CHAPTER 935

An Act to amend and reenact §§ 26-5.2, 26-30, 26-51, 26-66, 37.1-110, 55-7, 55-60, 55-277.4, and 64.1-73 of the Code of Virginia; to amend the Code of Virginia by adding in Title 55 a chapter numbered 31, consisting of articles numbered 1 through 11, consisting of sections numbered 55-541.01 through 55-551.06; and to repeal §§ 26-5.1, 26-49, 26-53, 26-54, 26-55, 26-64, 26-65, 38.2-3120, 55-7.1, 55-7.2, 55-19, 55-19.3, 55-19.4, 55-27 through 55-34, and 64.1-67.2 of the Code of Virginia, relating to the Uniform Trust Code.

[S 891]

Approved April 6, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-5.2, 26-30 26-51, 26-66, 37.1-110, 55-7, 55-60, 55-277.4, and 64.1-73 of the Code of Virginia are amended and reenacted; that the Code of Virginia is amended by adding in Title 55 a chapter numbered 31, consisting of articles numbered 1 through 11, consisting of sections numbered 55-541.01 through 55-551.06, as follows:

§ 26-5.2. Liability of fiduciary for actions of cofiduciary.

A. Any power vested in three or more fiduciaries may be exercised by a majority, but a fiduciary who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise. A dissenting fiduciary is not liable for the consequences of an act in which he joins at the direction of the majority of the fiduciaries if he expressed his dissent in writing to any of his cofiduciaries, if the act is not of itself a patent breach of trust.

B. A fiduciary shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any cofiduciary, nor for any banker, broker, or other person with whom the trust money or securities may be lawfully deposited, nor for any loss unless the same occurs through his own default or negligence.

C. Whenever the instrument under which a fiduciary or fiduciaries are acting reserves unto the trustor, testator, or creator or vests in an advisory or investment committee or any other person or persons, including a cofiduciary, to the exclusion of the fiduciary or the exclusion of one or more of several fiduciaries, authority to direct the making or retention of investments, or any investment, the excluded fiduciary or cofiduciary shall be liable, if at all, only as a ministerial agent and shall not be liable as fiduciary or cofiduciary for any loss resulting from the making or retention of any investment pursuant to such authorized direction.

D. This section does not excuse a cofiduciary from liability for failure to participate in the administration of trust, or to attempt to prevent a breach of trust, or to seek advice and guidance from the court in an apparently recurring situation unless otherwise expressly provided by the instrument under which the cofiduciary is acting.

E. As used in this section, "fiduciary" shall be defined as in § 8.01-2*, except that it shall not include trustees subject to the requirements and provisions of Chapter 31 (§ 55-541.01 et seq.) of Title 55*.

§ 26-30. Expenses and commissions allowed fiduciaries.

The commissioner, in stating and settling the account, shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation, in the form of a commission on receipts, or otherwise. Unless otherwise provided by the court, any guardian appointed pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1 shall also be allowed reasonable compensation for his services. If a committee or other fiduciary renders services with regard to real estate owned by the ward or beneficiary, compensation may also be allowed for the services rendered with regard to the real estate and the income therefrom or the value thereof. *Notwithstanding the foregoing provisions or any provision under Chapter 31 (§ 55-541.01 et seq.) of Title 55, where the compensation of an institutional fiduciary is specified under the terms of the trust or will by reference to a standard published fee schedule, the commissioner shall not reduce the compensation below the amount specified, unless there is sufficient proof that i) the settler or testator was not competent when the trust instrument or will was executed or ii) such compensation is excessive in light of the compensation institutional fiduciaries generally receive in similar situations.*

§ 26-51. Who to execute the trust until new trustee appointed.

The personal representative of a deceased sole trustee or the remaining trustee or trustees, if there were more than one trustee, and one or more but less than all of them have died, resigned, or become incapable of executing the trust on account of physical or mental disability or confinement in prison or other institution, or have become ineligible to continue to serve as trustee because of removal from the Commonwealth of themselves where residency is statutorily required, or have otherwise become

ineligible to continue serving as trustee, shall execute the trust, or so much thereof as remained unexecuted at the death or resignation or at the time such lack of capacity to execute the trust or such ineligibility came into being (whether the trust subject is real or personal property) until an appointment is made pursuant to § 26-48 unless the instrument creating the trust directs otherwise, or some other trustee is appointed for the purpose by a circuit court having jurisdiction of the case. In the case of removal of the trust management function by a corporate trustee, the corporate trustee shall continue to execute the trust until such time as an appointment is made pursuant to § 26-48.

~~This section and §§ 26-48 through *and* 26-50 shall not apply to any case provided for by § 55-29.~~ *The provisions of this section shall not apply to any trust governed by the Uniform Trust Code (§ 55-541.01 et seq.).*

§ 26-66. Sale of property and payment of proceeds to nonresident trustee.

If, in any proceeding under § 26-60 ~~or § 26-64,~~ or in case of an interest in property acquired by a will that does not restrict the transfer of property out of this Commonwealth upon petition under § 26-60, it shall appear to the court to be proper, it may order the property, or any part of it, to be sold, and the proceeds to be paid to the foreign guardian, conservator or committee or nonresident trustee.

§ 37.1-110. Application for order to compel payment of expenses.

When any patient or his guardian, conservator, committee, trustee or the person or persons legally liable for his expenses fails to pay such expenses, and it appears from investigation that such patient, his guardian, conservator, committee, trustee or the person or persons legally liable for the support of the patient is able or has sufficient estate to pay such expenses, the Department shall petition the appropriate court having jurisdiction over the estate of the patient or the court for the county or city of which the patient is a legal resident or from which he was admitted to a state hospital for an order to compel payment of such expenses by persons liable therefor. In any case in which a person or persons legally liable for the support of the patient is being proceeded against, the petition shall be directed to the appropriate court of the county or city in which such person or persons legally liable for the support of the patient reside.

The patient and his estate shall first be liable for the payment of his expenses and thereafter, the person or persons legally liable for the support of the patient. Such person or persons shall be the father, mother, husband, wife and child or children of the patient, who have attained the age of majority. Such persons shall be jointly and severally liable. The Department shall collect such part or all of such expenses from the several sources as appears proper under the circumstances and may proceed against all of such sources, except that principal or income or both from a trust created for the benefit of the patient shall be liable for payment only as provided in ~~§ 55-19~~ *Article 5 (§ 55-545.01 et seq.) of the Uniform Trust Code*. In evaluating the circumstances, the Department may consider any events related to the admission of the patient for treatment which have affected the person or persons legally liable, such as the infliction of serious injury by the patient on any person who is legally liable. The proceedings for the collection of such expenses shall conform to the procedure for collection of debts due the Commonwealth.

§ 55-7. Power of disposal in life tenant not to defeat remainder unless exercised; power of disposal held by fiduciary.

