HOUSE . . . . . No. 3780

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act further regulating the probate code.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 2. Paragraph (7) of subsection (a) of section 3-606 of Article III of said chapter 190B, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by striking the words "section 7-304" and inserting in place thereof the following:- "section 702 of chapter 203E"

SECTION 1. Article VII of Chapter 190B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out parts 1 to 4, inclusive, and inserting in place thereof the following:-

PART 1. [RESERVED]

PART 2. [RESERVED]

PART 3. [RESERVED]

PART 4. [RESERVED]

SECTION 3. Section 7-502 of Article VII of said chapter 190B, as so appearing, is hereby amended by striking the words "section 7-401" and inserting in place thereof the following:- "section 816 of chapter 203E"

SECTION 4. Section 3C of chapter 203 of the General Laws is hereby repealed.

SECTION 5. The General Laws are hereby amended by inserting after chapter 203D the following chapter—

CHAPTER 203E

MASSACHUSETTS UNIFORM TRUST CODE

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section 101. Short Title

Section 101. This chapter shall be known and may be cited as the Massachusetts Uniform Trust Code.

Section 102. Scope

Section 102. This chapter applies to express trusts, charitable or non-charitable, of a donative nature and trusts created pursuant to a judgment or decree that requires the trust to be administered in the manner of an express trusts.

Section 103. Definitions

Section 103. In this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard", a standard relating to an individual's health, education, support or maintenance.

(3) "Beneficiary", a person who has a present or future beneficial interest in a trust, vested or contingent.

(4) "Charitable trust", a trust, or portion of a trust, created for a charitable purpose described in section 405(a).

(5) "Environmental law", a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

(6) "Interests of the beneficiaries", the beneficial interests provided in the terms of the trust.

(7) "Jurisdiction", a geographic area, including a state or country.

(8) "Person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

(9) "Property", anything that may be the subject of ownership, whether real, personal, legal, equitable or any interest therein.

49 (10) "Qualified beneficiary", a beneficiary who, on the date the beneficiary's
50 qualification is determined:

51 (A) is a distributee or permissible distributee of trust income or principal; or

52 (B) would be a distributee or permissible distributee of trust income or principal if the
53 trust terminated on that date.

54 (11) "Revocable", a trust that is revocable by the settlor without the consent of the
55 trustee or a person holding an adverse interest.

56 (12) "Settlor", a person, including a testator, who creates or contributes property to a
57 trust. If more than one person creates or contributes property to a trust, each person is a settlor
58 of the portion of the trust property attributable to that person's contribution except to the extent
59 another person has the power to revoke or withdraw that portion.

60 (13) "Spendthrift provision", a term of a trust which restrains transfer of a beneficiary's
61 interest.

62 (14) "State", a state of the United States, the District of Columbia, Puerto Rico, the
63 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
64 the United States, including an Indian tribe or band recognized by federal law or formally
65 acknowledged by a state.

66 (15) "Terms of a trust", the manifestation of the settlor's intent regarding a trust's
67 provisions as expressed in the trust instrument or as may be established by other evidence that
68 would be admissible in a judicial proceeding.

69 (16) "Trust instrument", an instrument that contains terms of the trust, including any
70 amendments thereto.

71 (17) "Trustee", an original, additionalor successor trustee or a co-trustee.

72 Section 104. Knowledge

73 Section 104. (a) Subject to subsection (b), a person has knowledge of a fact if the person:

74 (1) has actual knowledge of it;

75 (2) has received a notice or notification of it; or

76 (3) from all the facts and circumstances known to the person at the time in question, has
77 reason to know it.

78 (b) An organization that conducts activities through employees has notice or knowledge
79 of a fact involving a trust only from the time the information was received by an employee

80 having responsibility to act for the trust, or would have been brought to the employee's attention
81 if the organization had exercised reasonable diligence. An organization exercises reasonable
82 diligence if it maintains reasonable routines for communicating significant information to the
83 employee having responsibility to act for the trust and there is reasonable compliance with the
84 routines. Reasonable diligence does not require an employee of the organization to
85 communicate information unless the communication is part of the individual's regular duties or
86 the individual knows a matter involving the trust would be materially affected by the
87 information.

88 Section 105. Default And Mandatory Rules

89 Section 105. (a) Except as otherwise provided in the terms of the trust, this chapter
90 governs the duties and powers of a trustee, relations among trustees and the rights and interests
91 of a beneficiary.

92 (b) The terms of a trust prevail over any provision of this chapter except:

93 (1) the requirements for creating a trust;

94 (2) the duty of a trustee to act in good faith and in accordance with the terms and
95 purposes of the trust and the interests of the beneficiaries;

96 (3) the requirement that a trust have a purpose that is lawful and not contrary to public
97 policy;

98 (4) the power of the court to modify or terminate a trust under sections 410 through 416;

99 (5) the effect of a spendthrift provision and the rights of certain creditors and assignees
100 to reach a trust as provided in article 5;

101 (6) the power of the court under section 702 to require, dispense with, or modify or
102 terminate a bond;

103 (7) the power of the court under section 708(b) to adjust a trustee's compensation
104 specified in the terms of the trust which is unreasonably low or high;

105 (8) the effect of an exculpatory term under section 1008;

106 (9) the rights under sections 1010 through 1013 of a person other than a trustee or
107 beneficiary; and

108 (10) the power of the court to take such action and exercise such jurisdiction as may be
109 necessary in the interests of justice.

110 Section 106. Common Law of Trusts; Principles of Equity

111 Section 106. The common law of trusts and principles of equity supplement this chapter,
112 except to the extent modified by this chapter or any other general or special law.

113 Section 108. Principal Place of Administration

114 Section 108. (a) Without precluding other means for establishing a sufficient connection
115 with the designated jurisdiction, terms of a trust designating the principal place of administration
116 are valid and controlling if:

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

119 (2) all or part of the administration occurs in the designated jurisdiction.

120 (b) Without precluding the right of a court to order, approve or disapprove a transfer, the
121 trustee may, but has no affirmative duty to, transfer the trust's principal place of administration
122 to another state or to a jurisdiction outside of the United States.

123 (c) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's
124 principal place of administration not less than 60 days before initiating the transfer. The notice
125 of proposed transfer must include:

126 (1) the name of the jurisdiction to which the principal place of administration is to be
127 transferred;

128 (2) the address and telephone number at the new location at which the trustee can be
129 contacted;

130 (3) an explanation of the reasons for the proposed transfer;

131 (4) the date on which the proposed transfer is anticipated to occur; and

132 (5) the date, not less than 60 days after the giving of the notice, by which the qualified
133 beneficiary must notify the trustee of an objection to the proposed transfer.

134 (d) The authority of a trustee under this section to transfer a trust's principal place of
135 administration terminates if a qualified beneficiary notifies the trustee of an objection to the
136 proposed transfer on or before the date specified in the notice.

137 Section 109. Methods and Waiver of Notice

138 Section 109. (a) Notice to a person under this chapter, or the sending of a document to a
139 person under this chapter, must be accomplished in a manner reasonably suitable under the
140 circumstances and likely to result in receipt of the notice or document. Permissible methods of
141 notice, or for sending a document, include first-class mail, personal delivery or delivery to the
142 person's last known place of residence or place of business.

143 (b) Notice required under this chapter, or a document required to be sent under this
144 chapter, need not be provided to a person whose identity or location is unknown to and not
145 reasonably ascertainable by the trustee.

