

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 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  
3 64.1-73 of the Code of Virginia; to amend the Code of Virginia by adding in Title 55 a chapter  
4 numbered 31, consisting of articles numbered 1 through 11, consisting of sections numbered  
5 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,  
6 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  
7 of Virginia, relating to the Uniform Trust Code.

8 [S 891]  
9 Approved

10  
11 Be it enacted by the General Assembly of Virginia:  
12 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  
13 Virginia are amended and reenacted; that the Code of Virginia is amended by adding in Title 55 a  
14 chapter numbered 31, consisting of articles numbered 1 through 11, consisting of sections  
15 numbered 55-541.01 through 55-551.06, as follows:

16 § 26-5.2. Liability of fiduciary for actions of cofiduciary.  
17 A. Any power vested in three or more fiduciaries may be exercised by a majority, but a fiduciary  
18 who has not joined in exercising a power is not liable to the beneficiaries or to others for the  
19 consequences of the exercise. A dissenting fiduciary is not liable for the consequences of an act in  
20 which he joins at the direction of the majority of the fiduciaries if he expressed his dissent in writing to  
21 any of his cofiduciaries, if the act is not of itself a patent breach of trust.

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

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

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

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

39 § 26-30. Expenses and commissions allowed fiduciaries.  
40 The commissioner, in stating and settling the account, shall allow the fiduciary any reasonable  
41 expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a  
42 reasonable compensation, in the form of a commission on receipts, or otherwise. Unless otherwise  
43 provided by the court, any guardian appointed pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4  
44 of Title 37.1 shall also be allowed reasonable compensation for his services. If a committee or other  
45 fiduciary renders services with regard to real estate owned by the ward or beneficiary, compensation  
46 may also be allowed for the services rendered with regard to the real estate and the income therefrom or  
47 the value thereof. *Notwithstanding the foregoing provisions or any provision under Chapter 31*  
48 *(§ 55-541.01 et seq.) of Title 55, where the compensation of an institutional fiduciary is specified under*  
49 *the terms of the trust or will by reference to a standard published fee schedule, the commissioner shall*  
50 *not reduce the compensation below the amount specified, unless there is sufficient proof that i) the*  
51 *settler or testator was not competent when the trust instrument or will was executed or ii) such*  
52 *compensation is excessive in light of the compensation institutional fiduciaries generally receive in*  
53 *similar situations.*

54 § 26-51. Who to execute the trust until new trustee appointed.  
55 The personal representative of a deceased sole trustee or the remaining trustee or trustees, if there  
56 were more than one trustee, and one or more but less than all of them have died, resigned, or become  
57 incapable of executing the trust on account of physical or mental disability or confinement in prison or

58 other institution, or have become ineligible to continue to serve as trustee because of removal from the  
 59 Commonwealth of themselves where residency is statutorily required, or have otherwise become  
 60 ineligible to continue serving as trustee, shall execute the trust, or so much thereof as remained  
 61 unexecuted at the death or resignation or at the time such lack of capacity to execute the trust or such  
 62 ineligibility came into being (whether the trust subject is real or personal property) until an appointment  
 63 is made pursuant to § 26-48 unless the instrument creating the trust directs otherwise, or some other  
 64 trustee is appointed for the purpose by a circuit court having jurisdiction of the case. In the case of  
 65 removal of the trust management function by a corporate trustee, the corporate trustee shall continue to  
 66 execute the trust until such time as an appointment is made pursuant to § 26-48.

67 This section and §§ 26-48 through ~~and 26-50~~ shall not apply to any case provided for by ~~§ 55-29.~~  
 68 *The provisions of this section shall not apply to any trust governed by the Uniform Trust Code*  
 69 *(§ 55-541.01 et seq.).*

70 § 26-66. Sale of property and payment of proceeds to nonresident trustee.

71 If, in any proceeding under § 26-60 ~~or § 26-64~~, or in case of an interest in property acquired by a  
 72 will that does not restrict the transfer of property out of this Commonwealth upon petition under  
 73 § 26-60, it shall appear to the court to be proper, it may order the property, or any part of it, to be sold,  
 74 and the proceeds to be paid to the foreign guardian, conservator or committee or nonresident trustee.

75 § 37.1-110. Application for order to compel payment of expenses.

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

86 The patient and his estate shall first be liable for the payment of his expenses and thereafter, the  
 87 person or persons legally liable for the support of the patient. Such person or persons shall be the father,  
 88 mother, husband, wife and child or children of the patient, who have attained the age of majority. Such  
 89 persons shall be jointly and severally liable. The Department shall collect such part or all of such  
 90 expenses from the several sources as appears proper under the circumstances and may proceed against  
 91 all of such sources, except that principal or income or both from a trust created for the benefit of the  
 92 patient shall be liable for payment only as provided in ~~§ 55-49~~ *Article 5 (§ 55-545.01 et seq.) of the*  
 93 *Uniform Trust Code.* In evaluating the circumstances, the Department may consider any events related to  
 94 the admission of the patient for treatment which have affected the person or persons legally liable, such  
 95 as the infliction of serious injury by the patient on any person who is legally liable. The proceedings for  
 96 the collection of such expenses shall conform to the procedure for collection of debts due the  
 97 Commonwealth.

98 § 55-7. Power of disposal in life tenant not to defeat remainder unless exercised; power of disposal  
 99 held by fiduciary.

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

109 B. A power in a fiduciary to dispose of property for the benefit of any beneficiary, including  
 110 himself, when such power is limited by reference to health, education, support, maintenance, benefit or  
 111 other ascertainable standard, shall not be deemed a power of absolute disposition, but the holder shall be  
 112 subject to such conditions or limitations as the standard imposes on the exercise of such power; and  
 113 such conditions or limitations shall be enforceable by any beneficiary, including a remainderman. A  
 114 power to use property for the benefit of the holder of the power is limited by an ascertainable standard  
 115 if the extent of the holder's duty to exercise or not to exercise the power is reasonably measurable in  
 116 terms of a beneficiary's needs for health, education, support or maintenance, or any combination of  
 117 them. As used in this subsection, the words "support" and "maintenance" are synonymous and their  
 118 meaning is not limited to the bare necessities of life. Examples of powers which are limited by the

119 requisite standards are powers exercisable for the beneficiary's "support," "support in reasonable  
120 comfort," "maintenance in health and reasonable comfort," "support in his accustomed manner of living,"  
121 "education, including college and professional," "benefit," "health" and "medical, dental, hospital and  
122 nursing expenses and expenses of invalidism." In determining whether a power is limited by an  
123 ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income  
124 before the power can be exercised.

125 § 55-60. Meaning of phrases that may be included in such trust deed.