~~A.~~ If any interest in or claim to real estate or personal property be disposed of by deed or will for life, with a limitation in remainder over, and in the same instrument there be conferred expressly or by implication a power upon the life tenant in his lifetime or by will to dispose absolutely of such property, the limitation in remainder over shall not fail, or be defeated, except to the extent that the life tenant shall have lawfully exercised such power of disposal. A deed of trust or mortgage executed by the life tenant shall not be construed to be an absolute disposition of the estate thereby conveyed, unless there be a sale thereunder. A power of disposal held by any person in a fiduciary capacity under an express trust in writing shall not be deemed to be held by such fiduciary in a beneficial capacity and shall not be construed in any manner to enlarge the beneficial interest otherwise given to him under such trust.

~~B. A power in a fiduciary to dispose of property for the benefit of any beneficiary, including himself, when such power is limited by reference to health, education, support, maintenance, benefit or other ascertainable standard, shall not be deemed a power of absolute disposition, but the holder shall be subject to such conditions or limitations as the standard imposes on the exercise of such power; and such conditions or limitations shall be enforceable by any beneficiary, including a remainderman. A power to use property for the benefit of the holder of the power is limited by an ascertainable standard if the extent of the holder's duty to exercise or not to exercise the power is reasonably measurable in terms of a beneficiary's needs for health, education, support or maintenance, or any combination of them. As used in this subsection, the words "support" and "maintenance" are synonymous and their meaning is not limited to the bare necessities of life. Examples of powers which are limited by the requisite standards are powers exercisable for the beneficiary's "support," "support in reasonable comfort," "maintenance in health and reasonable comfort," "support in his accustomed manner of living," "education, including college and professional," "benefit," "health" and "medical, dental, hospital and nursing expenses and expenses of invalidism." In determining whether a power is limited by an ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income~~

~~before the power can be exercised.~~

§ 55-60. Meaning of phrases that may be included in such trust deed.

The following provisions may be incorporated in any such deed of trust in the respective short forms indicated, namely:

(1) The words "identified by trustee's signature," or words of like purport, shall be construed as if the deed set forth: "All of which said notes (or other obligations) bear the marginal signature of the trustee for the purpose of identification but for no other purpose whatever."

(2) The words "deferred purchase money," "purchase money" or words of like purport, shall be construed as if the deed set forth: "This deed of trust is a contemporaneous purchase money deed of trust and secures the payment of deferred purchase money due by the grantor upon the property hereby conveyed." Any deed of trust securing a loan, proceeds of which are used by the borrower to acquire the secured real property, shall be deemed to be a purchase money deed of trust.

(3) The words "exemptions waived," or words of like purport, shall be construed as if the deed set forth: "The grantor hereby waives the benefit of his exemptions as to the debt hereby secured and as to all other obligations which may be imposed upon him by the provisions of this deed of trust."

(4) The words "subject to all upon default," or words of like purport, shall be construed as if the deed set forth: "Should default be made in the payment of any part of the debt hereby secured, principal or interest, at the maturity of such part, or in the event of the breach of any of the covenants entered into or imposed upon the grantor, then the entire obligation of this deed of trust and the whole debt hereby secured shall, at the option of the beneficiaries, become forthwith due and payable."

(5) The words "renewal or extension permitted," or words of like purport, shall be construed as if the deed set forth: "The grantor hereby consents and agrees that the debt hereby secured, or any part thereof, may be renewed or extended beyond maturity as often as may be desired by agreement between the creditor and any subsequent owner of the property, and no such renewal or extension shall in any way affect the grantor's responsibility, whether as surety or otherwise."

(5a) The words "reinstatement permitted" or words of like purport shall be construed as if the deed set forth: "The grantor and any other party assuming liability hereunder hereby consent and agree that if the property conveyed hereby or a substantial portion thereof is transferred to any subsequent owner, and the creditor exercises the right to accelerate the debts secured hereby, the creditor may accept any delinquent payments or other cure of default giving rise to such acceleration from the then owner of the property or any other person and reinstate the indebtedness in accordance with the schedule of maturity as of the time of acceleration or upon such new schedule as may be agreed if renewal or extension are otherwise permitted and no such reinstatement shall in any way affect the liability of such prior parties, whether as surety or otherwise."

The words "renewal, extension or reinstatement permitted," or words of like purport, shall have the meaning ascribed to the individual words or phrases in this subsection (5a) and in subsection (5).

(6) The words "right of anticipation reserved," or words of like purport, shall be construed as if the deed set forth: "The grantor reserves the right to anticipate the payment of the debt hereby secured, or any part thereof which is represented by a separate note (or other obligation) at any interest period by the payment of principal and interest to the date of such anticipated payment only."

(7) The words "priority in direct order of maturity," or words of like purport shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured have priority amongst themselves in the direct order of their maturities, each having priority over all others falling due after its maturity." And the words, "priority in inverse order of maturity," or words of like purport, shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured have priority amongst themselves in the inverse order of their maturities, each having priority over all others falling due before its maturity."

(8) The words "insurance required . . . . . dollars," or words of similar purport, shall be construed as if the deed set forth: "The grantor covenants that he will keep the improvements on the property insured against fire in some solvent insurance company approved by the trustee for the benefit of the beneficiaries hereunder in the sum of at least . . . . . dollars, and will deposit with the trustee or beneficiary the policies, with standard loss payable clauses with full contribution in favor of the trustee as his interest may appear; and the grantor further covenants that in the event of his failure to keep the property so insured and the policies so deposited, then the trustee or any beneficiary may, at his option, effect such insurance and pay the premium thereon and the money so paid, with interest thereon, shall become a part of the debt hereby secured, in the event of sale to be paid next after the expenses of executing this trust, and shall be otherwise recoverable from the grantor as a debt, but there shall be no obligation upon the trustee or beneficiary to effect such insurance."

(9) The words "substitution of trustee permitted," or words of like purport, shall be construed as if the deed set forth: "Grantor grants unto the beneficiary or beneficiaries or to a majority in amount of the holders of the obligations secured hereunder and to their assigns the right and power, under the provisions of ~~§ 26-49~~ *§ 55-59*, to appoint a substitute trustee or trustees."

(10) The words "any trustee may act," or words of similar purport, shall be construed as if the deed set forth: "The grantors, and all interested in the obligations hereby secured, by accepting the benefits hereof, agree that all authority, power and discretion hereinabove granted to the trustees may be

exercised by any of them, without any other, with the same effect as if exercised jointly by all of them."

(11) The words "this is a credit line deed of trust," or words of like purport, if in capital letters or underscored and on the first page of the deed of trust and containing the name and address of the noteholder, shall have the meaning set forth in § 55-58.2.

§ 55-277.4. Fiduciary's power to adjust.

