a power with respect to the trust unless the terms of the trust explicitly direct that no such notice be given.

(e) Conflicts.--If the terms of a trust grant the same power to both a trust protector and a trust director that is not a trust protector and do not provide a different rule, the trust protector shall control the exercise of the power.

Comment

Giving a non-trustee known as a “trust protector” the power to change the terms of a trust is a common application of trust direction and differs from most other applications of trust direction in which a trust director directs a trustee how to act. However, the terms of a trust may authorize a trust protector both to change the terms of a trust and to direct a trustee what to do.

Because the uses of trust protectors are varied and there are many practical and tax implications to the grant and the exercise of a trust protector’s powers, the statute requires that all such powers be expressly stated. For example, few settlors will be comfortable giving a trust protector the power “to modify the terms of the trust” without limitation, or to grant a beneficiary an unlimited power of appointment. Unlike § 7780.16, § 7780.17 does not include default powers that are available if no powers are among the terms of the trust.

The illustration of powers in subsection (b) and specifically, subsection (b)(13) are intended to eliminate the argument that a particular power may not be given to a trust protector. The illustrated powers are neither exclusive nor limiting.

§ 7780.18. Limitations on powers of trust director - UDTA 7.

In the exercise or non-exercise of powers affecting the following, a trust director is subject to the same rules as a trustee that holds the same power regarding:

(1) a payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in section 1917 of the Social Security Act, 42 U.S.C. § 1396p(d)(4)(A), as amended, and regulations issued thereunder, as amended; and

(2) a charitable interest in a trust, including notice regarding the interest to the Office of Attorney General.

§ 7780.19. Duty and liability of trust director - UDTA 8.

(a) Scope.--Except as subsections (b) and (c) provide, with respect to a power of direction, a trust director has the same fiduciary duty and liability in the exercise or non-exercise of the power:

(1) if the power may be exercised by only one trust director, as a sole trustee in a like position and under similar circumstances; or

(2) if the power is shared with a trustee or another trust director, as a cotrustee in a like position and under similar circumstance.

(b) Licensed or certified trust directors.--If a trust director is licensed, certified, or otherwise authorized or permitted by law other than this subchapter to provide health care in the ordinary course of the trust director's business or practice of a profession, then to the extent the trust director acts in that capacity, the trust director is not subject to duty or liability under this subchapter unless the terms of the trust provide otherwise.

(c) Effect of terms of the trust.--The terms of a trust may vary a trust director's duty or liability to the same extent that the terms of the trust may vary the duty or liability of a trustee in a like position and under similar circumstances.

Comment

A trust director is a fiduciary with respect to each power of direction the trust director holds. The power carries with it both duty and potential liability that mirror the duty and potential liability a trustee would have with respect to the power absent a power of direction.

A settlor may limit or expand the duty and potential liability of a trust director by the terms of the trust to the same extent the settlor may limit the duty and potential liability of a trustee. As applied to a trustee, the scope of a settlor's authority to do so is defined by § 7705(a), which gives the terms of a trust precedence over all provisions of the chapter except as the mandatory rules set forth in § 7705(b) provide.

§ 7780.20. Duty and liability of directed trustee - UDTA 9.

(a) Duty to comply with power of direction.--Subject to subsection (b), a directed trustee shall take reasonable action to comply with a trust director's exercise or non-exercise of a power of direction, and the directed trustee is not be liable for that action.

(b) Exception for willful misconduct.--A directed trustee shall not comply with a trust director's exercise or non-exercise of a power of direction to the extent that by doing so, the directed trustee would engage in willful misconduct.

(c) When release from liability ineffective.--An exercise of a power of direction under which a trust director purports to release a trustee or another trust director from liability for breach of trust is ineffective:

(1) to the extent it would relieve the trustee or the other trust director of liability for a breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries;

(2) if the release was induced by improper conduct of the trustee or the other trust director in procuring the release; or

(3) if at the time of the release, the trust director did not know of the material facts relating to the breach.

(d) Petition for declaratory judgment.--A directed trustee that has reasonable doubt about its duty under this section may petition the court for a declaratory judgment.