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

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

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

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

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

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

149 (5a) The words "reinstatement permitted" or words of like purport shall be construed as if the deed  
150 set forth: "The grantor and any other party assuming liability hereunder hereby consent and agree that if  
151 the property conveyed hereby or a substantial portion thereof is transferred to any subsequent owner,  
152 and the creditor exercises the right to accelerate the debts secured hereby, the creditor may accept any  
153 delinquent payments or other cure of default giving rise to such acceleration from the then owner of the  
154 property or any other person and reinstate the indebtedness in accordance with the schedule of maturity  
155 as of the time of acceleration or upon such new schedule as may be agreed if renewal or extension are  
156 otherwise permitted and no such reinstatement shall in any way affect the liability of such prior parties,  
157 whether as surety or otherwise."

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

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

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

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

180 obligation upon the trustee or beneficiary to effect such insurance."

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

185 (10) The words "any trustee may act," or words of similar purport, shall be construed as if the deed  
 186 set forth: "The grantors, and all interested in the obligations hereby secured, by accepting the benefits  
 187 hereof, agree that all authority, power and discretion hereinabove granted to the trustees may be  
 188 exercised by any of them, without any other, with the same effect as if exercised jointly by all of them."

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

192 § 55-277.4. Fiduciary's power to adjust.

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

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

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

202 2. The intent of the settlor;

203 3. The identity and circumstances of the beneficiaries;

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

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

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

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

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

218 9. The anticipated tax consequences of an adjustment.

219 C. A fiduciary may not make an adjustment:

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

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

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

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

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

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

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

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

239 D. If subdivision C 5, 6, 7, or 8 applies to a fiduciary and there is more than one fiduciary, a  
 240 cofiduciary to whom the provision does not apply may make the adjustment unless the exercise of the

241 power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust. Any  
 242 beneficiary or fiduciary may petition the circuit court pursuant to § 26-54 for appointment of a  
 243 cofiduciary who would be permitted to make an adjustment not permitted by the other fiduciary or  
 244 fiduciaries.

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

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

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

#### 257 CHAPTER 31.

#### 258 UNIFORM TRUST CODE.

#### 259 Article 1.

#### 260 *General Provisions and Definitions.*

261 § 55-541.01. *Short Title.*

262 *This Act may be cited as the Uniform Trust Code.*

263 § 55-541.02. *Scope.*

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

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

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

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

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

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

284 § 55-541.03. *Definitions.*

285 *In this chapter:*

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

287 *"Ascertainable standard" means a standard relating to an individual's health, education, support, or*  
 288 *maintenance within the meaning of § 2041 (b) (1) (A) or 2514 (c) (1) of the Internal Revenue Code of*  
 289 *1986.*

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

293 *"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in*  
 294 *§ 55-544.05.*

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

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

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

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

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

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

304 *"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability*  
 305 *company, association, joint venture, government, governmental subdivision, agency, or instrumentality;*  
 306 *public corporation, or any other legal or commercial entity.*

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

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

312 *"Qualified beneficiary" means a living or then existing beneficiary who, on the date the beneficiary's*  
 313 *qualification is determined, (i) is a distributee or permissible distributee of trust income or principal;*  
 314 *(ii) would be a distributee or permissible distributee of trust income or principal if the interests of the*  
 315 *distributees described in (i) terminated on that date, but the termination of those interests would not*  
 316 *cause the trust to terminate; or (iii) would be a distributee or permissible distributee of trust income or*  
 317 *principal if the trust terminated on that date.*

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

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

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

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

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

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

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

335 *§ 55-541.04. Knowledge.*

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

337 *1. Has actual knowledge of it;*

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

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

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

350 *§ 55-541.05. Default and mandatory rules.*

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

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

354 *1. The requirements for creating a trust;*

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

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

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

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

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

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

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

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

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

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

370 § 55-541.06. Common law of trusts; principles of equity.

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

373 § 55-541.07. Governing law.

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

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

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

380 § 55-541.08. Principal place of administration.

381 A. Without precluding other means for establishing a sufficient connection with the designated  
382 jurisdiction, terms of an inter vivos trust designating the principal place of administration are valid and  
383 controlling if:

384 1. A trustee's principal place of business is located in or a trustee is a resident of the designated  
385 jurisdiction; or

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

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

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

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

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

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

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

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

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

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

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

413 § 55-541.09. Methods and waiver of notice.

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

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

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

424 *D. Notice of a judicial proceeding shall be given as provided in § 55-542.06.*  
 425 *§ 55-541.10. Others treated as qualified beneficiaries.*

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

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

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

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

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

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

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

443 *§ 55-541.11. Nonjudicial settlement agreements.*

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

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

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

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

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

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

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

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

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

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

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

#### 462 *Article 2.*

#### 463 *Judicial Proceedings.*

464 *§ 55-542.01. Role of court in administration of trust.*

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

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

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

471 *§ 55-542.02. Jurisdiction over trustee and beneficiary.*

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

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

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

483 *§ 55-542.03. RESERVED.*

484 *§ 55-542.04. RESERVED.*

485 § 55-542.05. Proceedings to appoint or remove trustees.

486 A. Proceedings to appoint or remove trustees may be brought by motion pursuant to §§ 26-48 and  
487 26-50.

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

492 § 55-542.06. Pleadings; parties; orders; notice.

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

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

498 2. Orders shall bind persons as follows:

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

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

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

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

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

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

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

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

519 3. Notice shall be given:

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

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

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

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

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

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

539 Article 3.

540 Representation.

541 § 55-543.01. Representation; basic effect.

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

544 B. The consent of a person who may represent and bind another person under this chapter is  
545 binding on the person represented unless the person represented objects to the representation by

546 notifying the trustee or the representative before the consent would otherwise have become effective.

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

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

552 § 55-543.02. Representation by holder of general testamentary power of appointment.

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

557 § 55-543.03. Representation by fiduciaries and parents or other ancestors.

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

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

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

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

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

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

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

571 7. If a minor or unborn person is not otherwise represented under this section, a grandparent or  
572 more remote ancestor may represent and bind that minor or unborn person.

573 § 55-543.04. Representation by person having substantially identical interest.

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

579 § 55-543.05. Appointment of representative.

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

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

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

#### 589 Article 4.

##### 590 Creation, Validity, Modification, and Termination of Trust.

591 § 55-544.01. Methods of creating trust.

592 A trust may be created by:

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

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

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

597 § 55-544.02. Requirements for creation.