146 (c) Notice under this chapter, or the sending of a document under this chapter, may be
147 waived by the person to be notified or sent the document.

148 (d) Notice of a judicial proceeding authorized by this chapter to be brought by petition in
149 the probate and family court department of the trial court must be given as provided in section 1-
150 401 of chapter 190B. Notice of any other judicial proceeding must be given as provided in the
151 applicable procedural rules.

152 Section 110. Others Treated as Qualified Beneficiaries

153 Section 110. (a) Whenever notice to qualified beneficiaries of a trust is required under
154 this chapter, the trustee must also give notice to any other beneficiary who has sent the trustee a
155 request for notice.

156 (b) A charitable organization expressly designated to receive distributions under the
157 terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the
158 charitable organization, on the date the charitable organization's qualification is being
159 determined:

160 (1) is a distributee or permissible distributee of trust income or principal; or

161 (2) would be a distributee or permissible distributee of trust income or principal if the
162 trust terminated on that date.

163 (c) A person appointed to enforce a trust created for the care of an animal or another
164 non-charitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary
165 under this chapter.

166 Section 111. Non-judicial Settlement Agreements

167 (a) For purposes of this section, "interested persons" means persons whose consent
168 would be required in order to achieve a binding settlement were the settlement to be approved by
169 the court.

170 (b) Except as otherwise provided in subsection (c), interested persons may enter into a
171 binding non-judicial settlement agreement with respect to any matter involving a trust.

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

175 (d) Matters that may be resolved by a non-judicial settlement agreement include:

176 (1) the interpretation or construction of the terms of the trust;

177 (2) the approval of a trustee's report or accounting;

178 (3) direction to a trustee to refrain from performing a particular act or the grant to a
179 trustee of any necessary or desirable power;

180 (4) the resignation or appointment of a trustee and the determination of a trustee's
181 compensation;

182 (5) transfer of a trust's principal place of administration; and

183 (6) liability of a trustee for an action relating to the trust.

184 (e) Any interested person may request the court to approve a non-judicial settlement
185 agreement, to determine whether the representation as provided in article 3 was adequate, and to
186 determine whether the agreement contains terms and conditions the court could have properly
187 approved.

188 Section 112. Rules of Construction

189 Section 112. The rules of construction that apply in the commonwealth to the
190 interpretation of and disposition of property shall also apply as appropriate to the interpretation
191 of the terms of a revocable trust and the disposition of the trust property. A "revocable trust", for
192 purposes of this section, shall mean a trust that was (1) revocable by the settlor until the time of
193 his or her death, (2) created or amended by the settlor after the effective date of this act, and (3)
194 was intended to dispose of the settlor's property at death, whether under will or otherwise and
195 whether the trust was funded at the time of the settlor's death or not.

196 Section 113. Qualification of Foreign Trustee

197 Section 113. A foreign corporate trustee is required to qualify as a foreign corporation
198 doing business in the commonwealth if it maintains the principal place of administration of any
199 trust within the commonwealth. A foreign co-trustee is not required to qualify in the
200 commonwealth solely because its co-trustee maintains the principal place of administration in the
201 commonwealth. Unless otherwise doing business in the commonwealth, local qualification by a
202 foreign trustee, corporate or individual, is not required in order for the trustee to receive
203 distribution from a local estate, to hold, invest in, manage or acquire property located in the
204 commonwealth, or to maintain litigation. Nothing in this section affects a determination of what
205 other acts require qualification as doing business in the commonwealth.

206 ARTICLE 2

207 JUDICIAL PROCEEDINGS

208 Section 201. Role of Court in Administration of Trust

209 Section 201. (a) The court may intervene in the administration of a trust to the extent its
210 jurisdiction is invoked by an interested person or as provided by law.

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

212 (c) A judicial proceeding involving a trust may relate to any matter involving the trust's
213 administration, including a request for instructions and an action to declare rights.

214 (d) A proceeding brought pursuant to this chapter in the probate and family court
215 department of the trial court to appoint or remove a trustee, to approve the resignation of a
216 trustee, to review and settle accounts of a trustee, or concerning any other matter relating to the
217 administration of a trust may be initiated by filing a petition and giving notice as provided in
218 section 109 to interested parties. A decree will be valid as to all who are given notice of the
219 proceeding even if fewer than all interested parties are notified.

220 Section 202. Jurisdiction Over Trustee and Beneficiary

221 Section 202. (a) By accepting the trusteeship of a trust having its principal place of
222 administration in the commonwealth or by moving the principal place of administration to the
223 commonwealth, the trustee submits personally to the jurisdiction of the courts of the
224 commonwealth regarding any matter involving the trust.

225 (b) With respect to their interests in the trust, the beneficiaries of a trust having its
226 principal place of administration in the commonwealth are subject to the jurisdiction of the
227 courts of the commonwealth regarding any matter involving the trust. By accepting a
228 distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of
229 the commonwealth regarding any matter involving the trust.

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

232 Section 203. Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts

233 Section 203. The court shall not, over the objection of a party, entertain proceedings
234 under section 201 involving a trust registered or having its principal place of administration in
235 another state, unless (1) all appropriate parties could not be bound by litigation in the courts of
236 the state where the trust is registered or has its principal place of administration or (2) the
237 interests of justice otherwise would seriously be impaired. The court may condition a stay or
238 dismissal of a proceeding under this section on the consent of any party to jurisdiction of the
239 state in which the trust is registered or has its principal place of administration, or the court may
240 grant a continuance or enter any other appropriate order.

241 Section 204. Venue

242 Section 204. A trust shall be subject to the jurisdiction of the probate and family court
243 department of the trial court of the commonwealth for the county in which is located its principal
244 place of administration. The principal place of administration of a testamentary trust shall be
245 deemed to be the location of the court of the commonwealth in which the will creating the trust
246 was granted informal or formal probate. Unless otherwise designated in the trust instrument, the
247 principal place of administration of an inter vivos trust is the trustee's usual place of business
248 where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no
249 such place of business. In the case of co-trustees, the principal place of administration, if not
250 otherwise designated in the trust instrument, is (1) the usual place of business of the corporate
251 trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of
252 the individual trustee who is a professional fiduciary if there is but one such person and no
253 corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-
254 trustees as agreed upon by them.

255 Section 205. Petition for Transfers of Trust Property Whose Disposition Depends upon
256 the Death of an Absentee

257 Section 205. (a) If a trustee holds trust property the disposition of which depends upon
258 the death of an absentee whose death has not otherwise been determined, on or after the day 5
259 years after the date of the absentee's disappearance, the trustee, or any person who would be
260 interested in the trust property were the absentee dead, may petition the court having jurisdiction
261 of the trust for an order that the trust property be disposed of to the persons to whom, and in the
262 shares or proportions in which, it would be distributed under the provisions of the trust if the
263 absentee had died on that day.

264 (b) The court may direct the petitioner to report the results of, or make and report back
265 concerning, a reasonably diligent search for the absentee in any manner that may seem advisable,
266 including any or all of the following methods:

267 (1) by inserting in a periodical of general circulation a notice requesting information
268 from any person having knowledge of the whereabouts of the absentee;

269 (2) by notifying law enforcement officials, public welfare agencies and registers of
270 deaths in appropriate locations of the disappearance of the absentee;

271 (3) by engaging the services of an investigator.

272 The costs of any search so directed shall be paid from the trust property.

273 (c) After any such report directed by the court under paragraph (b) above has been
274 completed to the satisfaction of the court, notice of the hearing on the petition shall be given.