A. A fiduciary may adjust between principal and income to the extent the fiduciary considers necessary if the fiduciary invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the fiduciary determines, after applying the rules in subsection A of § 55-277.3, that the fiduciary is unable to comply with subsection B of § 55-277.3.

B. In deciding whether and to what extent to exercise the power conferred by subsection A, a fiduciary shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

1. The nature, purpose, and expected duration of the trust;

2. The intent of the settlor;

3. The identity and circumstances of the beneficiaries;

4. The needs for liquidity, regularity of income, and preservation and appreciation of capital;

5. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the fiduciary or received from the settlor;

6. The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the fiduciary may estimate as to assets for which market values are not readily available;

7. Whether and to what extent the terms of the trust give the fiduciary the power to invade principal or accumulate income or prohibit the fiduciary from invading principal or accumulating income, and the extent to which the fiduciary has exercised a power from time to time to invade principal or accumulate income;

8. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

9. The anticipated tax consequences of an adjustment.

C. A fiduciary may not make an adjustment:

1. That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary did not have the power to make the adjustment;

2. That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

3. That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

4. From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

5. If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the fiduciary did not possess the power to make an adjustment;

6. If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a fiduciary or appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment;

7. If the fiduciary is a beneficiary of the trust; or

8. If the fiduciary is not a beneficiary, but the adjustment would benefit the fiduciary directly or indirectly.

D. If subdivision C 5, 6, 7, or 8 applies to a fiduciary and there is more than one fiduciary, a cofiduciary to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust. Any beneficiary or fiduciary may petition the circuit court ~~pursuant to § 26-54~~ for appointment of a cofiduciary who would be permitted to make an adjustment not permitted by the other fiduciary or fiduciaries.

E. A fiduciary may release the entire power conferred by subsection A or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subdivisions C 1 through 6 or C 8 or if the fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection C. The release may be permanent or for a specified period, including a period measured by the life of an individual.

F. Terms of a trust that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection A.

G. As used in this section and the application of this section elsewhere in this chapter, the term "trust" includes the assets under the control or management of a personal representative.

CHAPTER 31.

UNIFORM TRUST CODE.

Article 1.

General Provisions and Definitions.

§ 55-541.01. Short Title.

This Act may be cited as the Uniform Trust Code.

§ 55-541.02. Scope.

A. This chapter applies to express inter vivos trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This chapter also applies to testamentary trusts, except to the extent that specific provision is made for them in Title 26 or elsewhere in the Code of Virginia, or to the extent it is clearly inapplicable to them. Section 55-548.13, which provides the duties of a trustee to inform and report to the trust's beneficiaries, shall apply to testamentary trusts. For purposes of this subsection A, the word "trust" and the words "trustee" or "fiduciary," as used in Title 26, shall be deemed to refer to testamentary trusts and testamentary trustees, except to the extent that the use of such words is clearly inapplicable to testamentary trusts and testamentary trustees. This chapter shall not apply to:

1. A trust that is primarily used for business, investment or commercial transactions, including business trusts, land trusts (§ 55-17.1), deeds of trusts (Article 2 (§ 55-58 et seq.) of Chapter 4 of Title 55) voting trusts, common trust funds, security arrangements, liquidation trusts, trusts created by deposit arrangement in a financial institution, and trusts created for paying debts, dividends, interest, or profits.

2. A trust that is used primarily for employment including trusts created for paying salaries, wages, pensions or employee benefits of any kind.

3. A trust under which a person is a nominee or escrowee for another.

4. Other special purpose trusts governed by particular statutes, including trusts under Title 57.

B. Notwithstanding subsection A, a court, in exercising jurisdiction over the supervision or administration of trusts, may determine that application of the policies, procedures or rules of the Code is appropriate to resolution of particular issues.

§ 55-541.03. Definitions.

In this chapter:

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

"Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of § 2041 (b) (1) (A) or 2514 (c) (1) of the Internal Revenue Code of 1986.

"Beneficiary" means a person that (i) has a present or future beneficial interest in a trust, vested or contingent; or (ii) in a capacity other than that of trustee, holds a power of appointment over trust property.

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in § 55-544.05.

"Conservator" means a person appointed by the court to administer the estate of an adult individual.

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

"Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

"Guardian of the estate" means a person appointed by the court to administer the estate of a minor.

"Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

"Jurisdiction," with respect to a geographic area, includes a state or country.

"Person" means 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.

"Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee which is limited by an ascertainable standard, or which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

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

"Qualified beneficiary" means a living or then existing beneficiary who, on the date the beneficiary's qualification is determined, (i) is a distributee or permissible distributee of trust income or principal; (ii) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in (i) terminated on that date, but the termination of those interests would not

cause the trust to terminate; or (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

"Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

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

"Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

"Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

"Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

"Trustee" includes an original, additional, and successor trustee, and a cotrustee.

§ 55-541.04. Knowledge.

A. Subject to subsection B, a person has knowledge of a fact if the person:

1. Has actual knowledge of it;

2. Has received a notice or notification of it; or

3. From all the facts and circumstances known to the person at the time in question, has reason to know it.

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

§ 55-541.05. Default and mandatory rules.

A. Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

B. The terms of a trust prevail over any provision of this chapter except:

1. The requirements for creating a trust;

2. The duty of a trustee to act in good faith and in accordance with the purposes of the trust;

3. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

4. The power of the court to modify or terminate a trust under §§ 55-544.10 through 55-544.16;

5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5;

6. The power of the court under § 55-547.02 to require, dispense with, or modify or terminate a bond;

7. The power of the court under subsection B of § 55-547.08 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

8. The effect of an exculpatory term under § 55-550.08;

9. The rights under §§ 55-550.10 through 55-550.13 of a person other than a trustee or beneficiary;

10. Periods of limitation for commencing a judicial proceeding; and

11. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

§ 55-541.06. Common law of trusts; principles of equity.

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

§ 55-541.07. Governing law.

The meaning and effect of the terms of a trust are determined by:

1. The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

2. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

§ 55-541.08. Principal place of administration.

A. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of an inter vivos trust designating the principal place of administration 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; or

2. All or part of the administration occurs in the designated jurisdiction.

B. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee of an inter vivos trust may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

C. When the proposed transfer of a trust's principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the qualified beneficiaries of the proposed transfer not less than 60 days before initiating the transfer. A corporate trustee that maintains a place of business in the Commonwealth where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries shall not be deemed to have transferred its principal place of administration if all or significant portions of the administration of the trust are performed outside the Commonwealth. The notice of proposed transfer shall include:

1. The name of the jurisdiction to which the principal place of administration is to be transferred;

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

3. An explanation of the reasons for the proposed transfer;

4. The date on which the proposed transfer is anticipated to occur; and

5. The date, not less than 60 days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.

D. The authority of a trustee under this section to transfer a trust's principal place of administration to another state or to a jurisdiction outside of the United States terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

E. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to § 55-547.04.