598 A. A trust is created only if:

599 1. The settlor has capacity to create a trust;

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

601 3. The trust has a definite beneficiary or is:

602 a. A charitable trust;

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

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

605 4. The trustee has duties to perform; and

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

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

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

612 *§ 55-544.03. Trusts created in other jurisdictions.*

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

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

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

618 *3. Any trust property was located.*

619 *§ 55-544.04. Trust purposes.*

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

622 *§ 55-544.05. Charitable purposes; enforcement.*

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

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

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

630 *§ 55-544.06. Creation of trust induced by fraud, duress, or undue influence.*

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

632 *§ 55-544.07. Evidence of oral trust.*

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

636 *§ 55-544.08. Trust for care of animal.*

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

640 *B. A trust authorized by this section may be enforced by a person appointed in the terms of the trust*  
 641 *or, if no person is so appointed, by a person appointed by the court. A person having an interest in the*  
 642 *welfare of the animal may request the court to appoint a person to enforce the trust or to remove a*  
 643 *person appointed.*

644 *C. Property of a trust authorized by this section may be applied only to its intended use, except to*  
 645 *the extent the court determines that the value of the trust property exceeds the amount required for the*  
 646 *intended use. Except as otherwise provided in the terms of the trust, property not required for the*  
 647 *intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in*  
 648 *interest.*

649 *§ 55-544.09. Noncharitable trust without ascertainable beneficiary.*

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

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

654 *2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust*  
 655 *or, if no person is so appointed, by a person appointed by the court.*

656 *3. Property of a trust authorized by this section may be applied only to its intended use, except to*  
 657 *the extent the court determines that the value of the trust property exceeds the amount required for the*  
 658 *intended use. Except as otherwise provided in the terms of the trust, property not required for the*  
 659 *intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in*  
 660 *interest.*

661 *§ 55-544.10. Modification or termination of trust; proceedings for approval or disapproval.*

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

666 *B. A proceeding to approve or disapprove a proposed modification or termination under*  
 667 *§§ 55-544.11 through 55-544.16, or trust combination or division under § 55-544.17, may be*

668 commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to  
669 modify the trust under § 55-544.13.

670 § 55-544.11. Modification or termination of noncharitable irrevocable trust by consent.

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

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

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

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

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

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

692 § 55-544.12. Modification or termination because of unanticipated circumstances or inability to  
693 administer trust effectively.

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

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

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

702 § 55-544.13. Cy Pres.

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

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

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

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

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

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

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

715 § 55-544.14. Modification or termination of uneconomic trust.

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

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

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

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

724 § 55-544.15. Reformation to correct mistakes.

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

728 § 55-544.16. Modification to achieve settlor's tax objectives.

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

732 § 55-544.17. Combination and division of trusts.

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

736 § 55-544.18. Amendment of trust where gift, etc., establishes private foundation or constitutes a  
 737 charitable trust or a split-interest trust.

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

747 § 55-544.19. Distribution of income of trust which is a private foundation or a charitable trust;  
 748 prohibitions as to such private foundation.

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

758 § 55-544.20. Prohibitions as to trust which is deemed a split-interest trust.

759 Every trust which is a split-interest trust (as described in § 4947 (a) (2) of the Internal Revenue  
 760 Code), unless its governing instrument expressly includes specific provisions to the contrary, shall not  
 761 engage in any act of self-dealing (as defined in § 4941 (d) of the Internal Revenue Code), retain any  
 762 excess business holdings (as defined in § 4943 (c) of the Internal Revenue Code) which would give rise  
 763 to liability for the tax imposed by § 4943 (a) of the Internal Revenue Code, make any investments in  
 764 such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or  
 765 make any taxable expenditures (as defined in § 4945 (d) of the Internal Revenue Code). This paragraph  
 766 shall not apply with respect to:

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

769 2. Any amounts in trust other than amounts for which a deduction was allowed under § 170, 545 (b)  
 770 (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or 2522 of the Internal Revenue Code, if such other  
 771 amounts are segregated from amounts for which no deduction was allowable; or

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

773 § 55-544.21. Application of §§ 55-544.19 and 55-544.20.

774 Sections 55-544.19 and 55-544.20 shall apply to any private foundation, charitable trust or  
 775 split-interest trust defined or described therein and established after December 31, 1969; and to any  
 776 such private foundation, charitable trust or split-interest trust established before January 1, 1970, only  
 777 for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508 (e)  
 778 (2) (B) or (C) of the Internal Revenue Code shall apply or unless the trustee or trustees shall elect that  
 779 this section shall not apply by filing written notice of such election with the Attorney General, and with  
 780 the clerk of the court in which its governing instrument may be recorded, on or before December 31,  
 781 1971.

782 § 55-544.22. Interpretation of references to Internal Revenue Code in §§ 55-544.18 through  
 783 55-544.21.

784 Each reference to a section of the Internal Revenue Code made in §§ 55-544.18, 55-544.19,  
 785 55-544.20 and 55-544.21 shall include future amendments to such Code sections and corresponding  
 786 provisions of future internal revenue laws.

787 § 55-544.23. Powers of courts not impaired by §§ 55-544.18 through 55-544.22; severability.

788 Nothing in §§ 55-544.18 through 55-544.22 shall impair the power of a court of competent  
 789 jurisdiction with respect to any such foundation or trust, and the invalidity of any one or more of such

790 sections shall not be deemed to affect the validity of the other sections.

791 Article 5.

792 Creditor's Claims; Spendthrift and Discretionary Trusts.

793 § 55-545.01. Rights of beneficiary's creditor or assignee.

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

798 § 55-545.02. Spendthrift provision.

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

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

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

807 § 55-545.03. Exceptions to spendthrift provision.

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

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

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

816 § 55-545.03:1. Certain claims for reimbursement for public assistance.

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

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

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

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

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

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

839 § 55-545.04. Discretionary trusts; effect of standard.

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

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

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

846 2. The trustee has abused the discretion.

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

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

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

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

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

859 § 55-545.05. Creditor's claim against settlor.

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

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

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

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

880 B. For purposes of this section:

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

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

888 § 55-545.06. Overdue distribution.

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

893 § 55-545.07. Personal obligations of trustee.

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

896 Article 6.

897 Revocable Trusts.

898 § 55-546.01. Capacity of settlor of revocable trust.

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

901 § 55-546.02. Revocation or amendment of revocable trust.

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

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

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

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

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

912 promptly notify the other settlors of the revocation or amendment.

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

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

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

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

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

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

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

929 § 55-546.03. Settlor's powers; powers of withdrawal.

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

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

935 § 55-546.04. Limitation on action contesting validity of revocable trust; distribution of trust property.

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

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

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

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

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

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

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

950

#### Article 7.

951

#### Office of Trustee.

952

§ 55-547.01. Accepting or declining trusteeship.