275 (d) If after the hearing the court finds that the facts warrant a presumption of death, it
276 shall enter an appropriate order of disposition of the trust property and any undistributed net
277 income.

278 ARTICLE 3

279 REPRESENTATION

280 Section 301. Representation: Basic Effect

281 Section 301. (a) Notice to a person who may represent and bind another person under
282 this article shall have the same effect as if notice were given directly to the other person.

283 (b) The consent of a person who may represent and bind another person under this article
284 is binding on the person represented unless the person represented objects to the representation
285 before the consent would otherwise have become effective.

286 (c) Except as otherwise provided in section 602, a person who under this article may
287 represent a settlor who lacks capacity may receive notice and give a binding consent on the
288 settlor's behalf.

289 (d) A settlor may not represent and bind a beneficiary under this article with respect to
290 the termination or modification of a trust under section 411(a).

291 Section 302. Representation by Holder of General Testamentary Power of Appointment

292 Section 302. To the extent there is no conflict of interest between the holder of a general
293 testamentary power of appointment and the persons represented with respect to the particular
294 question or dispute, the holder may represent and bind persons whose interests, as permissible
295 appointees, takers in default, or otherwise, are subject to the power.

296 Section 303. Representation by Fiduciaries and Parents

297 Section 303. To the extent there is no conflict of interest between the representative and
298 the person represented or among those being represented with respect to a particular question or
299 dispute:

300 (1) a conservator may represent and bind the estate that the conservator controls;

301 (2) a guardian may represent and bind the ward or protected person if a conservator has
302 not been appointed;

303 (3) an agent having authority to act with respect to the particular question or dispute may
304 represent and bind the principal;

305 (4) a trustee may represent and bind the beneficiaries of the trust;

306 (5) a personal representative of a decedent's estate may represent and bind persons
307 interested in the estate; and

308 (6) a parent may represent and bind the parent's minor or unborn child if a conservator
309 or guardian for the child has not been appointed.

310 Section 304. Representation by Person Having Substantially Identical Interest

311 Section 304. Unless otherwise represented, a minor, incapacitated, or unborn individual,
312 or a person whose identity or location is unknown and not reasonably ascertainable, may be
313 represented by and bound by another having a substantially identical interest with respect to the
314 particular question or dispute, but only to the extent there is no conflict of interest between the
315 representative and the person represented.

316 Section 305. Appointment of Guardian ad Litem

317 Section 305. (a) If the court determines that an interest is not represented under this
318 article, or that the otherwise available representation might be inadequate, the court may appoint
319 a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on
320 behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is
321 unknown. A guardian ad litem may be appointed to represent several persons or interests.

322 (b) A guardian ad litem may act on behalf of the individual represented with respect to
323 any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is
324 pending.

325 (c) In making decisions, a guardian ad litem may consider general benefit accruing to the
326 living members of the individual's family.

327 ARTICLE 4

328 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

329 Section 401. Methods Of Creating Trust

330 Section 401. A trust may be created by:

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

333 (2) declaration by the owner of property that the owner holds identifiable property as
334 trustee; or

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

336 Section 402. Requirements For Creation

337 Section 402. (a) A trust shall be created only if:

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

339 (2) the settlor indicates an intention to create the trust;

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

341 (A) a charitable trust;

342 (B) a trust for the care of an animal, as provided in section 408; or

343 (C) a trust for a non-charitable purpose, as provided in section 409;

344 (4) the trustee has duties to perform; and

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

346 (b) A beneficiary shall be definite if the beneficiary can be ascertained now or in the
347 future, subject to any applicable rule against perpetuities.

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

352 Section 403. Trusts Created in Other Jurisdictions

353 Section 403. A trust not created by will shall be validly created if its creation complies
354 with the law of the jurisdiction in which the trust instrument was executed, or the law of the
355 jurisdiction in which, at the time of creation:

356 (1) the settlor was domiciled, had a place of abode, or was a national;

357 (2) a trustee was domiciled or had a place of business; or

358 (3) any trust property was located.

359 Section 404. Trust Purposes

360 Section 404. A trust may be created only to the extent its purposes are lawful and not
361 contrary to public policy.

362 Section 405. Charitable Purposes; Enforcement

363 Section 405. (a) A charitable trust may be created for the relief of poverty, the
364 advancement of education or religion, the promotion of health, governmental or municipal
365 purposes, or other purposes the achievement of which is beneficial to the community.

366 (b) If the terms of a charitable trust do not indicate a particular charitable purpose or
367 beneficiary and do not provide a method to select such a purpose or beneficiary, the court may
368 select one or more charitable purposes or beneficiaries. The selection must be consistent with
369 the settlor's intention to the extent it can be ascertained.

370 (c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce
371 the trust.

372 Section 406. Creation of Trust Induced By Fraud, Duress, or Undue Influence

373 Section 406. A trust shall be void to the extent its creation was induced by fraud, duress,
374 or undue influence.

375 Section 407. Evidence of Oral Trust

376 Section 407. Except as required by a statute other than this chapter, a trust need not be
377 evidenced by a trust instrument, but the creation of an oral trust and its terms may be established
378 only by clear and convincing evidence.

379 Section 408. Trust for Care of Animal

380 Section 408. (a) A trust for the care of animals alive during the settlor's lifetime shall be
381 valid. Unless the trust instrument provides for an earlier termination, the trust shall terminate
382 upon the death of the animal or, if the trust was created to provide for the care of more than 1
383 animal alive during the settlor's lifetime, upon the death of last surviving animal.

384 (b) Except as otherwise expressly provided in the trust instrument, no portion of the
385 principal or income shall be converted to the use of the trustee, other than reasonable trustee fees
386 and expenses of administration, or to any use other than for the benefit of covered animals.

387 (c) A court may reduce the amount of property held by the trust if it determines that the
388 amount substantially exceeds the amount required for the intended use and the court finds that
389 there will be no substantial adverse impact in the care, maintenance, health or appearance of the
390 covered animal. The amount of the reduction shall pass as unexpended trust property in
391 accordance with subsection (d).

392 (d) Upon reduction or termination, the trustee shall transfer the unexpended trust property
393 in the following order:

394 (1) as directed in the trust instrument;

395 (2) to the settlor, if living;

396 (3) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil
397 to the transferor's will, under the residuary clause in the transferor's will; or

398 (4) to the settlor's heirs in accordance with chapter 190B.

399 (e) If a trustee is not designated by the trust instrument or no designated trustee is willing
400 or able to serve, the court shall name a trustee. The court may order the transfer of the property
401 to another trustee if the transfer is necessary to ensure that the intended use is carried out. The
402 court may also make other orders and determinations as are advisable to carry out the intent of
403 the settler and the intended use of the trust.

404 (f) The intended use of the principal or income may be enforced by an individual
405 designated for that purpose in the trust instrument, by the person having custody of an animal for
406 which care is provided by the trust instrument, by a remainder beneficiary or by an individual
407 appointed by a court upon application to it by an individual or charitable organization.

408 (g) The settlor or other custodian of an animal for whose benefit the trust was created
409 may transfer custody of the animal to the trustee at or subsequent to the creation of the trust.

410 (h) Any trust created under this section shall be subject to sections 2-901 to 2-906 of
411 chapter 190B, and the common law Rule Against Perpetuities; provided, however, that the life or
412 lives in being shall be measured based on the animal or animals alive at the time of the settlor's
413 death or when the trust becomes irrevocable. The measuring lives shall be those of the
414 beneficiary animals, not human lives.