F. The court, for good cause shown, may transfer the principal place of administration of a testamentary trust to another state or to a jurisdiction outside of the United States upon such conditions, if any, as it may deem appropriate.

§ 55-541.09. Methods and waiver of notice.

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

B. Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

C. Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

D. Notice of a judicial proceeding shall be given as provided in § 55-542.06.

§ 55-541.10. Others treated as qualified beneficiaries.

A. Whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

B. A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date of the charitable organization's qualification is being determined:

1. Is a distributee or permissible distributee of trust income or principal;

2. Would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

3. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

C. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in § 55-544.08 or 55-544.09 has the rights of a qualified beneficiary under this chapter.

D. The attorney general of the Commonwealth has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the Commonwealth but need not be given notices or information required under §§ 55-547.05 and 55-548.13 unless otherwise requested.

§ 55-541.11. Nonjudicial settlement agreements.

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

B. Except as otherwise provided in subsection C, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

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

D. Matters that may be resolved by a nonjudicial settlement agreement include:

1. The interpretation or construction of the terms of the trust;

2. The approval of a trustee's report or accounting;

3. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

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

5. Transfer of a trust's principal place of administration; and

6. Liability of a trustee for an action relating to the trust.

E. Any interested person may petition the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Article 2.

Judicial Proceedings.

§ 55-542.01. Role of court in administration of trust.

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

B. Except as provided in Title 26, a trust is not subject to continuing judicial supervision unless ordered by the court.

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

§ 55-542.02. Jurisdiction over trustee and beneficiary.

A. By accepting the trusteeship of a trust having its principal place of administration in the Commonwealth or by moving the principal place of administration to the Commonwealth, the trustee submits personally to the jurisdiction of the courts of the Commonwealth regarding any matter involving the trust.

B. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in the Commonwealth are subject to the jurisdiction of the courts of the Commonwealth regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of the Commonwealth regarding any matter involving the trust.

C. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

§ 55-542.03. RESERVED.

§ 55-542.04. RESERVED.

§ 55-542.05. Proceedings to appoint or remove trustees.

A. Proceedings to appoint or remove trustees may be brought by motion pursuant to §§ 26-48 and 26-50.

B. Proceedings to appoint or remove trustees also may be brought by petition or bill of complaint. In such a proceeding, beneficiaries who are not qualified beneficiaries shall not be necessary parties, nor shall it be necessary to join (i) a trustee who has declined to accept the trust, resigned or been adjudicated an incapacitated person, or (ii) the personal representative of a trustee.

§ 55-542.06. Pleadings; parties; orders; notice.

A. In judicial proceedings involving trusts governed under this chapter, including proceedings to modify or terminate a trust:

1. Interests to be affected by the proceeding shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in any other appropriate manner.

2. Orders shall bind persons as follows:

a. An order binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests as objects, takers in default or otherwise are subject to such power.

b. To the extent there is no conflict of interest between or among them:

i. An order binding a conservator or a guardian of an estate binds the person whose estate he controls;

ii. An order binding a guardian of the person binds the ward if no conservator or guardian of his estate has been appointed;

iii. An order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties;

iv. An order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

v. An order binding a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

c. Unless otherwise represented, a minor, an incapacitated, unborn, or unascertained person is bound by an order if his interest is adequately represented by another party having a substantially identical interest in the proceedings.

3. Notice shall be given:

a. Pursuant to Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 and the Rules of Supreme Court of Virginia, to every interested party or to a person who can bind an interested party pursuant to subdivision 2a or 2b.

b. To unborn or unascertained persons who are not represented pursuant to subdivision 2a or 2b by giving notice to all known persons whose interests in the proceeding are substantially identical to those of the unborn or unascertained persons.

4. Persons under a disability, or unborn or incapacitated persons may be represented during the course of a judicial proceeding as follows:

a. At any point in a judicial proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. The guardian ad litem may be appointed to represent several persons or interests to the extent there is no conflict of interest among those persons or interests. The reasons for appointing a guardian ad litem shall be stated in the record of the proceedings.

b. A minor or other person under a disability may be represented by an attorney-at-law duly licensed to practice in this Commonwealth who has entered of record an appearance on his behalf to the extent permitted by § 8.01-9.

B. The provisions of this section shall apply notwithstanding the Rules of Supreme Court of Virginia or any applicable provisions in Title 8.01.

Article 3.

Representation.

§ 55-543.01. Representation; basic effect.

A. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

B. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

C. Except as otherwise provided in §§ 55-544.11 and 55-546.02, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

D. A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under § 55-544.11.

§ 55-543.02. Representation by holder of general testamentary power of appointment.

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

§ 55-543.03. Representation by fiduciaries and parents or other ancestors.

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

1. A conservator or guardian of the estate may represent and bind the estate that such fiduciary controls;

2. A guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

3. An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

4. A trustee may represent and bind the beneficiaries of the trust;

5. A personal representative of a decedent's estate may represent and bind persons interested in the estate;

6. A parent may represent and bind the parent's minor or unborn child if a guardian of the estate or guardian for the child has not been appointed; and

7. If a minor or unborn person is not otherwise represented under this section, a grandparent or

more remote ancestor may represent and bind that minor or unborn person.

§ 55-543.04. Representation by person having substantially identical interest.

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

§ 55-543.05. Appointment of representative.

A. If the court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

B. A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

C. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

Article 4.

Creation, Validity, Modification, and Termination of Trust.

§ 55-544.01. Methods of creating trust.

A trust may be created by:

1. Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

2. Declaration by the owner of property that the owner holds identifiable property as trustee; or

3. Exercise of a power of appointment in favor of a trustee.

§ 55-544.02. Requirements for creation.

A. A trust is created only if:

1. The settlor has capacity to create a trust;

2. The settlor indicates an intention to create the trust;

3. The trust has a definite beneficiary or is:

a. A charitable trust;

b. A trust for the care of an animal, as provided in § 55-544.08; or

c. A trust for a noncharitable purpose, as provided in § 55-544.09;

4. The trustee has duties to perform; and

5. The same person is not the sole trustee and sole beneficiary.

B. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

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

§ 55-544.03. Trusts created in other jurisdictions.

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

1. The settlor was domiciled, had a place of abode, or was a national;

2. A trustee was domiciled or had a place of business; or

3. Any trust property was located.

§ 55-544.04. Trust purposes.

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms shall be for the benefit of its beneficiaries.

§ 55-544.05. Charitable purposes; enforcement.

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

B. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

C. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

§ 55-544.06. Creation of trust induced by fraud, duress, or undue influence.

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

§ 55-544.07. Evidence of oral trust.

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

§ 55-544.08. Trust for care of animal.

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

B. A trust authorized by this section may be enforced by a person appointed in the terms of the trust 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. 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, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 55-544.09. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in § 55-544.08 or by another statute, the following rules apply:

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

2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust 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, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 55-544.10. Modification or termination of trust; proceedings for approval or disapproval.