953 A. Except as otherwise provided in subsection C, a person designated as trustee accepts the  
954 trusteeship:

955 1. By substantially complying with a method of acceptance provided in the terms of the trust; or

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

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

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

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

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

968 § 55-547.02. Trustee's bond.

969 A. Except as otherwise provided in Title 26, a trustee shall give bond, or bond with surety or other  
970 security, to secure performance of the trustee's duties only if the court finds that a bond is needed to  
971 protect the interests of the beneficiaries or is required by the terms of the trust and the court has not  
972 dispensed with the requirement.

- 973 *B. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary.*  
 974 *The court may modify or terminate a bond at any time.*  
 975 *C. A regulated financial-service institution qualified to do trust business in the Commonwealth need*  
 976 *not give bond, even if required by the terms of the trust.*  
 977 *§ 55-547.03. Cotrustees.*  
 978 *A. Cotrustees who are unable to reach a unanimous decision may act by majority decision.*  
 979 *B. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.*  
 980 *C. A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is*  
 981 *unavailable to perform the function because of absence, illness, disqualification under other law, or*  
 982 *other temporary incapacity, or the cotrustee has properly delegated the performance of the function to*  
 983 *another trustee.*  
 984 *D. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under*  
 985 *other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the*  
 986 *trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining*  
 987 *cotrustees may act for the trust.*  
 988 *E. A trustee may delegate to a cotrustee the performance of any function other than a function that*  
 989 *the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was*  
 990 *irrevocable, a trustee may revoke a delegation previously made.*  
 991 *F. Except as otherwise provided in subsection G, a trustee who does not join in an action of another*  
 992 *trustee is not liable for the action.*  
 993 *G. Each trustee shall exercise reasonable care to:*  
 994 *1. Prevent a cotrustee from committing a serious breach of trust; and*  
 995 *2. Compel a cotrustee to redress a serious breach of trust.*  
 996 *H. A dissenting trustee who joins in an action at the direction of the majority of the trustees and*  
 997 *who notified any cotrustee of the dissent at or before the time of the action is not liable for the action*  
 998 *unless the action is a serious breach of trust.*  
 999 *§ 55-547.04. Vacancy in trusteeship; appointment of successor.*  
 1000 *A. A vacancy in a trusteeship occurs if:*  
 1001 *1. A person designated as trustee rejects the trusteeship;*  
 1002 *2. A person designated as trustee cannot be identified or does not exist;*  
 1003 *3. A trustee resigns;*  
 1004 *4. A trustee is disqualified or removed;*  
 1005 *5. A trustee dies; or*  
 1006 *6. An individual serving as trustee is adjudicated an incapacitated person.*  
 1007 *B. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A*  
 1008 *vacancy in a trusteeship shall be filled if the trust has no remaining trustee.*  
 1009 *C. A vacancy in a trusteeship of a noncharitable trust that is required to be filled shall be filled in*  
 1010 *the following order of priority:*  
 1011 *1. By a person designated pursuant to the terms of the trust to act as successor trustee;*  
 1012 *2. By a person appointed by unanimous agreement of the qualified beneficiaries; or*  
 1013 *3. By a person appointed by the court pursuant to §§ 26-48 and 26-50, or pursuant to § 55-542.05.*  
 1014 *D. A vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the*  
 1015 *following order of priority:*  
 1016 *1. By a person designated pursuant to the terms of the trust to act as successor trustee;*  
 1017 *2. By a person selected by the charitable organizations expressly designated to receive distributions*  
 1018 *under the terms of the trust, subject, however, to the concurrence of the Attorney General in any case in*  
 1019 *which he has previously requested of an organization so designated that he be consulted regarding the*  
 1020 *selection of successor; or*  
 1021 *3. By a person appointed by the court pursuant to §§ 26-48 and 26-50, or pursuant to § 55-542.05.*  
 1022 *E. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint*  
 1023 *an additional trustee or special fiduciary whenever the court considers the appointment necessary for*  
 1024 *the administration of the trust.*  
 1025 *F. A successor or surviving trustee shall succeed to all the rights, powers, and privileges, and shall*  
 1026 *be subject to all the duties, liabilities, and responsibilities imposed upon the original trustee without*  
 1027 *regard to the nature of discretionary powers conferred by the instrument, unless the trust instrument*  
 1028 *expressly provides to the contrary, or unless an order appointing the successor trustee provides*  
 1029 *otherwise.*  
 1030 *§ 55-547.05. Resignation of trustee.*  
 1031 *A. A trustee may resign:*  
 1032 *1. Upon at least 30 days' notice to the settlor, if living, to all cotrustees, and to the qualified*  
 1033 *beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the*

- 1034 capacity to revoke; or
- 1035 2. With the approval of the court.
- 1036 B. In approving a resignation, the court may issue orders and impose conditions reasonably
- 1037 necessary for the protection of the trust property.
- 1038 C. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions
- 1039 of the trustee is not discharged or affected by the trustee's resignation.
- 1040 § 55-547.06. Removal of trustee.
- 1041 A. The settlor, a cotrustee, or a beneficiary, or in the case of a charitable trust, the Attorney
- 1042 General, may petition the court to remove a trustee, or a trustee may be removed by the court on its
- 1043 own initiative.
- 1044 B. The court may remove a trustee if:
- 1045 1. The trustee has committed a serious breach of trust;
- 1046 2. Lack of cooperation among cotrustees substantially impairs the administration of the trust;
- 1047 3. Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust
- 1048 effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;
- 1049 or
- 1050 4. There has been a substantial change of circumstances or removal is requested by all of the
- 1051 qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the
- 1052 beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or
- 1053 successor trustee is available.
- 1054 C. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing
- 1055 a trustee, the court may order such appropriate relief under subsection B of § 55-550.01 as may be
- 1056 necessary to protect the trust property or the interests of the beneficiaries.
- 1057 § 55-547.07. Delivery of property by former trustee.
- 1058 A. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is
- 1059 delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been
- 1060 removed has the duties of a trustee and the powers necessary to protect the trust property.
- 1061 B. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust
- 1062 property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.
- 1063 C. Title to all trust property shall be owned and vested in any successor trustee, upon acceptance of
- 1064 the trusteeship, without any conveyance, transfer or assignment by the prior trustee.
- 1065 § 55-547.08. Compensation of trustee.
- 1066 A. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to
- 1067 compensation that is reasonable under the circumstances.
- 1068 B. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated
- 1069 as specified, but the court may allow more or less compensation if:
- 1070 1. The duties of the trustee are substantially different from those contemplated when the trust was
- 1071 created; or
- 1072 2. The compensation specified by the terms of the trust would be unreasonably low or high.
- 1073 § 55-547.09. Reimbursement of expenses.
- 1074 A. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:
- 1075 1. Expenses that were properly incurred in the administration of the trust; and
- 1076 2. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly
- 1077 incurred in the administration of the trust.
- 1078 B. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust
- 1079 property to secure reimbursement with reasonable interest.
- 1080 Article 8.
- 1081 Duties and Powers of Trustee.
- 1082 § 55-548.01. Duty to administer trust and invest.
- 1083 Upon acceptance of a trusteeship, the trustee shall administer the trust and invest trust assets in
- 1084 good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in
- 1085 accordance with this chapter. In administering, managing and investing trust assets, the trustee shall
- 1086 comply with the provisions of the Uniform Prudent Investor Act (§ 26-45.3 et seq.) and the Uniform
- 1087 Principal and Income Act (§ 55-277.1 et seq.).
- 1088 § 55-548.02. Duty of loyalty.
- 1089 A. A trustee shall administer the trust solely in the interests of the beneficiaries.
- 1090 B. Subject to the rights of persons dealing with or assisting the trustee as provided in § 55-550.12, a
- 1091 sale, encumbrance, or other transaction involving the investment or management of trust property
- 1092 entered into by the trustee for the trustee's own personal account or which is otherwise affected by a
- 1093 conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the
- 1094 transaction unless:

- 1095 1. The transaction was authorized by the terms of the trust;
- 1096 2. The transaction was approved by the court;
- 1097 3. The beneficiary did not commence a judicial proceeding within the time allowed by § 55-550.05;
- 1098 4. The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee
- 1099 in compliance with § 55-550.09; or
- 1100 5. The transaction involves a contract entered into or claim acquired by the trustee before the person
- 1101 became or contemplated becoming trustee.
- 1102 C. A sale, encumbrance, or other transaction involving the investment or management of trust
- 1103 property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered
- 1104 into by the trustee with:
- 1105 1. The trustee's spouse;
- 1106 2. The trustee's descendants, siblings, parents, or their spouses;
- 1107 3. An agent or attorney of the trustee; or
- 1108 4. A corporation or other person or enterprise in which the trustee, or a person that owns a
- 1109 significant interest in the trustee, has an interest that might affect the trustee's best judgment.
- 1110 D. A transaction between a trustee and a beneficiary that does not concern trust property but that
- 1111 occurs during the existence of the trust or while the trustee retains significant influence over the
- 1112 beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage
- 1113 from such transaction is voidable by the beneficiary unless the trustee establishes that the transaction
- 1114 was fair to the beneficiary.
- 1115 E. A transaction not concerning trust property in which the trustee engages in the trustee's individual
- 1116 capacity involves a conflict between personal and fiduciary interests if the transaction concerns an
- 1117 opportunity properly belonging to the trust.
- 1118 F. An investment by a trustee in securities of an investment company, investment trust, mutual fund,
- 1119 or other investment or financial product to which the trustee, or an affiliate of the trustee, sponsors,
- 1120 sells or provides services in a capacity other than as trustee is not presumed to be affected by a conflict
- 1121 between personal and fiduciary interests if the investment otherwise complies with the Uniform Prudent
- 1122 Investor Act (§ 26-45.3 et seq.) and § 26-44.1. The trustee may be compensated by the investment
- 1123 company, investment trust, mutual fund or other investment or financial product, or by the affiliated
- 1124 entity sponsoring, selling, or providing such service, and such compensation may be in addition to the
- 1125 compensation the trustee is receiving as a trustee if the trustee notifies the persons entitled to receive a
- 1126 copy of the trustee's annual report under § 55-548.13 of the rate and method by which that
- 1127 compensation was determined and of any subsequent changes to such rate or method of compensation.
- 1128 G. In voting shares of stock or in exercising powers of control over similar interests in other forms
- 1129 of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner
- 1130 of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other
- 1131 managers who will manage the corporation or enterprise in the best interests of the beneficiaries.
- 1132 H. This section does not preclude the following transactions, if fair to the beneficiaries:
- 1133 1. An agreement between a trustee and a beneficiary relating to the appointment or compensation of
- 1134 the trustee;
- 1135 2. Payment of reasonable compensation to the trustee;
- 1136 3. A transaction between a trust and another trust, decedent's estate, or conservatorship of which the
- 1137 trustee is a fiduciary or in which a beneficiary has an interest;
- 1138 4. A deposit of trust money in a regulated financial service institution operated by the trustee; or
- 1139 5. An advance by the trustee of money for the protection of the trust.
- 1140 I. The court may appoint a special fiduciary to make a decision with respect to any proposed
- 1141 transaction that might violate this section if entered into by the trustee.
- 1142 § 55-548.03. Impartiality.
- 1143 If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and
- 1144 distributing the trust property, giving due regard to the beneficiaries' respective interests.
- 1145 § 55-548.04. Prudent administration.
- 1146 A trustee shall administer the trust as a prudent person would, by considering the purposes, terms,
- 1147 distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee
- 1148 shall exercise reasonable care, skill, and caution.
- 1149 § 55-548.05. Costs of administration.
- 1150 In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust
- 1151 property, the purposes of the trust, and the skills of the trustee.
- 1152 § 55-548.06. Trustee's skills.
- 1153 A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's
- 1154 representation that the trustee has special skills or expertise, shall use those special skills or expertise.
- 1155 § 55-548.07. Delegation by trustee.

1156 A. A trustee may delegate duties and powers that a prudent trustee of comparable skills could  
 1157 properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution  
 1158 in:

1159 1. Selecting an agent;

1160 2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the  
 1161 trust; and

1162 3. Periodically reviewing the agent's actions in order to monitor the agent's performance and  
 1163 compliance with the terms of the delegation.

1164 B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care  
 1165 to comply with the terms of the delegation.

1166 C. A trustee who complies with subsection A is not liable to the beneficiaries or to the trust for an  
 1167 action of the agent to whom the function was delegated.

1168 D. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law  
 1169 of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth.

1170 § 55-548.08. Powers to direct.

1171 A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the  
 1172 terms of the trust.

1173 B. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to  
 1174 direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power  
 1175 unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the  
 1176 attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the  
 1177 power owes to the beneficiaries of the trust.

1178 C. The terms of a trust may confer upon a trustee or other person a power to direct the modification  
 1179 or termination of the trust.

1180 D. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who,  
 1181 as such, is required to act in good faith with regard to the purposes of the trust and the interests of the  
 1182 beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a  
 1183 fiduciary duty.

1184 § 55-548.09. Control and protection of trust property.

1185 A trustee shall take reasonable steps to take control of and protect the trust property.

1186 § 55-548.10. Recordkeeping and identification of trust property.