(e) Additional duties and liabilities.--The terms of the trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities prescribed by this section.

Comment

Unbundling the trust relationship to allow for trust directors assumes that the trust director and the directed trustee communicate with one another on matters that are relevant to the powers and duties allocated between them (*see* § 7780.21). It further assumes that both trust director and directed trustee will be responsive to one another. The relationship works only if the trust director provides the directed trustee with direction the settlor charged the trust director to provide and the trustee acts in accordance with that direction. A directed trustee that acts in accordance with direction cannot be held liable to the beneficiaries except for the trustee's own willful misconduct. The following comment to UDTA § 9 clarifies what is expected of a directed trustee that receives direction from a person entitled to give it:

The duty to take reasonable action under subsection (a) does not, however, impose a duty to ensure that the substance of the direction is reasonable. To the contrary, [with the exception subsection (b) describes], a trustee that takes reasonable action to comply with a power of direction is not liable for so acting even if the substance of the direction is unreasonable. In other words, [with the exception subsection (b) describes], a trustee is liable only for its own breach of trust in executing a direction, and not for the director's breach of trust in giving the direction.

State laws differ in identifying the circumstances, if any, under which a directed trustee is liable to the beneficiaries for acting as a trust director directed. The UDTA would require a trustee to take reasonable action to comply with a trust director's exercise or non-exercise of a power of direction and exonerate the trustee from liability for doing so, but excuse the directed trustee from following a direction in the event the trustee would engage in "willful misconduct" if the trustee complied. The UDTA does not define the term "willful misconduct."

Delaware law defines "wilful misconduct" to "mean intentional wrongdoing, not mere negligence, gross negligence, or recklessness and 'wrongdoing' means malicious conduct or conduct designed to defraud or seek an unconscionable advantage." Del. Code Ann. tit. 12, § 3301(g). Delaware law requires a directed trustee to follow direction, and exonerates the trustee from liability for doing so, unless by following the direction, the trustee would engage in "wilful misconduct," so defined.

The approach taken in the Directed Trust Act is similar to Delaware's. It establishes a "willful misconduct" exception to both the duty to follow a direction and the trustee's relief from liability for doing so. The term "willful misconduct" is defined in § 7780.12 to mean "[i]ntentional conduct that is

malicious, designed to defraud, or unconscionable,” and expressly excludes “[m]ere negligence, gross negligence and recklessness.”

Subsection (c) applies where the terms of a trust grant a trust director the power to release a trustee or another trust director from liability for breach of trust. It does not by itself imply a power to do so. The standard set forth in subsection (c)(1) is the same as for the exculpation of a trustee set forth in § 7788(a)(1).

§ 7780.21. Duty to provide information to trust director or trustee - UDTA 10.

(a) Duty of directed trustee.--Subject to section 7780.22 (relating to no duty to monitor, inform, or advise – UDTA 11), a directed trustee shall provide information to a directed trustee or another trust director to the extent the information is reasonably related to powers or duties of both the:

(1) directed trustee; and

(2) trust director, or the powers or duties of another trust director over which the trust director may exercise authority.

(b) Duty of trust director.--Subject to section 7780.22, a trust director shall provide information to a directed trustee or another trust director to the extent the information is reasonably related to the powers or duties of both the:

(1) trust director, and

(2) directed trustee, or the other trust director or a trust director over which the other trust director may exercise authority.

(c) Limitation on liability of directed trustee.--A directed trustee that acts in reliance upon information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance unless the information was outside scope of the trust director’s authority or the directed trustee engages in willful misconduct by doing so.

(d) Limitation on liability of trust director.--A trust director that acts in reliance upon information provided by a directed trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance unless the trust director engages in willful misconduct by doing so.

Comment

Timely, effective communication between a trust director and a trustee is the foundation of trust direction. The Directed Trust Act imposes a duty upon both parties to communicate with one another on matters relevant to a power of direction the trust director holds.