A. In addition to the methods of termination prescribed by §§ 55-544.11 through 55-544.14, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

B. A proceeding to approve or disapprove a proposed modification or termination under §§ 55-544.11 through 55-544.16, or trust combination or division under § 55-544.17, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under § 55-544.13.

§ 55-544.11. Modification or termination of noncharitable irrevocable trust by consent.

A. If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

B. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

C. Upon termination of a trust under subsection A or B, the trustee shall distribute the trust property as agreed by the beneficiaries.

D. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection A or B, the modification or termination may be approved by the court if the court is satisfied that:

1. If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

2. The interests of a beneficiary who does not consent will be adequately protected.

§ 55-544.12. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

A. The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intention.

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

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

§ 55-544.13. Cy Pres.

A. Except as otherwise provided in subsection B, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

1. The trust does not fail, in whole or in part;

2. The trust property does not revert to the settlor or the settlor's successors in interest; and

3. The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

B. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection A to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

1. The trust property is to revert to the settlor and the settlor is still living; or

2. Fewer than 21 years have elapsed since the date of the trust's creation.

§ 55-544.14. Modification or termination of uneconomic trust.

A. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

D. This section does not apply to an easement for conservation or preservation.

§ 55-544.15. Reformation to correct mistakes.

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

§ 55-544.16. Modification to achieve settlor's tax objectives.

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

§ 55-544.17. Combination and division of trusts.

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

§ 55-544.18. Amendment of trust where gift, etc., establishes private foundation or constitutes a charitable trust or a split-interest trust.

When any such gift, grant, devise or bequest establishes a private foundation (as defined in § 509 of the Internal Revenue Code) or constitutes a charitable trust (as described in § 4947 (a) (1) of the Internal Revenue Code) or a split-interest trust (as described in § 4947 (a) (2) of the Internal Revenue Code), the trustee or trustees of such trust, with the concurrence of the creator of the trust, if then living and able to give such consent, and the Attorney General, may, without resort to any court, unless such amendment is inconsistent with an express provision of such trust's governing instrument, amend the terms of such trust to bring such trust into or continue such trust in conformity with requirements for exemption of such trust, or any interest therein, from federal taxes. When such gift, grant, or will is recorded, a copy of such amendment shall be similarly recorded.

§ 55-544.19. Distribution of income of trust which is a private foundation or a charitable trust; prohibitions as to such private foundation.

Every trust which is a private foundation (as defined in § 509 of the Internal Revenue Code) or a charitable trust (as described in § 4947 (a) (1) of the Internal Revenue Code), unless its governing instrument expressly includes specific provisions to the contrary, shall distribute its income, and if necessary principal, for each taxable year at such time and in such manner as not to subject such trust to tax under § 4942 of the Internal Revenue Code, and such trust shall not engage in any act of self-dealing (as defined in § 4941 (d) of the Internal Revenue Code), retain any excess business holdings (as defined in § 4943 (c) of the Internal Revenue Code), make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures (as defined in § 4945 (d) of the Internal Revenue Code).

§ 55-544.20. Prohibitions as to trust which is deemed a split-interest trust.

Every trust which is a split-interest trust (as described in § 4947 (a) (2) of the Internal Revenue Code), unless its governing instrument expressly includes specific provisions to the contrary, shall not engage in any act of self-dealing (as defined in § 4941 (d) of the Internal Revenue Code), retain any excess business holdings (as defined in § 4943 (c) of the Internal Revenue Code) which would give rise to liability for the tax imposed by § 4943 (a) of the Internal Revenue Code, make any investments in

such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures (as defined in § 4945 (d) of the Internal Revenue Code). This paragraph shall not apply with respect to:

1. Any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under § 170 (f) (2) (B), 2055 (e) (2) (B), or 2522 (c) (2) (B) of the Internal Revenue Code;

2. Any amounts in trust other than amounts for which a deduction was allowed under § 170, 545 (b) (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or 2522 of the Internal Revenue Code, if such other amounts are segregated from amounts for which no deduction was allowable; or

3. Any amounts transferred in trust before May 27, 1969.

§ 55-544.21. Application of §§ 55-544.19 and 55-544.20.

Sections 55-544.19 and 55-544.20 shall apply to any private foundation, charitable trust or split-interest trust defined or described therein and established after December 31, 1969; and to any such private foundation, charitable trust or split-interest trust established before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508 (e) (2) (B) or (C) of the Internal Revenue Code shall apply or unless the trustee or trustees shall elect that this section shall not apply by filing written notice of such election with the Attorney General, and with the clerk of the court in which its governing instrument may be recorded, on or before December 31, 1971.

§ 55-544.22. Interpretation of references to Internal Revenue Code in §§ 55-544.18 through 55-544.21.

Each reference to a section of the Internal Revenue Code made in §§ 55-544.18, 55-544.19, 55-544.20 and 55-544.21 shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

§ 55-544.23. Powers of courts not impaired by §§ 55-544.18 through 55-544.22; severability.

Nothing in §§ 55-544.18 through 55-544.22 shall impair the power of a court of competent jurisdiction with respect to any such foundation or trust, and the invalidity of any one or more of such sections shall not be deemed to affect the validity of the other sections.

Article 5.

Creditor's Claims; Spendthrift and Discretionary Trusts.

§ 55-545.01. Rights of beneficiary's creditor or assignee.

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

§ 55-545.02. Spendthrift provision.

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

B. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

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

§ 55-545.03. Exceptions to spendthrift provision.

A. In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

C. Subject to the limitations of § 55-545.03:1, no spendthrift provision shall operate to the prejudice of the United States, the Commonwealth, or any county, city, or town.

§ 55-545.03:1. Certain claims for reimbursement for public assistance.

A. Notwithstanding any contrary provision in the trust instrument, if a statute or regulation of the United States or Commonwealth requires a beneficiary to reimburse the Commonwealth or any agency or instrumentality thereof, for public assistance, including medical assistance, furnished or to be furnished to the beneficiary, the Attorney General or an attorney acting on behalf of the state agency responsible for the program may file a petition in chancery in the circuit court having jurisdiction over the trustee requesting reimbursement. The petition may be filed prior to obtaining a judgment. The beneficiary, the guardian of his estate, his conservator, or his committee shall be made a party.

B. Following its review of the circumstances of the case, the court may:

1. Order the trustee to satisfy all or part of the liability out of all or part of the amounts to which the beneficiary is entitled, whether presently or in the future, to the extent the beneficiary has the right under the trust to compel the trustee to pay income or principal to or for the benefit of the beneficiary;

or

2. Regardless of whether the beneficiary has the right to compel the trustee to pay income or principal to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of any future payments that the trustee chooses to make to or for the benefit of the beneficiary in the exercise of discretion under the trust.