1187 A. A trustee shall keep adequate records of the administration of the trust.

1188 B. A trustee shall keep trust property separate from the trustee's own property.

1189 C. Except as otherwise provided in subsection D, a trustee shall cause the trust property to be  
 1190 designated so that the interest of the trust, to the extent feasible, appears in records maintained by a  
 1191 party other than a trustee or beneficiary.

1192 D. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as  
 1193 a whole the property of two or more separate trusts.

1194 § 55-548.11. Enforcement and defense of claims.

1195 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the  
 1196 trust.

1197 § 55-548.12. Collecting trust property.

1198 A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust  
 1199 property to the trustee, and to redress a breach of trust or duty known to the trustee to have been  
 1200 committed by a former trustee or other fiduciary.

1201 § 55-548.13. Duty to inform and report.

1202 A. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the  
 1203 administration of the trust and of the material facts necessary for them to protect their interests. Unless  
 1204 unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for  
 1205 information related to the administration of the trust.

1206 B. A trustee:

1207 1. Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust  
 1208 instrument;

1209 2. Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the  
 1210 acceptance and of the trustee's name, address, and telephone number;

1211 3. Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable  
 1212 trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable,  
 1213 whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's  
 1214 existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument,  
 1215 and of the right to a trustee's report as provided in subsection C; and

1216 4. Shall notify the qualified beneficiaries in advance of any change in the method or rate of the

1217 trustee's compensation.

1218 C. A trustee shall send to the distributees or permissible distributees of trust income or principal,  
1219 and to other qualified or nonqualified beneficiaries who request it, at least annually and at the  
1220 termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including  
1221 the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their  
1222 respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report  
1223 shall be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator,  
1224 or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated  
1225 trustee.

1226 D. A beneficiary may waive the right to a trustee's report or other information otherwise required to  
1227 be furnished under this section. A beneficiary, with respect to future reports and other information, may  
1228 withdraw a waiver previously given.

1229 E. Subdivisions 2 and 3 of subsection B and subsection C apply only to an irrevocable trust created  
1230 on or after the effective date of this chapter, and to a revocable trust which becomes irrevocable on or  
1231 after the effective date of this chapter.

1232 § 55-548.14. Discretionary powers; tax savings.

1233 A. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including  
1234 the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary  
1235 power in good faith and in accordance with the terms and purposes of the trust and the interests of the  
1236 beneficiaries.

1237 B. Subject to subsection D, and unless the terms of the trust expressly indicate that a rule in this  
1238 subsection does not apply:

1239 1. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the  
1240 trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise  
1241 the power only in accordance with an ascertainable standard; and

1242 2. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation  
1243 of support that the trustee personally owes another person.

1244 C. A power whose exercise is limited or prohibited by subsection B may be exercised by a majority  
1245 of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all  
1246 trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise  
1247 the power.

1248 D. Subsection B does not apply to:

1249 1. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as  
1250 defined in § 2056 (b) (5) or 2523 (e) of the Internal Revenue Code of 1986, as in effect on the effective  
1251 date of this chapter, or as later amended, was previously allowed;

1252 2. Any trust during any period that the trust may be revoked or amended by its settlor; or

1253 3. A trust if contributions to the trust qualify for the annual exclusion under § 2503 (c) of the  
1254 Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

1255 § 55-548.15. General powers of trustee.

1256 A. A trustee, without authorization by the court, may exercise:

1257 1. Powers conferred by the terms of the trust; and

1258 2. Except as limited by the terms of the trust:

1259 a. All powers over the trust property that an unmarried competent owner has over individually  
1260 owned property;

1261 b. Any other powers appropriate to achieve the proper investment, management, and distribution of  
1262 the trust property; and

1263 c. Any other powers conferred by this chapter.

1264 B. The exercise of a power is subject to the fiduciary duties prescribed by this article.

1265 C. Any reference in a trust instrument incorporating the powers authorized under § 64.1-57 shall not  
1266 be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly  
1267 states in the trust instrument that such reference should be so construed.

1268 § 55-548.16. Specific powers of trustee.

1269 A. Without limiting the authority conferred by § 55-548.15, a trustee may:

1270 1. Collect trust property and accept or reject additions to the trust property from a settlor or any  
1271 other person;

1272 2. Acquire or sell property, for cash or on credit, at public or private sale;

1273 3. Exchange, partition, or otherwise change the character of trust property;

1274 4. Deposit trust money in an account in a regulated financial-service institution;

1275 5. Borrow money, with or without security, and mortgage or pledge trust property for a period  
1276 within or extending beyond the duration of the trust;

1277 6. With respect to an interest in a proprietorship, partnership, limited liability company, business

1278 trust, corporation, or other form of business or enterprise, continue the business or other enterprise and  
 1279 take any action that may be taken by shareholders, members, or property owners, including merging,  
 1280 dissolving, or otherwise changing the form of business organization or contributing additional capital;  
 1281 7. With respect to stocks or other securities, exercise the rights of an absolute owner, including the  
 1282 right to:  
 1283 a. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a  
 1284 voting trust agreement;  
 1285 b. Hold a security in the name of a nominee or in other form without disclosure of the trust so that  
 1286 title may pass by delivery;  
 1287 c. Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or  
 1288 exercise stock subscription or conversion rights; and  
 1289 d. Deposit the securities with a depository or other regulated financial service institution;  
 1290 8. With respect to an interest in real property, construct, or make ordinary or extraordinary repairs  
 1291 to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze  
 1292 existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or  
 1293 grant public or private easements, and make or vacate plats and adjust boundaries;  
 1294 9. Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for  
 1295 exploration and removal of natural resources, with or without the option to purchase or renew, for a  
 1296 period within or extending beyond the duration of the trust;  
 1297 10. Grant an option involving a sale, lease, or other disposition of trust property or acquire an  
 1298 option for the acquisition of property, including an option exercisable beyond the duration of the trust,  
 1299 and exercise an option so acquired;  
 1300 11. Insure the property of the trust against damage or loss and insure the trustee, the trustee's  
 1301 agents, and beneficiaries against liability arising from the administration of the trust;  
 1302 12. Abandon or decline to administer property of no value or of insufficient value to justify its  
 1303 collection or continued administration;  
 1304 13. With respect to possible liability for violation of environmental law:  
 1305 a. Inspect or investigate property the trustee holds or has been asked to hold, or property owned or  
 1306 operated by an organization in which the trustee holds or has been asked to hold an interest, for the  
 1307 purpose of determining the application of environmental law with respect to the property;  
 1308 b. Take action to prevent, abate, or otherwise remedy any actual or potential violation of any  
 1309 environmental law affecting property held directly or indirectly by the trustee, whether taken before or  
 1310 after the assertion of a claim or the initiation of governmental enforcement;  
 1311 c. Decline to accept property into trust or disclaim any power with respect to property that is or  
 1312 may be burdened with liability for violation of environmental law;  
 1313 d. Compromise claims against the trust that may be asserted for an alleged violation of  
 1314 environmental law; and  
 1315 e. Pay the expense of any inspection, review, abatement, or remedial action to comply with  
 1316 environmental law;  
 1317 14. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part,  
 1318 a claim belonging to the trust;  
 1319 15. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust,  
 1320 and other expenses incurred in the administration of the trust;  
 1321 16. Exercise elections with respect to federal, state, and local taxes;  
 1322 17. Select a mode of payment under any employee benefit or retirement plan, annuity, or life  
 1323 insurance payable to the trustee, exercise rights thereunder, including exercise of the right to  
 1324 indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;  
 1325 18. Make loans out of trust property, including loans to a beneficiary on terms and conditions the  
 1326 trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future  
 1327 distributions for repayment of those loans;  
 1328 19. Pledge trust property to guarantee loans made by others to the beneficiary;  
 1329 20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other  
 1330 jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee,  
 1331 require that the appointed trustee furnish security, and remove any trustee so appointed;  
 1332 21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee  
 1333 reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the  
 1334 beneficiary's benefit, or by:  
 1335 a. Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the  
 1336 beneficiary's guardian;  
 1337 b. Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act (§ 31-37 et  
 1338 seq.) or custodial trustee under the Uniform Custodial Trust Act (§ 55-34.1 et seq.), and, for that