The Uniform Directed Trust Act is silent as to the duty of a trustee or trust director to seek information from the other that is or might be relevant to their roles but addresses that subject in comments to UDTA § 10. By speaking of the duties of a trustee and trust director to share relevant information with one another, subsections (a) and (b) anticipate that each of them will seek relevant information from the other.

§ 7780.22. No duty to monitor, inform, or advise - UDTA 11.

(a) Directed trustee.--Unless the terms of the trust provide otherwise:

(1) a directed trustee does not have a duty to:

(i) monitor a trust director; or

(ii) inform or advise a settlor, beneficiary, cotrustee, or trust director as to any matter on which the directed trustee might not have acted as the trust director acted, or as to any matter on which the directed trustee might have acted but the trust director did not; and

(2) by taking any action described in paragraph (1), a directed trustee does not thereby assume a duty that is excluded by paragraph (1).

(b) Trust director.--Unless the terms of a trust provide otherwise:

(1) a trust director does not have a duty to:

(i) monitor a trustee, or another trust director over which the trust director has no authority; or

(ii) inform or advise a settlor, beneficiary, cotrustee, or other trust director as to any matter on which the trust director might not have acted as a trustee or other trust director acted, or as to any matter on which the trust director might have acted but the trustee or another trust director did not; and

(2) by taking any action described in paragraph (1), a trust director does not thereby assume a duty that is excluded by paragraph (1).

Comment

Comments to the Uniform Directed Trust Act clarify that a power of direction does not relieve a trustee of duties outside the Act to report to the beneficiaries and respond to their reasonable requests for information. For example, § 7780.3(a) requires a trustee “promptly [to] respond to a reasonable request by the settlor of a trust or by a beneficiary of an irrevocable trust for information related to the trust’s administration.” Similarly, the notices required by § 7780.3(i)(5) include mention of “[e]ach current beneficiary’s right to receive, at least annually, upon request, periodic written financial reports concerning the trust.”

To the extent a request for information comprehends what a trust director has or has not done, or that a truthful financial report requires disclosure of a trust director’s action or inaction, the trustee must respond or provide the disclosure in spite of § 7780.22(a). However, reporting what a trust director has or has not done is different from commenting on it. A trustee is under no duty to second-guess what the trust director did or did not do, or to evaluate the trust director’s action or inaction in any such report. Commenting on a trust director’s action or inaction does not establish a duty that the trustee ever comment again.

§ 7780.23. Application to cotrustee - UDTA 12.

The terms of a trust may:

- (1) assign different duties and standards of care to different trustees; and
- (2) in doing so, relieve a trustee from liability with respect to a duty assigned to another trustee to the same extent that in a directed trust, a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 7780.20 (relating to duty and liability of directed trustee - UDTA 9), 7780.21 (relating to duty to provide information to trust director or trustee - UDTA 10) and 7780.22 (relating to no duty to monitor, inform, or advise - UDTA 11).

Comment

Trust direction may be accomplished by assigning different duties to different trustees, in which event the relationship between cotrustees mirrors the relationship between a trust director and a trustee, and potential liability follows duty the same as with a power of direction held by a non-trustee. How standards of care may differ among co-trustees is illustrated by § 7776, which imposes upon a trustee that has or claimed to the settlor to have special skills or expertise the duty to apply those skills or that expertise in the administration of the trust.

§ 7780.24. Limitation of action against trust director - UDTA 13.

(a) Commencement of action.--An action against a trust director for breach of trust must be commenced within the same limitation period as under section 7785 (relating to limitation of action against trustee) for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) Effect of report or accounting.--A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under section 7785 in an action for breach of trust against a trustee in a like position and under similar circumstances.

§ 7780.25. Defenses in action against trust director - UDTA 14.

In an action against a trust director for breach of trust, the trust director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

§ 7780.26. Jurisdiction over trust director - UDTA 15.

(a) Effect of acceptance of appointment.--By accepting an appointment as a trust director, the trust director submits to personal jurisdiction of the courts of this Commonwealth regarding any matter related to a power or duty of the trust director.

(b) Other methods of obtaining jurisdiction.--This section does not preclude other methods of obtaining jurisdiction over a trust director.

§ 7780.27. Office of trust director - UDTA 16.