415 Section 409. Non-charitable Trust Without Ascertainable Beneficiary.

416 Section 409. Except as otherwise provided in section 408, or by another general or
417 special law, the following rules shall apply:

418 (1) A trust may be created for a non-charitable purpose without a definite or definitely
419 ascertainable beneficiary or for a non-charitable but otherwise valid purpose to be selected by the
420 trustee.

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

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

428 Section 410. Modification or Termination of Trust; Proceedings for Approval or
429 Disapproval

430 Section 410. (a) In addition to the methods of termination prescribed by sections 411
431 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms,
432 no purpose of the trust remains to be achieved, or the purposes of the trust have become
433 unlawful, contrary to public policy, or impossible to achieve.

434 (b) A proceeding to approve or disapprove a proposed modification or termination under
435 sections 411 through 416, or trust combination or division under section 417, may be
436 commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed
437 modification or termination under section 411 may be commenced by the settlor.

438 Section 411. Modification or Termination of Non-charitable Irrevocable Trust by
439 Consent

440 Section 411. (a) If, upon petition, the court finds that the settlor and all beneficiaries
441 consent to the modification or termination of a non-charitable irrevocable trust, the court may
442 approve the modification or termination even if the modification or termination is inconsistent
443 with a material purpose of the trust.

444 (b) A non-charitable irrevocable trust may be terminated upon consent of all of the
445 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any
446 material purpose of the trust. A non-charitable irrevocable trust may be modified upon consent of
447 all of the beneficiaries if the court concludes that modification is not inconsistent with a material
448 purpose of the trust.

449 (c) If not all of the beneficiaries consent to a proposed modification or termination of the
450 trust under subsection (a) or (b), the modification or termination may be approved by the court if
451 the court is satisfied that:

452 (1) if all of the beneficiaries had consented, the trust could have been modified or
453 terminated under this section; and

454 (2) the interests of a beneficiary who does not consent will be adequately protected.

455 Section 412. Modification or Termination Because of Unanticipated Circumstances or
456 Inability to Administer Trust Effectively

457 Section 412. (a) The court may modify the administrative or dispositive terms of a trust
458 or terminate the trust if, because of circumstances not anticipated by the settlor, modification or
459 termination will further the purposes of the trust. To the extent practicable, the modification
460 must be made in accordance with the settlor's probable intention.

461 (b) The court may modify the administrative terms of a trust if continuation of the trust
462 on its existing terms would be impracticable or wasteful or impair the trust's administration.

463 Section 414. [Modification or Termination of Uneconomic Trust.]

464 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust
465 property having a total value less than $200,000 may terminate the trust if the trustee concludes
466 that the value of the trust property is insufficient to justify the cost of administration.

467 (b) The court may modify or terminate a trust or remove the trustee and appoint a
468 different trustee if it determines that the value of the trust property is insufficient to justify the
469 cost of administration.

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

472 (d) This section does not apply to an easement for conservation or preservation.

473 (e) Action may be taken under this section regardless of any spendthrift or similar
474 protective provision.

475 Section 415. Reformation to Correct Mistakes

476 Section 415. The court may reform the terms of a trust, even if unambiguous, to conform
477 the terms to the settlor's intention if it is proved by clear and convincing evidence that the
478 settlor's intent or the terms of the trust were affected by a mistake of fact or law, whether in
479 expression or inducement.

480 Section 417. Combination and Division of Trusts

481 Section 417. After notice to the qualified beneficiaries, a trustee may combine 2 or more
482 trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not
483 impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

484 ARTICLE 5

485 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

486 Section 501. Rights of Beneficiary's Creditor or Assignee

487 Section 501. To the extent a beneficiary's interest is not subject to a spendthrift provision,
488 the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's
489 interest by attachment of present or future distributions to or for the benefit of the beneficiary or
490 other means. The court may limit the award to such relief as is appropriate under the
491 circumstances.

492 Section 502. Spendthrift Provision

493 Section 502. (a) A spendthrift provision in any instrument shall be valid only if it
494 restrains both voluntary and involuntary transfer of a beneficiary's interest.

495 (b) A term of a trust providing that the interest of a beneficiary is held subject to a
496 "spendthrift trust," or words of similar import, shall be sufficient to restrain both voluntary and
497 involuntary transfer of the beneficiary's interest.

498 (c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift
499 provision and, except as otherwise provided in this article, a creditor or assignee of the
500 beneficiary may not reach the interest or a distribution by the trustee before its receipt by the
501 beneficiary.

502 Section 505. Creditor's Claim Against Settlor

503 Section 505. (a) Whether or not the terms of a trust contain a spendthrift provision, the
504 following rules shall apply:

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

507 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the
508 maximum amount that can be distributed to or for the settlor's benefit and, if a trust has more
509 than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not
510 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.
511 Trust property shall not be considered distributable to or for the settlor's benefit solely because
512 the trustee is authorized by the terms of the trust to reimburse the settlor for any tax on trust
513 income or capital gain that is payable by the settlor under the law imposing such tax; no creditor
514 or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based
515 on the discretionary authority described in this sentence.

516 (3) After the death of a settlor, and subject to the settlor's right to direct the source from
517 which liabilities will be paid, the property of a trust that was revocable at the settlor's death shall
518 be subject to claims of the settlor's creditors, the expenses of the settlor's funeral and disposal of
519 remains, and statutory allowances to a surviving spouse and children to the extent the settlor's
520 probate estate is inadequate to satisfy those claims, expenses, and allowances.

521 Section 506. Overdue Distribution

522 Section 506. (a) In this section, "mandatory distribution" shall mean a distribution of
523 income or principal which the trustee is required to make to a beneficiary under the terms of the
524 trust, including a distribution upon termination of the trust. "Mandatory distribution" shall not
525 include a distribution subject to the exercise of the trustee's discretion even if (1) the discretion is

526 expressed in the form of a standard of distribution, or (2) the terms of the trust authorizing a
527 distribution couple language of discretion with language of direction.

528 (b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a
529 beneficiary may reach a mandatory distribution of income or principal, including a distribution
530 upon termination of the trust, if the trustee has not made the distribution to the beneficiary within
531 a reasonable time after the designated distribution date.

532 Section 507. Personal Obligations of Trustee

533 Section 507. Trust property shall not be subject to personal obligations of the trustee,
534 even if the trustee becomes insolvent or bankrupt.

535 ARTICLE 6

536 REVOCABLE TRUSTS

537 Section 602. Revocation or Amendment of Revocable Trust

538 Section 602. (a) Unless the terms of a trust expressly provide that the trust is irrevocable,
539 the settlor may revoke or amend the trust.

540 (b) If a revocable trust is created or funded by more than 1 settlor:

541 (1) to the extent the trust consists of community property, the trust may be revoked by
542 either spouse acting alone but may be amended only by joint action of both spouses;

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

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

548 (c) The settlor may revoke or amend a revocable trust:

549 (1) by complying with a method provided in the terms of the trust; or

550 (2) if the terms of the trust do not provide a method, by any method manifesting clear
551 and convincing evidence of the settlor's intent.

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

554 (e) A settlor's powers with respect to revocation, amendment, or distribution of trust
555 property may be exercised by an agent under a power of attorney only to the extent expressly
556 authorized by the terms of the trust and the power.

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

560 Section 603. Settlor's Powers; Powers of Withdrawal

561 Section 603. (a) While a trust is revocable and the settlor has capacity to revoke the trust,
562 rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed
563 exclusively to, the settlor.