C. A duty in the trustee under the instrument to make disbursements in a manner designed to avoid rendering the beneficiary ineligible for public assistance to which he might otherwise be entitled, however, shall not be construed as a right possessed by the beneficiary to compel such payments.

D. The court shall not issue an order pursuant to this section if the beneficiary is a person who has a medically determined physical or mental disability that substantially impairs his ability to provide for his care or custody, and constitutes a substantial handicap.

§ 55-545.04. Discretionary trusts; effect of standard.

A. In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Except as otherwise provided in subsection C and § 55-545.03:1, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

1. The discretion is expressed in the form of a standard of distribution; or

2. The trustee has abused the discretion.

C. To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

1. A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and

2. The court shall direct the trustee to pay to the child such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

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

E. A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.

§ 55-545.05. Creditor's claim against settlor.

A. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

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

2. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children including the family allowance, the right to exempt property, and the homestead allowance to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. This section shall not apply to life insurance proceeds under § 38.2-3122. No proceeding to subject a trustee, trust assets or distributees of such assets to such claims, costs and expenses shall be commenced unless the personal representative of the settlor has received a written demand by a surviving spouse, a creditor or one acting for a minor or dependent child of the settlor and no proceeding shall be commenced later than two years following the death of the settlor. This section shall not affect the right of a trustee to make distributions required or permitted by the terms of the trust prior to being served with process in a proceeding brought by the personal representative.

B. For purposes of this section:

1. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

2. Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in § 2041 (b) (2) or 2514 (e) of the Internal Revenue Code of 1986, or § 2503 (b) of the Internal Revenue Code of 1986.

§ 55-545.06. Overdue distribution.

Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the

designated distribution date.

§ 55-545.07. Personal obligations of trustee.

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

Article 6.
Revocable Trusts.

§ 55-546.01. Capacity of settlor of revocable trust.

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

§ 55-546.02. Revocation or amendment of revocable trust.

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2006.

B. If a revocable trust is created or funded by more than one settlor:

1. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

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

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

C. The settlor may revoke or amend a revocable trust:

1. By substantial compliance with a method provided in the terms of the trust; or

2. If the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor's intent.

D. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

E. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent (i) expressly authorized by the terms of the trust or (ii) authorized by the court for good cause shown.

F. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only (i) to the extent expressly authorized by the terms of the trust or (ii) authorized by the court supervising the conservatorship or guardianship for good cause shown.

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

§ 55-546.03. Settlor's powers; powers of withdrawal.

A. While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

B. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

§ 55-546.04. Limitation on action contesting validity of revocable trust; distribution of trust property.

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

1. Two years after the settlor's death; or

2. Six months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

B. Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

1. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

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

3. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Article 7.
Office of Trustee.

§ 55-547.01. Accepting or declining trusteeship.

A. 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; or

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

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

C. A person designated as trustee, without accepting the trusteeship, may:

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

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

§ 55-547.02. Trustee's bond.

A. Except as otherwise provided in Title 26, a trustee shall give bond, or bond with surety or other security, 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 terms of the trust and the court has not dispensed with the requirement.

B. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

C. A regulated financial-service institution qualified to do trust business in the Commonwealth need not give bond, even if required by the terms of the trust.

§ 55-547.03. Cotrustees.

A. Cotrustees who are unable to reach a unanimous decision may act by majority decision.

B. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

C. 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 other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

D. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

E. A trustee may delegate to a cotrustee the performance of any function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

F. Except as otherwise provided in subsection G, a trustee who does not join in an action of another trustee is not liable for the action.

G. Each trustee shall exercise reasonable care to:

1. Prevent a cotrustee from committing a serious breach of trust; and

2. Compel a cotrustee to redress a serious breach of trust.

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

§ 55-547.04. Vacancy in trusteeship; appointment of successor.

A. A vacancy in a trusteeship occurs if:

1. A person designated as trustee rejects the trusteeship;

2. A person designated as trustee cannot be identified or does not exist;

3. A trustee resigns;

4. A trustee is disqualified or removed;

5. A trustee dies; or

6. An individual serving as trustee is adjudicated an incapacitated person.

B. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

C. 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 pursuant to the terms of the trust to act as successor trustee;

2. By a person appointed by unanimous agreement of the qualified beneficiaries; or

3. By a person appointed by the court pursuant to §§ 26-48 and 26-50, or pursuant to § 55-542.05.

D. 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 pursuant to the terms of the trust to act as successor trustee;

2. By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust, subject, however, to the concurrence of the Attorney General in any case in which he has previously requested of an organization so designated that he be consulted regarding the

selection of successor; or

3. By a person appointed by the court pursuant to §§ 26-48 and 26-50, or pursuant to § 55-542.05.

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

F. A successor or surviving trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities imposed upon the original trustee without regard to the nature of discretionary powers conferred by the instrument, unless the trust instrument expressly provides to the contrary, or unless an order appointing the successor trustee provides otherwise.

§ 55-547.05. Resignation of trustee.

A. A trustee may resign:

1. Upon at least 30 days' notice to the settlor, if living, to all cotrustees, and to the qualified beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the capacity to revoke; or

2. With the approval of the court.

B. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

C. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§ 55-547.06. Removal of trustee.

A. The settlor, a cotrustee, or a beneficiary, or in the case of a charitable trust, the Attorney General, may petition the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

B. The court may remove a trustee if:

1. The trustee has committed a serious breach of trust;

2. Lack of cooperation among cotrustees substantially impairs the administration of the trust;

3. Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

4. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

C. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection B of § 55-550.01 as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 55-547.07. Delivery of property by former trustee.

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

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

C. Title to all trust property shall be owned and vested in any successor trustee, upon acceptance of the trusteeship, without any conveyance, transfer or assignment by the prior trustee.

§ 55-547.08. Compensation of trustee.

A. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

B. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

1. The duties of the trustee are substantially different from those contemplated when the trust was created; or

2. The compensation specified by the terms of the trust would be unreasonably low or high.

§ 55-547.09. Reimbursement of expenses.

A. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

1. Expenses that were properly incurred in the administration of the trust; and

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

B. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Article 8.

Duties and Powers of Trustee.

§ 55-548.01. Duty to administer trust and invest.

Upon acceptance of a trusteeship, the trustee shall administer the trust and invest trust assets in

good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter. In administering, managing and investing trust assets, the trustee shall comply with the provisions of the Uniform Prudent Investor Act (§ 26-45.3 et seq.) and the Uniform Principal and Income Act (§ 55-277.1 et seq.).

§ 55-548.02. Duty of loyalty.