Unless the terms of the trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) acceptance or declining under section 7761 (relating to accepting or declining trusteeship - UTC 701), except that if a trustee requests in writing that a person designated as a trust director accept that role in writing and the person does not do so in writing within 60 days after receipt of the trustee's request, the person shall be deemed to have rejected the appointment to serve as a trust director;

(2) giving of bond to secure performance under section 7762 (relating to trustee's bond - UTC 702);

(3) reasonable compensation under section 7768 (relating to compensation of trustee - UTC 708);

(4) resignation under section 7765 (relating to resignation of trustee; filing resignation), or upon at least 30 days' advance notice in writing to the qualified beneficiaries of the trust, the settlor if sui juris, and all trustees;

(5) removal under section 7766 (relating to removal of trustee - UTC 706); and

(6) vacancy and appointment of a successor under section 7764 (relating to vacancy in trusteeship; appointment of successor - UTC 704), except that if a trust director does not accept an appointment or there is a vacancy in the position, the powers and duties of the trustee or another trust director shall be determined as if the office of the non-accepting trust director had not been created.

Section 28. Chapter 77 of Title 20 is amended by adding a section to read:

§ 7785.1. Nonjudicial account settlement.

(a) Election.--Any trustee may elect to proceed under this section to obtain a nonjudicial settlement of account when:

(1) the trust terminates in whole or in part;

(2) the trustee ceases or intends to cease to serve for any reason; or

(3) the trustee seeks discharge for an interim accounting period when the trust is continuing.

(b) Mandatory notice.--Within a reasonable time after a trustee elects to proceed under this section, the trustee shall give notice of a request for nonjudicial account settlement in the manner and to the extent required by section 7709(a), (b) and (c) (relating to methods and waiver of notice – UTC 109) to:

(1) the qualified beneficiaries of the trust;

(2) any other beneficiary who has sent the trustee a written request for notice;

(3) any person who has the notification rights of a beneficiary under section 7710 (relating to notice; others treated as beneficiaries – UTC 110); and

(4) any co-trustee, trust director or similar fiduciary, or successor trustee.

(c) Permissive notice.--The trustee may also provide notice to any other person who the trustee reasonably believes may have an interest in the trust.

(d) Representation.--Whether notice is mandatory or permissive, the trustee may give notice to a representative in accordance with Subchapter C (relating to representation). The time period for the presumption of the representative's acceptance of the representation shall be deemed to run concurrently with the notice period provided under this section.

(e) Contents of notice.--The notice under subsection (b) or (c) shall provide:

(1) the reason for providing notice under this section;

(2) to the extent applicable, the proposed distribution of the net assets of the trust including the distributees and proportions to be distributed;

(3) to the extent applicable, an estimate of disbursements anticipated to be made prior to distribution including legal fees and trustee fees, if any;

(4) trust account statements showing all transactions, the fair market value of all assets, and realized and unrealized gains and losses on assets held in the account, for 30 months prior to the date a trust terminates, the cessation of the trustee's service or statement of intent to cease to serve, or the end of the interim accounting period (or for the entire term of the trust if the term of the trust is shorter than the 30-month period);

(5) a statement that the trustee seeks settlement of the account of the trust, the period of time for which the trustee seeks discharge of the account of the trust, and which clearly and conspicuously states that claims against a trustee under Subchapter I (relating to liability of trustees and rights of persons dealing with trustees) and section 7754 (relating to actions contesting validity of revocable trust), if applicable, will be forever barred if no objections are received within the time period described in subsection (g);

(6) the name and mailing address of the trustee; and

(7) the name and telephone number of a person who may be contacted for additional information.

(f) Distributions.--To the extent applicable, distributions from a terminating trust, and any fees and expenses due or anticipated as of the date the settlement of account is requested, may be held by or on behalf of the trustee until the settlement of account is approved or deemed approved as provided by this section.