564 (b) During the period the power may be exercised, the holder of a non-lapsing power of
565 withdrawal shall be treated for purposes of this section as if he or she were the settlor of a
566 revocable trust to the extent of the property subject to the power.

567 Section 604. Limitation on Action Contesting Validity of Revocable Trust; Distribution
568 of Trust Property

569 Section 604. (a) A person may commence a judicial proceeding to contest the validity of
570 a trust that was revocable at the settlor's death within the earlier of:

571 (1) 1 year after the settlor's death; or

572 (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice
573 informing the person of the trust's existence, of the trustee's name and address, and of the time
574 allowed for commencing a proceeding.

575 (b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the
576 trustee may proceed to distribute the trust property in accordance with the terms of the trust. The
577 trustee shall not be subject to liability for doing so unless:

578 (1) the trustee knows of a pending judicial proceeding contesting the validity of the trust;
579 or

580 (2) a potential contestant has notified the trustee of a possible judicial proceeding to
581 contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent
582 the notification.

583 (c) A beneficiary of a trust that is determined to have been invalid shall be liable to
584 return any distribution received.

585 ARTICLE 7

586 OFFICE OF TRUSTEE

587 Section 701. Accepting or Declining Trusteeship

588 Section 701. (a) Except as otherwise provided in subsection (c), a person designated as
589 trustee accepts the trusteeship:

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

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

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

598 (c) A person designated as trustee, without accepting the trusteeship, may, but need not:

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

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

604 Section 702. Duty to Provide Bond

605 Section 702. In the case of a testamentary trust, a trustee shall furnish a bond for the
606 performance of the trustee's fiduciary duties and a surety shall be required unless waived by the
607 terms of the trust, or found by the probate and family court department of the trial court to be not
608 necessary to protect the interests of the beneficiaries. On petition of the trustee or other interested
609 person the probate court may excuse a requirement of bond, reduce the amount of the bond,
610 release the surety, or permit the substitution of another bond with the same or different sureties.
611 When the instrument creating the trust exempts the trustee from furnishing a bond or limits the
612 amount thereof, or the probate court determines that the bond is insufficient, the probate court
613 may if it concludes that a bond is necessary or that a bond of a larger amount is necessary,
614 require the furnishing of such bond. The terms and conditions of the bond shall be as set forth in
615 section 3-606 of chapter 190B.

616 Section 703. Co-Trustees

617 Section 703. (a) Co-trustees who are unable to reach a unanimous decision may act by
618 majority decision.

619 (b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the
620 trust.

621 (c) A co-trustee shall participate in the performance of a trustee's function unless the co-
622 trustee is unavailable to perform the function because of absence, illness, disqualification under
623 other law, or other temporary incapacity or the co-trustee has properly delegated the performance
624 of the function to another trustee.

625 (d) If a co-trustee is unavailable to perform duties because of absence, illness,
626 disqualification under other law, or other temporary incapacity, and prompt action is necessary to
627 achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee
628 or a majority of the remaining co-trustees may act for the trust.

629 (e) Except as otherwise provided in subsection (f), a trustee who does not join in an
630 action of another trustee shall not be liable for the action.

631 (f) Each trustee shall exercise reasonable care to:

632 (1) prevent a co-trustee from committing a breach of trust; and

633 (2) compel a co-trustee to redress a breach of trust.

634 Section 704. Vacancy in Trusteeship; Appointment of Successor

635 Section 704. (a) A vacancy in a trusteeship shall occur if:

636 (1) a person designated as trustee rejects the trusteeship;

637 (2) a person designated as trustee cannot be identified or does not exist;

638 (3) a trustee resigns;

639 (4) a trustee is disqualified or removed;

640 (5) a trustee dies; or

641 (6) a guardian or conservator is appointed for an individual serving as trustee.

642 (b) If one or more co-trustees remain in office, a vacancy in a trusteeship need not be
643 filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustees.

644 (c) A vacancy in a trusteeship that is required to be filled shall be filled in the following
645 order of priority:

646 (1) by a person designated by the terms of the trust to act as successor trustee;

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

648 (3) by a person appointed by the court.

649 (d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court
650 may appoint an additional trustee or special fiduciary whenever the court considers the
651 appointment necessary for the administration of the trust.

652 Section 705. Resignation of Trustee

653 Section 705. (a) A trustee may resign:

654 (1) upon at least 30 days' notice to: (i) in the case of a revocable trust, the settlor and all
655 co-trustees of the trust, and (ii) in the case of any other trust, the qualified beneficiaries and all
656 co-trustees of the trust; or

657 (2) with the approval of the court.

658 (b) In approving a resignation, the court may issue orders and impose conditions
659 reasonably necessary for the protection of the trust property.

660 (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or
661 omissions of the trustee shall not be discharged or affected by the trustee's resignation.

662 Section 706. Removal of Trustee

663 Section 706. (a) The settlor, a co-trustee, or a beneficiary may request the court to
664 remove a trustee, or a trustee may be removed by the court on its own initiative.

665 (b) The court may remove a trustee if:

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

667 (2) lack of cooperation among co-trustees substantially impairs the administration of the
668 trust;

669 (3) because of unfitness, unwillingness, or persistent failure of the trustee to administer
670 the trust effectively, the court determines that removal of the trustee best serves the interests of
671 the beneficiaries; or

672 (4) there has been a substantial change of circumstances or removal is requested by all of
673 the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of
674 all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable
675 co-trustee or successor trustee is available.

676 (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition
677 to removing a trustee, the court may order such appropriate relief under section 1001(b) as may
678 be necessary to protect the trust property or the interests of the beneficiaries.

679 Section 707. Delivery of Property by Former Trustee

680 Section 707. A trustee who has resigned or been removed shall proceed expeditiously to
681 deliver the trust property within the trustee's possession to the co-trustee, successor trustee, or
682 other person entitled to it.

683 Section 708. Compensation of Trustee

684 Section 708. (a) If the terms of a trust do not specify the trustee's compensation, a trustee
685 shall be entitled to compensation that is reasonable under the circumstances.

686 (b) If the terms of a trust specify the trustee's compensation, the trustee shall be entitled
687 to be compensated as specified, but the court may allow more or less compensation if:

688 (1) the duties of the trustee are substantially different from those contemplated when the
689 trust was created; or

690 (2) the compensation specified by the terms of the trust would be unreasonably low or
691 high.

692 Section 709. Reimbursement of Expenses

693 Section 709. (a) A trustee shall be entitled to be reimbursed out of the trust property,
694 with interest as appropriate, for:

695 (1) expenses that were properly incurred in the administration of the trust; and

696 (2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were
697 not properly incurred in the administration of the trust.

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

700 ARTICLE 8

701 DUTIES AND POWERS OF TRUSTEE

702 Section 801. Duty to Administer Trust

703 Section 801. Upon acceptance of a trusteeship, the trustee shall administer the trust in
704 good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in
705 accordance with this chapter.