- 1339 purpose, creating a custodianship or custodial trust;
- 1340 c. If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it
- 1341 to an adult relative or other person having legal or physical care or custody of the beneficiary, to be
- 1342 expended on the beneficiary's behalf; or
- 1343 d. Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing
- 1344 right to withdraw the distribution;
- 1345 22. On distribution of trust property or the division or termination of a trust, make distributions in
- 1346 divided or undivided interests, allocate particular assets in proportionate or disproportionate shares,
- 1347 value the trust property for those purposes, and adjust for resulting differences in valuation;
- 1348 23. Resolve a dispute concerning the interpretation of the trust or its administration by mediation,
- 1349 arbitration, or other procedure for alternative dispute resolution;
- 1350 24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust
- 1351 property and the trustee in the performance of the trustee's duties;
- 1352 25. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the
- 1353 exercise of the trustee's powers; and
- 1354 26. On termination of the trust, exercise the powers appropriate to wind up the administration of the
- 1355 trust and distribute the trust property to the persons entitled to it.
- 1356 B. Any reference in a trust instrument incorporating the powers authorized under § 64.1-57 shall not
- 1357 be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly
- 1358 states in the trust instrument that such reference should be so construed.
- 1359 § 55-548.17. Distribution upon termination.
- 1360 A. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a
- 1361 proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if
- 1362 the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but
- 1363 only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.
- 1364 B. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall
- 1365 proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of
- 1366 the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.
- 1367 C. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:
- 1368 1. It was induced by improper conduct of the trustee; or
- 1369 2. The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the
- 1370 material facts relating to the breach.
- 1371 Article 9.
- 1372 Reserved.
- 1373 Article 10.
- 1374 *Liability of Trustees and Rights of Persons Dealing with Trustee.*
- 1375 § 55-550.01. Remedies for breach of trust.
- 1376 A. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
- 1377 B. To remedy a breach of trust that has occurred or may occur, the court may:
- 1378 1. Compel the trustee to perform the trustee's duties;
- 1379 2. Enjoin the trustee from committing a breach of trust;
- 1380 3. Compel the trustee to redress a breach of trust by paying money, restoring property, or other
- 1381 means;
- 1382 4. Order a trustee to account;
- 1383 5. Appoint a special fiduciary to take possession of the trust property and administer the trust;
- 1384 6. Suspend the trustee;
- 1385 7. Remove the trustee as provided in § 55-547.06;
- 1386 8. Reduce or deny compensation to the trustee;
- 1387 9. Subject to § 55-550.12, void an act of the trustee, impose a lien or a constructive trust on trust
- 1388 property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- 1389 10. Order any other appropriate relief.
- 1390 § 55-550.02. Damages for breach of trust.
- 1391 A. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:
- 1392 1. The amount required to restore the value of the trust property and trust distributions to what they
- 1393 would have been had the breach not occurred; or
- 1394 2. The profit the trustee made by reason of the breach.
- 1395 B. Except as otherwise provided in this subsection, if more than one trustee is liable to the
- 1396 beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.
- 1397 A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee
- 1398 or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes
- 1399 of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of

- 1400 *trust is not entitled to contribution from another trustee to the extent of the benefit received.*  
1401 *§ 55-550.03. Damages in absence of breach.*  
1402 *A. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from*  
1403 *the administration of the trust, even absent a breach of trust.*  
1404 *B. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the*  
1405 *value of trust property or for not having made a profit.*  
1406 *§ 55-550.04. Attorneys' fees and costs.*  
1407 *In a judicial proceeding involving the administration of a trust, the court, as justice and equity may*  
1408 *require, may award costs and expenses, including reasonable attorneys' fees, to any party, to be paid by*  
1409 *another party or from the trust that is the subject of the controversy.*  
1410 *§ 55-550.05. Limitation of action against trustee.*  
1411 *A. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one*  
1412 *year after the date the beneficiary or a representative of the beneficiary was sent a report that*  
1413 *adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary*  
1414 *of the time allowed for commencing a proceeding.*  
1415 *B. A report adequately discloses the existence of a potential claim for breach of trust if it provides*  
1416 *sufficient information so that the beneficiary or representative knows of the potential claim or should*  
1417 *have inquired into its existence.*  
1418 *C. If subsection A does not apply, a judicial proceeding by a beneficiary against a trustee for breach*  
1419 *of trust shall be commenced within five years after the first to occur of:*  
1420 *1. The removal, resignation, or death of the trustee;*  
1421 *2. The termination of the beneficiary's interest in the trust; or*  
1422 *3. The termination of the trust.*  
1423 *D. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed*  
1424 *under this chapter, or if fraud is used to avoid or circumvent the provisions or purposes of this chapter,*  
1425 *any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or*  
1426 *restitution from any person benefiting from the fraud, whether innocent or not, except for a bona fide*  
1427 *purchaser. Any proceeding shall be commenced within two years after the fraud is discovered, but no*  
1428 *proceeding may be brought against one not a perpetrator of the fraud later than five years after the*  
1429 *time the fraud is committed. This section does not apply to remedies for fraud practiced on a decedent*  
1430 *during his lifetime which affects the succession of his estate.*  
1431 *E. The provisions of this section shall not operate to reduce the period of limitations applicable to*  
1432 *actions and suits governed by § 8.01-245.*  
1433 *§ 55-550.06. Reliance on trust instrument.*  
1434 *A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust*  
1435 *instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the*  
1436 *reliance.*  
1437 *§ 55-550.07. Event affecting administration or distribution.*  
1438 *If the happening of an event, including marriage, divorce, performance of educational requirements,*  
1439 *or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable*  
1440 *care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of*  
1441 *knowledge.*  
1442 *§ 55-550.08. Exculpation of trustee.*  
1443 *A. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent*  
1444 *that it:*  
1445 *1. Relieves the trustee of liability for breach of trust committed in bad faith or with reckless*  
1446 *indifference to the purposes of the trust or the interests of the beneficiaries; or*  
1447 *2. Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to*  
1448 *the settlor.*  
1449 *B. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a*  
1450 *fiduciary or confidential relationship unless the trustee proves that the existence and contents of the*  
1451 *exculpatory term were adequately communicated to the settlor.*  
1452 *§ 55-550.09. Beneficiary's consent, release, or ratification.*  
1453 *A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct*  
1454 *constituting the breach, released the trustee from liability for the breach, or ratified the transaction*  
1455 *constituting the breach, unless:*  
1456 *1. The consent, release, or ratification of the beneficiary was induced by improper conduct of the*  
1457 *trustee; or*  
1458 *2. At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's*  
1459 *rights or of the material facts relating to the breach.*  
1460 *§ 55-550.10. Limitation on personal liability of trustee.*