A. A trustee shall administer the trust solely in the interests of the beneficiaries.

B. Subject to the rights of persons dealing with or assisting the trustee as provided in § 55-550.12, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

1. The transaction was authorized by the terms of the trust;

2. The transaction was approved by the court;

3. The beneficiary did not commence a judicial proceeding within the time allowed by § 55-550.05;

4. The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with § 55-550.09; or

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

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

1. The trustee's spouse;

2. The trustee's descendants, siblings, parents, or their spouses;

3. An agent or attorney of the trustee; or

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

D. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage from such transaction is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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

F. An investment by a trustee in securities of an investment company, investment trust, mutual fund, or other investment or financial product to which the trustee, or an affiliate of the trustee, sponsors, sells or provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Uniform Prudent Investor Act (§ 26-45.3 et seq.) and § 26-44.1. The trustee may be compensated by the investment company, investment trust, mutual fund or other investment or financial product, or by the affiliated entity sponsoring, selling, or providing such service, and such compensation may be in addition to the compensation the trustee is receiving as a trustee if the trustee notifies the persons entitled to receive a copy of the trustee's annual report under § 55-548.13 of the rate and method by which that compensation was determined and of any subsequent changes to such rate or method of compensation.

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

H. This section does not preclude the following transactions, if fair to the beneficiaries:

1. An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

2. Payment of reasonable compensation to the trustee;

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

4. A deposit of trust money in a regulated financial service institution operated by the trustee; or

5. An advance by the trustee of money for the protection of the trust.

I. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ 55-548.03. Impartiality.

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

§ 55-548.04. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee

shall exercise reasonable care, skill, and caution.

§ 55-548.05. Costs of administration.

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

§ 55-548.06. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§ 55-548.07. Delegation by trustee.

A. A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

1. Selecting an agent;

2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with subsection A is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

D. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth.

§ 55-548.08. Powers to direct.

A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

B. If the terms of a trust confer 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 an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust 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. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

D. A person, other than a beneficiary, who holds a power to direct 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 a fiduciary duty.

§ 55-548.09. Control and protection of trust property.

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

§ 55-548.10. Recordkeeping and identification of trust property.

A. A trustee shall keep adequate records of the administration of the trust.

B. A trustee shall keep trust property separate from the trustee's own property.

C. Except as otherwise provided in subsection D, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

D. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

§ 55-548.11. Enforcement and defense of claims.

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

§ 55-548.12. Collecting trust property.

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

§ 55-548.13. Duty to inform and report.

A. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

B. A trustee:

1. Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

2. Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

3. Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable

trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection C; and

4. Shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

C. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

D. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

E. Subdivisions 2 and 3 of subsection B and subsection C apply only to an irrevocable trust created on or after the effective date of this chapter, and to a revocable trust which becomes irrevocable on or after the effective date of this chapter.

§ 55-548.14. Discretionary powers; tax savings.

A. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

B. Subject to subsection D, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

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

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

C. A power whose exercise is limited or prohibited by subsection B may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

D. Subsection B does not apply to:

1. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in § 2056 (b) (5) or 2523 (e) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended, was previously allowed;

2. Any trust during any period that the trust may be revoked or amended by its settlor; or

3. A trust if contributions to the trust qualify for the annual exclusion under § 2503 (c) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

§ 55-548.15. General powers of trustee.

A. A trustee, without authorization by the court, may exercise:

1. Powers conferred by the terms of the trust; and

2. Except as limited by the terms of the trust:

a. All powers over the trust property that an unmarried competent owner has over individually owned property;

b. Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

c. Any other powers conferred by this chapter.

B. The exercise of a power is subject to the fiduciary duties prescribed by this article.

C. Any reference in a trust instrument incorporating the powers authorized under § 64.1-57 shall not be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly states in the trust instrument that such reference should be so construed.

§ 55-548.16. Specific powers of trustee.

A. Without limiting the authority conferred by § 55-548.15, a trustee may:

1. Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

2. Acquire or sell property, for cash or on credit, at public or private sale;

3. Exchange, partition, or otherwise change the character of trust property;

4. Deposit trust money in an account in a regulated financial-service institution;

5. Borrow money, with or without security, and mortgage or pledge trust property for a period

within or extending beyond the duration of the trust;

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

7. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

a. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

b. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

c. Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

d. Deposit the securities with a depository or other regulated financial service institution;

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

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

10. Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

11. Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

12. Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

13. With respect to possible liability for violation of environmental law:

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

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

c. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

d. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

14. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

15. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

16. Exercise elections with respect to federal, state, and local taxes;

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

18. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

19. Pledge trust property to guarantee loans made by others to the beneficiary;

20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

a. Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

b. Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act (§ 31-37 et seq.) or custodial trustee under the Uniform Custodial Trust Act (§ 55-34.1 et seq.), and, for that purpose, creating a custodianship or custodial trust;

c. If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

d. Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

22. On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

23. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

25. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

26. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

B. Any reference in a trust instrument incorporating the powers authorized under § 64.1-57 shall not be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly states in the trust instrument that such reference should be so construed.

§ 55-548.17. Distribution upon termination.

A. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

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

C. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

1. It was induced by improper conduct of the trustee; or

2. The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Article 9.
Reserved.
Article 10.
Liability of Trustees and Rights of Persons Dealing with Trustee.

§ 55-550.01. Remedies for breach of trust.

A. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

B. To remedy a breach of trust that has occurred or may occur, the court may:

1. Compel the trustee to perform the trustee's duties;

2. Enjoin the trustee from committing a breach of trust;

3. Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

4. Order a trustee to account;

5. Appoint a special fiduciary to take possession of the trust property and administer the trust;

6. Suspend the trustee;

7. Remove the trustee as provided in § 55-547.06;

8. Reduce or deny compensation to the trustee;

9. Subject to § 55-550.12, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

10. Order any other appropriate relief.

§ 55-550.02. Damages for breach of trust.

A. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

1. The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

2. The profit the trustee made by reason of the breach.

B. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 55-550.03. Damages in absence of breach.

A. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

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

§ 55-550.04. Attorneys' fees and costs.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorneys' fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§ 55-550.05. Limitation of action against trustee.

A. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

B. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

C. If subsection A does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust shall be commenced within five years after the first to occur of:

1. The removal, resignation, or death of the trustee;

2. The termination of the beneficiary's interest in the trust; or

3. The termination of the trust.

D. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter, or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person benefiting from the fraud, whether innocent or not, except for a bona fide purchaser. Any proceeding shall be commenced within two years after the fraud is discovered, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time the fraud is committed. This section does not apply to remedies for fraud practiced on a decedent during his lifetime which affects the succession of his estate.

E. The provisions of this section shall not operate to reduce the period of limitations applicable to actions and suits governed by § 8.01-245.

§ 55-550.06. Reliance on trust instrument.

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

§ 55-550.07. Event affecting administration or distribution.

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

§ 55-550.08. Exculpation of trustee.

A. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

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

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

B. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the existence and contents of the exculpatory term were adequately communicated to the settlor.

§ 55-550.09. Beneficiary's consent, release, or ratification.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

1. The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

2. At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ 55-550.10. Limitation on personal liability of trustee.

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

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

C. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an

obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 55-550.11. Interest as general partner.