706 Section 802. Duty of Loyalty

707 Section 802. (a) A trustee shall administer the trust solely in the interests of the
708 beneficiaries.

709 (b) Subject to the rights of persons dealing with or assisting the trustee as provided in
710 section 1012, a sale, encumbrance, or other transaction involving the investment or management
711 of trust property entered into by the trustee for the trustee's own personal account or which is
712 otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable
713 by a beneficiary affected by the transaction unless:

714 (1) the transaction was authorized by the terms of the trust;

715 (2) the transaction was approved by the court;

716 (3) the beneficiary did not commence a judicial proceeding within the time allowed by
717 section 1005;

718 (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released
719 the trustee in compliance with section 1009; or

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

722 (c) A sale, encumbrance, or other transaction involving the investment or management of
723 trust property is presumed to be affected by a conflict between personal and fiduciary interests if
724 it is entered into by the trustee with:

725 (1) the trustee's spouse;

726 (2) the trustee's descendants, siblings, parents, or their spouses;

727 (3) an agent or attorney of the trustee; or

728 (4) a corporation or other person or enterprise in which the trustee, or a person that owns
729 a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

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

733 (e) An investment by a trustee in securities of an investment company or investment trust
734 to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not
735 presumed to be affected by a conflict between personal and fiduciary interests if the investment
736 otherwise complies with the prudent investor rule of chapter 203C. In addition to its
737 compensation for acting as trustee, the trustee may be compensated by the investment company
738 or investment trust for providing those services out of fees charged to the trust. If the trustee
739 receives compensation from the investment company or investment trust for providing
740 investment advisory or investment management services, the trustee must at least annually notify

741 the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate
742 and method by which that compensation was determined.

743 (f) In voting shares of stock or in exercising powers of control over similar interests in
744 other forms of enterprise, the trustee shall act in the best interests of the beneficiaries.

745 (g) This section does not preclude the following transactions, if fair to the beneficiaries:

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

748 (2) payment of reasonable compensation to the trustee;

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

751 (4) a deposit of trust money in a regulated financial-service institution operated by the
752 trustee; or

753 (5) an advance or loan by the trustee of money to the trust for a proper trust purpose.

754 Section 803. Impartiality

755 Section 803. If a trust has two or more beneficiaries, the trustee shall act impartially in
756 investing, managing and distributing the trust property, giving due regard to the beneficiaries'
757 respective interests.

758 Section 804. Prudent Administration

759 Section 804. A trustee shall administer the trust as a prudent person would, considering
760 the purposes, terms and other circumstances of the trust. In satisfying this standard, the trustee
761 shall exercise reasonable care, skill and caution.

762 Section 805. Costs of Administration

763 Section 805. In administering a trust, the trustee may incur only costs that are appropriate
764 and reasonable in relation to the trust property, the purposes of the trust, and the skills of the
765 trustee.

766 Section 806. Trustee's Skills

767 Section 806. A trustee who has special skills or expertise, or is named trustee in reliance
768 upon the trustee's representation that the trustee has such special skills or expertise, shall have a
769 duty to use such special skills or expertise.

770 Section 807. Delegation by Trustee

771 Section 807. (a) A trustee may delegate duties and powers if it is prudent to do so. The
772 trustee shall exercise reasonable care, skill, and caution in:

773 (1) selecting an agent;

774 (2) establishing the scope and terms of the delegation, consistent with the purposes and
775 terms of the trust; and

776 (3) periodically reviewing the agent's actions in order to monitor the agent's
777 performance and compliance with the terms of the delegation.

778 (b) In performing a delegated function, an agent owes a duty to the trust to exercise
779 reasonable care to comply with the terms of the delegation.

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

782 (d) By accepting a delegation of powers or duties from the trustee of a trust that is
783 subject to the law of the commonwealth, an agent submits to the jurisdiction of the courts of the
784 commonwealth.

785 Section 808. Powers to Direct

786 Section 808. (a) While a trust is revocable, the trustee may follow a direction of the
787 settlor that is contrary to the terms of the trust.

788 (b) If the terms of a trust confer upon a person other than the settlor of a revocable trust
789 power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise
790 of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the
791 trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that
792 the person holding the power owes to the beneficiaries of the trust.

793 (c) A person who holds a power to direct is presumptively a fiduciary who, as such, is
794 required to act in good faith with regard to the purposes of the trust and the interests of the
795 beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a
796 fiduciary duty.

797 Section 809. Control and Protection of Trust Property

798 Section 809. A trustee shall take reasonable steps to take control of and protect the trust
799 property.

800 Section 810. Recordkeeping and Identification of Trust Property.

801 Section 810. (a) A trustee shall keep adequate records of the administration of the trust.

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

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

805 Section 811. Enforcement and Defense of Claims

806 Section 811. A trustee shall take reasonable steps to enforce claims of the trust and to
807 defend claims against the trust.

808 Section 812. Collecting Trust Property

809 Section 812. A trustee shall take reasonable steps to compel a former trustee or other
810 person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee
811 to have been committed by a former trustee.

812 Section 813. Duty to Inform and Report

813 Section 813. (a) A trustee shall keep the qualified beneficiaries of the trust reasonably
814 informed about the administration of the trust. Unless unreasonable under the circumstances, a
815 trustee shall promptly respond to a qualified beneficiary's request for information related to the
816 administration of the trust.

817 (b) Within 30 days after acceptance of the trust or the trust becomes irrevocable,
818 whichever is later, the trustee shall inform in writing the qualified beneficiaries of the trustee's
819 name and address. The information shall be delivered or sent by ordinary first class mail.

820 (c) A trustee shall send an account to the distributees and permissible distributees of trust
821 income or principal, and to other qualified beneficiaries who request it, at least annually and at
822 the termination of the trust. The account may be formal or informal, but shall include
823 information relating to the trust property, liabilities, receipts, and disbursements, including the
824 amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective
825 market values.

826 (d) A beneficiary may waive the right to a trustee's account or other information
827 otherwise required to be furnished under this section. A beneficiary, with respect to future
828 accounts and other information, may withdraw a waiver previously given. A waiver of a
829 trustee's account or other information does not relieve the trustee from accountability and
830 potential liability for matters that the account or other information would have disclosed.

831 Section 814. Discretionary Powers; Tax Savings

832 Section 814. (a) Notwithstanding the broad discretion granted to a trustee in the terms of
833 the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee

834 shall exercise a discretionary power in good faith and in accordance with the terms and purposes
835 of the trust and the interests of the beneficiaries.

836 (b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a
837 rule in this subsection does not apply:

838 (1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on
839 the trustee a power to make discretionary distributions to or for the trustee's personal benefit
840 may exercise the power only in accordance with an ascertainable standard; and

841 (2) a trustee may not exercise a power to make discretionary distributions to satisfy a
842 legal obligation of support that the trustee personally owes another person.

843 (c) A power whose exercise is limited or prohibited by subsection (b) may be exercised
844 by a majority of the remaining trustees whose exercise of the power is not so limited or
845 prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special
846 fiduciary with authority to exercise the power.

847 (d) Subsection (b) does not apply to:

848 (1) a power held by the settlor's spouse who is the trustee of a trust for which a marital
849 deduction was previously allowed; or

850 (2) any trust during any period that the trust may be revoked or amended by its settlor.

851 Section 815. General Powers of Trustee.

852 Section 815. (a) A trustee, without authorization by the court, may exercise:

853 (1) powers conferred by the terms of the trust; or

854 (2) except as limited by the terms of the trust:

855 (A) all powers over the trust property which an unmarried competent owner has over
856 individually owned property;

857 (B) any other powers appropriate to achieve the proper investment, management, and
858 distribution of the trust property; and

859 (C) any other powers conferred by this chapter.