(g) Objection.--A person provided notice under subsection (b) or (c) may object to the settlement of account by giving written notice to the trustee within 60 days after the notice was sent. If a person given notice under subsection (b) or (c) makes timely objections to the settlement of account, the trustee or the person making the objections may:

(1) submit the written objection to the court and commence a proceeding for its resolution;

or

(2) resolve the objection by nonjudicial settlement agreement under section 7710.1 (relating to nonjudicial settlement agreements – UTC 111) or otherwise.

(h) Approval--If no timely objections are raised under subsection (g), or objections are resolved as provided by subsection (g), the settlement of account shall be deemed approved and any assets held in trust shall, within a reasonable time thereafter, be distributed subject to payment of expenses as provided in subsection (f), or shall continue to be administered in trust subject to payment of expenses.

(i) Reliance.--The trustee may rely upon the written statement of a person receiving notice that such person does not object.

(j) Limitation of action and preclusive effect.--

(1) When a settlement of account is deemed approved under this section for a terminated trust or with respect to the duties of a trustee who ceased to serve or stated an intent to cease to serve, each person who was sent notice as provided by subsection (b) or (c) is barred from bringing a claim against the trustee or challenging the distribution of assets of the trust to the same extent and with the same preclusive effect as if the court had entered a final, unappealable order approving the trustee's final account.

(2) When a settlement of account for a trustee seeking final settlement of an interim trust account is deemed approved under this section, each person who was sent notice as provided by subsection (b) or (c) is barred from bringing a claim against the trustee for the period of such interim account to the same extent and with the same preclusive effect as if the court had entered a final, unappealable order approving the trustee's interim account.

(k) Representation.--The provisions of Subchapter C shall apply to an account settlement under this section.

(l) Filing account.--Nothing in this section shall preclude a trustee from proceeding under section 7797 (relating to filing accounts) or section 7710.1.

Comment

This alternative to proceeding under either § 7797 or § 7710.1 is a simplified means for the settlement of the trustee's account. The trustee may elect to proceed under this new section when a trust terminates by the terms of the trust, by court order, or by exercise of trustee discretion, or when a trustee ceases to serve, or when a trustee seeks a discharge for an interim accounting period when the trust is continuing. It can also apply when a beneficiary's interest in a trust ends, such as a trust that continues for other beneficiaries after an income beneficiary dies. It is anticipated that the trustees will give notice as provided under this new section that will include any one to whom the trustee would send notice, either directly or by the virtual representation provisions of Subchapter C, when an account is filed with the court.

Section 29. Section 7781 of Title 20 is amended to read:

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

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

* * *

Section 30. Section 7786 of Title 20 is amended to read:

§ 7786. Reliance on trust instrument - UTC 1006.

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

Section 31. Section 7788(a) of Title 20 is amended to read:

§ 7788. Exculpation of trustee - UTC 1008.

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

* * *

Section 32. Section 7790.3 of Title 20 is amended to read:

§ 7790.3. Certification of trust - UTC 1013.

* * *

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

* * *

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

* * *

Section 33. Section 7794 of Title 20 is amended to read:

§ 7794. Title of purchaser.

If the trustee has given a bond as required in accordance with this title, any sale, pledge, mortgage or exchange by a trustee, whether pursuant to a decree or to the exercise of a power conferred by the terms of a trust [instrument] or of a power under this title, shall pass the full title of the trust in the property, unless otherwise specified. Persons dealing with the trustee shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the trust. A sale or exchange by a trustee pursuant to a decree under section 3353 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law if the holder of the mortgage consents by

writing filed in the proceeding. No sale, mortgage, exchange or conveyance shall be prejudiced by the subsequent dismissal of the trustee. No sale, mortgage, exchange or conveyance by a testamentary trustee shall be prejudiced by the terms of a will or codicil thereafter probated if the person dealing with the trustee did so in good faith.

Section 34. The letters, UTC, in section headings refer to Uniform Trust Code. The letters, UDTA, in section headings refer to Uniform Directed Trust Act. The number that follows these letters refers to a particular section of the applicable uniform act. Where a section in 20 Pa.C.S. has these references, that section shall be construed and applied consistent with 1 Pa.C.S. sections 1927 (relating to construction of uniform laws) and 1939 (relating to use of comments and reports).

Section 35. This act shall take effect in 90 days.