A. Except as otherwise provided in subsection C or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act (§ 50-73.79 et seq.).

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

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

D. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

§ 55-550.12. Protection of person dealing with trustee.

A. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.

B. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

C. A person who in good faith delivers assets to a trustee need not ensure their proper application.

D. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

E. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§ 55-550.13. Certification of trust.

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

1. That the trust exists and the date the trust instrument was executed;

2. The identity of the settlor;

3. The identity and address of the currently acting trustee;

4. The powers of the trustee;

5. The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

6. The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

7. The trust's taxpayer identification number; and

8. The manner of taking title to trust property.

B. A certification of trust may be signed or otherwise authenticated by any trustee.

C. A certification of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

D. A certification of trust need not contain the dispositive terms of a trust.

E. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

F. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein 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 terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

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

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

I. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Article 11.
Miscellaneous Provisions.

§ 55-551.01. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 55-551.02. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of § 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§ 55-551.03. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 55-551.04. RESERVED.

§ 55-551.05. RESERVED.

§ 55-551.06. Application to existing relationships.

A. Except as otherwise provided in this chapter:

1. This chapter applies to all trusts created before, on, or after July 1, 2006;

2. This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2006;

3. This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2006, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

4. Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust; and

5. An act done before July 1, 2006, is not affected by this chapter;

B. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded.

§ 64.1-73. Devise or bequest to trustee of an established trust.

A. A devise or bequest (including the exercise of a power of appointment) may be made by a will duly executed pursuant to the provisions of this chapter to the trustee or trustees of an inter vivos trust or testamentary trust, whether the trust was established by the testator, by the testator and another, or by some other person if:

1. In the case of an inter vivos trust, the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will; or

2. In the case of a testamentary trust, the trust is identified in the testator's will and its terms are set forth in the valid last will of a person who has predeceased the testator and whose will was executed before or concurrently with the execution of the testator's will.

In either event, at the time the devise or bequest is to be distributed to the trustee or trustees at least one trustee of the trust shall be (i) an individual~~,~~ or (ii) a corporation or association authorized to do a trust business in this Commonwealth. However, prior to distribution of the devise or bequest to the trustee, each nonresident shall file, with the clerk of the circuit court of the jurisdiction wherein the testator's will was admitted to probate, his consent in writing that service of process in any action against him as trustee or any other notice with respect to administration of the trust in his charge, may be by service upon the clerk of the court in which he is qualified or upon a resident of this Commonwealth at such address as he may appoint in the written instrument filed with the clerk. Where any nonresident qualifies pursuant to this paragraph, bond with surety shall be required in every case unless at least one other trustee is a resident or the court in which the nonresident qualifies waives surety under the provisions of § 26-4.

A corporation or association not authorized to do a trust business in this Commonwealth at the time the devise or bequest is to be distributed shall not, in any case, be a trustee of such trust.

B. The inter vivos trust may be an unfunded trust.

For the purposes of this section:

1. An inter vivos trust shall be deemed established upon execution of the instrument creating such trust; and

2. An inter vivos trust may contain provisions whereby the amount of corpus to be allocated to any particular portion of the trust will be determined, measured or affected by the "adjusted gross estate" of the settlor or testator for federal estate tax purposes, or by the amount of the "marital deduction allowable" to the settlor's or testator's estate, the amount of deductions or credits available to the estate of the settlor or testator for federal estate tax purposes, or by the value of such estate for federal estate

tax purposes, or by any other method, and such unfunded trust shall not be deemed testamentary by reason thereof.

C. The devise or bequest shall not be invalid because (i) the trust is amendable or revocable or both by the settlor or any other person, either prior or subsequent to the testator's death, (ii) the trust instrument or any amendment thereto was not executed in the manner required for wills, or (iii) the trust was amended after the execution of the will or after the death of the testator.

D. Unless the testator's will provides otherwise, the property so devised or bequeathed:

1. Shall not be deemed held under a testamentary trust of the testator, but shall become a part of the corpus of the trust to which it is given or, if the will so specifies, it shall become a part of any one or more particular portions of the corpus; and

2. Shall be administered and disposed of (i) in accordance with the terms of the trust as they appear in writing at the testator's death, including any amendments thereto made before the death of the testator and regardless of whether made before or after the execution of the testator's will, or (ii) if the testator expressly so specifies in his will, and only in such event, as such terms are amended after the death of the testator.

E. In the event that the settlor or other person having the right to do so revokes or otherwise terminates the trust pursuant to a power so to do reserved in the trust instrument, and such revocation or termination is effected at a date subsequent to the death of a testator who has devised or bequeathed property to such trust, the revocation or termination shall be ineffective as to property devised or bequeathed to such trust by a testator other than the settlor, unless the testator's will expressly provides to the contrary.

F. The devise or bequest shall not be valid should the entire trust not be operative for any reason at the testator's death. If the devise or bequest is to augment only one or more portions of the trust, the devise or bequest shall not be valid should the trust not be operative for any reason as to such portion at the testator's death.

G. In any case in which the devise or bequest to the trustee of a trust such as is contemplated in the foregoing provisions fails to take effect by reason of the fact that there is no qualified trustee acting at the time the devise or bequest is to be distributed, or that one or more of the trustees then acting is a corporation or association not authorized to do a trust business in this Commonwealth, the court having jurisdiction with respect to the probate of the will or the administration of the testator's estate, upon sufficient evidence of the existence of a trust estate for administration, independent of the testator's estate, and of the validity of the trust established by virtue of such separate written instrument, may determine that the trusts declared by such separate written instrument are the trusts upon which the devise or bequest is made, so far as applicable in the nature of the case, to the same extent and with like effect as if such trust provisions had been extensively incorporated in the testamentary documents, and that such trusts will not fail for want of a qualified trustee to administer the trust estate so devised or bequeathed. The court may then grant such further and ancillary relief as the nature of the case may require, including the appointment of a qualified trustee to perform the trusts with respect to the estate so devised or bequeathed, and granting instruction and guidance to the trustee so appointed in the performance of his duties. Nothing herein shall be deemed to authorize any such trustee to be excused from any obligations of accounting or performance such as are required by law of fiduciaries, nor to prevent the transfer of the trust estate to a trustee appointed by or qualified in a court of record in a foreign state in accordance with the provisions of ~~§ 26-64~~ *§ 55-541.08*.

H. This section shall apply to any devise or bequest under the will of a decedent dying on or after July 1, 1994, and before July 1, 1999.

2. That the provisions of this act shall become effective on July 1, 2006.

3. That §§ 26-5.1, 26-49, 26-53, 26-54, 26-55, 26-64, 26-65, 38.2-3120, 55-7.1, 55-7.2, 55-19, 55-19.3, 55-19.4, 55-27 through 55-34, and 64.1-67.2 of the Code of Virginia are repealed.