860 (b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

861 Section 816. Specific Powers of Trustee

862 Section 816. Without limiting the authority conferred by section 815, a trustee may:

863 (1) collect trust property and accept or reject additions to the trust property from a
864 settlor or any other person;

865 (2) acquire or sell property, for cash or on credit, at public or private sale;

866 (3) exchange, partition, or otherwise change the character of trust property;

867 (4) deposit trust money in an account in a regulated financial-service institution;

868 (5) borrow money, with or without security, and mortgage or pledge trust property for a
869 period within or extending beyond the duration of the trust;

870 (6) with respect to an interest in a proprietorship, partnership, limited liability company,
871 business trust, corporation, or other form of business or enterprise, continue the business or other
872 enterprise and take any action that may be taken by shareholders, members, or property owners,
873 including merging, dissolving, or otherwise changing the form of business organization or
874 contributing additional capital;

875 (7) with respect to stocks or other securities, exercise the rights of an absolute owner,
876 including the right to:

877 (A) vote, or give proxies to vote, with or without power of substitution, or enter into or
878 continue a voting trust agreement;

879 (B) hold a security in the name of a nominee or in other form without disclosure of the
880 trust so that title may pass by delivery;

881 (C) pay calls, assessments, and other sums chargeable or accruing against the securities,
882 and sell or exercise stock subscription or conversion rights; and

883 (D) deposit the securities with a depositary or other regulated financial-service
884 institution;

885 (8) with respect to an interest in real property, construct, or make ordinary or
886 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
887 demolish improvements, raze existing or erect new party walls or buildings, subdivide or
888 develop land, dedicate land to public use or grant public or private easements, and make or
889 vacate plats and adjust boundaries;

890 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other
891 arrangement for exploration and removal of natural resources, with or without the option to
892 purchase or renew, for a period within or extending beyond the duration of the trust;

893 (10) grant an option involving a sale, lease, or other disposition of trust property or
894 acquire an option for the acquisition of property, including an option exercisable beyond the
895 duration of the trust, and exercise an option so acquired;

896 (11) insure the property of the trust against damage or loss and insure the trustee, the
897 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

898 (12) abandon or decline to administer property of no value or of insufficient value to
899 justify its collection or continued administration;

900 (13) with respect to possible liability for violation of environmental law:

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

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

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

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

912 (E) pay the expense of any inspection, review, abatement, or remedial action to comply
913 with environmental law;

914 (14) pay or contest any claim, settle a claim by or against the trust, and release, in whole
915 or in part, a claim belonging to the trust;

916 (15) pay taxes, assessments, compensation of the trustee and of employees and agents of
917 the trust, and other expenses incurred in the administration of the trust;

918 (16) exercise elections with respect to federal, state, and local taxes;

919 (17) select a mode of payment under any employee benefit or retirement plan, annuity,
920 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right
921 to indemnification for expenses and against liabilities, and take appropriate action to collect the
922 proceeds;

923 (18) make loans out of trust property, including loans to a beneficiary on terms and
924 conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee
925 has a lien on future distributions for repayment of those loans;

926 (19) pledge trust property to guarantee loans made by others to the beneficiary;

927 (20) appoint a trustee to act in another jurisdiction with respect to trust property located
928 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
929 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so
930 appointed;

931 (21) pay an amount distributable to a beneficiary who is under a legal disability or who
932 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
933 applying it for the beneficiary's benefit, or by:

934 (A) paying it to the beneficiary's conservator or, if the beneficiary does not have a
935 conservator, the beneficiary's guardian;

936 (B) paying it to the beneficiary's custodian under chapter 201A or custodial trustee under
937 part 5 of Article VII of chapter 190B, and, for that purpose, creating a custodianship or custodial
938 trust;

939 (C) if the trustee does not know of a conservator, guardian, custodian, or custodial
940 trustee, paying it to an adult relative or other person having legal or physical care or custody of
941 the beneficiary, to be expended on the beneficiary's behalf; or

942 (D) managing it as a separate fund on the beneficiary's behalf, subject to the
943 beneficiary's continuing right to withdraw the distribution;

944 (22) on distribution of trust property or the division or termination of a trust, make
945 distributions in divided or undivided interests, allocate particular assets in proportionate or
946 disproportionate shares, value the trust property for those purposes, and adjust for resulting
947 differences in valuation;

948 (23) resolve a dispute concerning the interpretation of the trust or its administration by
949 mediation, arbitration, or other procedure for alternative dispute resolution;

950 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
951 protect trust property and the trustee in the performance of the trustee's duties;

952 (25) sign and deliver contracts and other instruments that are useful to achieve or
953 facilitate the exercise of the trustee's powers;

954 (26) establish or continue title-holding entities, including so-called "nominee trusts" for
955 the purposes of holding legal title to any portion or all of the trust property without the need to
956 record or make public the terms of the trust; and

957 (27) on termination of the trust, exercise the powers appropriate to wind up the
958 administration of the trust and distribute the trust property to the persons entitled to it.

959 Section 817. Distribution upon Termination.

960 Section 817. (a) Upon termination or partial termination of a trust, the trustee may send
961 to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the
962 proposed distribution terminates if the beneficiary does not notify the trustee of an objection
963 within 30 days after the proposal was sent but only if the proposal (i) informed the beneficiary of
964 the right to object and of the time allowed for objection and (ii) provided the beneficiary with
965 sufficient material facts to enable the beneficiary to evaluate the proposal.

966 (b) Upon the occurrence of an event terminating or partially terminating a trust, the
967 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,
968 subject to the right of the trustee to retain a reasonable reserve for the payment of debts,
969 expenses, and taxes.

970 ARTICLE 10

971 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH
972 TRUSTEE

973 Section 1001. Remedies for Breach of Trust

974 Section 1001. (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a
975 breach of trust.

976 (b) To remedy a breach of trust that has occurred or may occur, the court may:

977 (1) compel the trustee to perform the trustee's duties;

978 (2) enjoin the trustee from committing a breach of trust;

979 (3) compel the trustee to redress a breach of trust by paying money, restoring property,
980 or other means;

981 (4) order a trustee to account;

982 (5) appoint a special fiduciary to take possession of the trust property and administer the
983 trust;

984 (6) suspend the trustee;

985 (7) remove the trustee;

986 (8) reduce or deny compensation to the trustee;

987 (9) subject to section 1012, void an act of the trustee, impose a lien or a constructive trust
988 on trust property, or trace trust property wrongfully disposed of and recover the property or its
989 proceeds; or

990 (10) order any other appropriate relief.

991 Section 1005. Limitation of Action Against Trustee

992 Section 1005. (a) Unless previously barred by adjudication, consent or limitation, any
993 claim against a trustee for breach of trust is barred as to any beneficiary who has received a final
994 account or other statement fully disclosing the matter and showing termination of the trust
995 relationship between the trustee and the beneficiary unless a proceeding to assert the claim is
996 commenced within six months after receipt of the final account or statement. In any event and
997 notwithstanding lack of full disclosure a trustee who has issued a final account or statement
998 received by the beneficiary and has informed the beneficiary of the location and availability of
999 records for examination by the beneficiary is protected after three years. A beneficiary is
1000 deemed to have received a final account or statement if, being an adult, it is received by the
1001 beneficiary personally or if, being a minor or disabled person, it is received by the beneficiary's
1002 representative as described in article 3.

1003 (b) Where a claim is not barred by the provisions of subsection (a), a beneficiary may not
1004 commence a proceeding against a trustee for breach of trust more than three years after the date
1005 the beneficiary or a representative of the beneficiary knew or reasonably should have known of
1006 the existence of a potential claim for breach of trust.

1007 (c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for
1008 breach of trust must be commenced within five years after the first to occur of:

1009 (1) the removal, resignation, or death of the trustee;

1010 (2) the termination of the beneficiary's interest in the trust; or

1011 (3) the termination of the trust.

1012 Section 1006. Reliance on Trust Instrument

1013 Section 1006. A trustee who acts in reasonable reliance on the terms of the trust as
1014 expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent
1015 the breach resulted from the reliance.

1016 Section 1007. Event Affecting Administration or Distribution

1017 Section 1007. If the happening of an event or change of status, including, but not limited
1018 to: birth, adoption, marriage, divorce, performance of educational requirements, or death, affects
1019 the administration or distribution of a trust, a trustee who has exercised reasonable care to
1020 ascertain the happening of the event or change of status is not liable for a loss resulting from the
1021 trustee's lack of knowledge.

1022 Section 1008. Exculpation of Trustee

1023 Section 1008. (a) A term of a trust relieving a trustee of liability for breach of trust shall
1024 be unenforceable to the extent that it:

1025 (1) relieves the trustee of liability for breach of trust committed in bad faith or with
1026 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

1027 (2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential
1028 relationship to the settlor.

1029 (b) An exculpatory term drafted or caused to be drafted by the trustee may be invalid as
1030 an abuse of a fiduciary or confidential relationship unless the trustee proves that its existence and
1031 contents were adequately communicated to the settlor.

1032 Section 1009. Beneficiary's Consent, Release, or Ratification

1033 Section 1009. A trustee is not liable to a beneficiary for breach of trust if the beneficiary,
1034 while having capacity, in writing, consented to the conduct constituting the breach, released the
1035 trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

1036 (1) the consent, release, or ratification of the beneficiary was induced by improper
1037 conduct of the trustee; or

1038 (2) at the time of the consent, release, or ratification, the beneficiary did not know of the
1039 material facts relating to the breach.

1040 Section 1010. Limitation on Personal Liability of Trustee

1041 Section 1010. (a) Except as otherwise provided in the contract, a trustee is not personally
1042 liable on a contract properly entered into in the trustee's fiduciary capacity in the course of
1043 administering the trust if the trustee in the contract disclosed the fiduciary capacity.

1044 (b) A trustee is personally liable for torts committed in the course of administering a
1045 trust, or for obligations arising from ownership or control of trust property, including liability for
1046 violation of environmental law, only if the trustee is personally at fault.

1047 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary
1048 capacity, on an obligation arising from ownership or control of trust property, or on a tort

1049 committed in the course of administering a trust, may be asserted in a judicial proceeding against
1050 the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for
1051 the claim.

1052 Section 1011. Interest as General Partner

1053 Section 1011. (a) Except as otherwise provided in subsection (c) or unless personal
1054 liability is imposed in the contract, a trustee who holds an interest as a general partner in a
1055 general or limited partnership shall not be personally liable on a contract entered into by the
1056 partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in
1057 the contract or in a statement previously filed pursuant to chapter 108A or chapter 109.

1058 (b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a
1059 general partner shall not be personally liable for torts committed by the partnership or for
1060 obligations arising from ownership or control of the interest unless the trustee is personally at
1061 fault.

1062 (c) The immunity provided by this section shall not apply if an interest in the partnership
1063 is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or
1064 one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

1065 (d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is
1066 personally liable for contracts and other obligations of the partnership as if the settlor were a
1067 general partner.

1068 Section 1012. Protection of Person Dealing with Trustee

1069 Section 1012. (a) A person other than a beneficiary who in good faith assists a trustee, or
1070 who in good faith and for value deals with a trustee, without knowledge that the trustee is
1071 exceeding or improperly exercising the trustee's powers shall be protected from liability as if the
1072 trustee properly exercised the power.

1073 (b) A person other than a beneficiary who in good faith deals with a trustee shall not be
1074 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

1075 (c) A person who in good faith delivers assets to a trustee need not ensure their proper
1076 application.

1077 (d) A person other than a beneficiary who in good faith assists a former trustee, or who
1078 in good faith and for value deals with a former trustee, without knowledge that the trusteeship
1079 has terminated shall be protected from liability as if the former trustee were still a trustee.

1080 (e) Comparable protective provisions of other laws relating to commercial transactions
1081 or transfer of securities by fiduciaries prevail over the protection provided by this section.

1082 Section 1013. Certification of Trust

1083 Section 1013. (a) Instead of furnishing a copy of the trust instrument to a person other
1084 than a beneficiary, the trustee may furnish to the person a certification of trust containing the
1085 following information:

1086 (1) that the trust exists and the date the trust instrument was executed;

1087 (2) the identity of the settlor;

1088 (3) the identity and address of the currently acting trustee;

1089 (4) the powers of the trustee;

1090 (5) the revocability or irrevocability of the trust and the identity of any person holding a
1091 power to revoke the trust;

1092 (6) the authority of co-trustees to sign or otherwise authenticate and whether all or less
1093 than all are required in order to exercise powers of the trustee;

1094 (7) the trust's taxpayer identification number; and

1095 (8) the manner of taking title to trust property.

1096 (b) A certification of trust may be signed or otherwise authenticated by any trustee.

1097 (c) A certification of trust must state that the trust has not been revoked, modified, or
1098 amended in any manner that would cause the representations contained in the certification of
1099 trust to be incorrect.

1100 (d) A certification of trust need not contain the dispositive terms of a trust.

1101 (e) A recipient of a certification of trust may require the trustee to furnish copies of those
1102 excerpts from the original trust instrument and later amendments which designate the trustee and
1103 confer upon the trustee the power to act in the pending transaction.

1104 (f) A person who acts in reliance upon a certification of trust without knowledge that the
1105 representations contained therein are incorrect is not liable to any person for so acting and may
1106 assume without inquiry the existence of the facts contained in the certification. Knowledge of
1107 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust
1108 instrument is held by the person relying upon the certification.

1109 (g) A person who in good faith enters into a transaction in reliance upon a certification of
1110 trust may enforce the transaction against the trust property as if the representations contained in
1111 the certification were correct.

1112 (h) A person making a demand for the trust instrument in addition to a certification of
1113 trust or excerpts is liable for damages if the court determines that the person did not act in good
1114 faith in demanding the trust instrument.

1115 (i) This section does not limit the right of a person to obtain a copy of the trust
1116 instrument in a judicial proceeding concerning the trust.

1117 SECTION 6. (a) Except as otherwise provided in this act, :

1118 (1) this act shall apply to all trusts created before, on, or after the effective date;

1119 (2) this act shall apply to all judicial proceedings concerning trusts commenced on or
1120 after the effective date;

1121 (3) an act done before the effective date shall not be affected by this act.

1122 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed
1123 period that has commenced to run under any other statute before the effective date of this act,
1124 that statute shall continue to apply to the right even if it has been superseded.

1125 SECTION 7. Paragraph (h) of section 408 of chapter 203E of section 5 shall not apply to
1126 a trust created under an instrument executed before the effective date of this act.

1127 SECTION 8. Paragraph (a) of section 502 of chapter 203E of section 5 shall not apply to
1128 spendthrift provisions in a trust created under an instrument executed before the effective date of
1129 this act.

1130 SECTION 9. Paragraph (a) of section 602 of chapter 203E of section 5 shall not apply to
1131 trust instruments executed before the effective date of this act.

1132 SECTION 10. Section 703 shall not apply to trust instruments executed before the
1133 effective date of this act.

1134 SECTION 11. This act shall take effect on January 2, 2012.