1461 A. Except as otherwise provided in the contract, a trustee is not personally liable on a contract  
 1462 properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the  
 1463 trustee in the contract disclosed the fiduciary capacity.

1464 B. A trustee is personally liable for torts committed in the course of administering a trust, or for  
 1465 obligations arising from ownership or control of trust property, including liability for violation of  
 1466 environmental law, only if the trustee is personally at fault.

1467 C. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an  
 1468 obligation arising from ownership or control of trust property, or on a tort committed in the course of  
 1469 administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's  
 1470 fiduciary capacity, whether or not the trustee is personally liable for the claim.

1471 § 55-550.11. Interest as general partner.

1472 A. Except as otherwise provided in subsection C or unless personal liability is imposed in the  
 1473 contract, a trustee who holds an interest as a general partner in a general or limited partnership is not  
 1474 personally liable on a contract entered into by the partnership after the trust's acquisition of the interest  
 1475 if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the  
 1476 Uniform Partnership Act (§ 50-73.79 et seq.).

1477 B. Except as otherwise provided in subsection C, a trustee who holds an interest as a general  
 1478 partner is not personally liable for torts committed by the partnership or for obligations arising from  
 1479 ownership or control of the interest unless the trustee is personally at fault.

1480 C. The immunity provided by this section does not apply if an interest in the partnership is held by  
 1481 the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of  
 1482 the trustee's descendants, siblings, or parents, or the spouse of any of them.

1483 D. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally  
 1484 liable for contracts and other obligations of the partnership as if the settlor were a general partner.

1485 § 55-550.12. Protection of person dealing with trustee.

1486 A. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and  
 1487 for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising  
 1488 the trustee's powers, is protected from liability as if the trustee properly exercised the power.

1489 B. A person other than a beneficiary who in good faith deals with a trustee is not required to  
 1490 inquire into the extent of the trustee's powers or the propriety of their exercise.

1491 C. A person who in good faith delivers assets to a trustee need not ensure their proper application.

1492 D. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith  
 1493 and for value deals with a former trustee, without knowledge that the trusteeship has terminated is  
 1494 protected from liability as if the former trustee were still a trustee.

1495 E. Comparable protective provisions of other laws relating to commercial transactions or transfer of  
 1496 securities by fiduciaries prevail over the protection provided by this section.

1497 § 55-550.13. Certification of trust.

1498 A. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the  
 1499 trustee may furnish to the person a certification of trust containing the following information:

1500 1. That the trust exists and the date the trust instrument was executed;

1501 2. The identity of the settlor;

1502 3. The identity and address of the currently acting trustee;

1503 4. The powers of the trustee;

1504 5. The revocability or irrevocability of the trust and the identity of any person holding a power to  
 1505 revoke the trust;

1506 6. The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are  
 1507 required in order to exercise powers of the trustee;

1508 7. The trust's taxpayer identification number; and

1509 8. The manner of taking title to trust property.

1510 B. A certification of trust may be signed or otherwise authenticated by any trustee.

1511 C. A certification of trust shall state that the trust has not been revoked, modified, or amended in  
 1512 any manner that would cause the representations contained in the certification of trust to be incorrect.

1513 D. A certification of trust need not contain the dispositive terms of a trust.

1514 E. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts  
 1515 from the original trust instrument and later amendments that designate the trustee and confer upon the  
 1516 trustee the power to act in the pending transaction.

1517 F. A person who acts in reliance upon a certification of trust without knowledge that the  
 1518 representations contained therein are incorrect is not liable to any person for so acting and may assume  
 1519 without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the  
 1520 trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by  
 1521 the person relying upon the certification.

1522 *G. A person who in good faith enters into a transaction in reliance upon a certification of trust may*  
 1523 *enforce the transaction against the trust property as if the representations contained in the certification*  
 1524 *were correct.*

1525 *H. A person making a demand for the trust instrument in addition to a certification of trust or*  
 1526 *excerpts is liable for damages if the court determines that the person did not act in good faith in*  
 1527 *demanding the trust instrument.*

1528 *I. This section does not limit the right of a person to obtain a copy of the trust instrument in a*  
 1529 *judicial proceeding concerning the trust.*

1530 *Article 11.*

1531 *Miscellaneous Provisions.*

1532 *§ 55-551.01. Uniformity of application and construction.*

1533 *In applying and construing this Uniform Act, consideration shall be given to the need to promote*  
 1534 *uniformity of the law with respect to its subject matter among states that enact it.*

1535 *§ 55-551.02. Electronic records and signatures.*

1536 *The provisions of this chapter governing the legal effect, validity, or enforceability of electronic*  
 1537 *records or electronic signatures, and of contracts formed or performed with the use of such records or*  
 1538 *signatures, conform to the requirements of § 102 of the Electronic Signatures in Global and National*  
 1539 *Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic*  
 1540 *Signatures in Global and National Commerce Act.*

1541 *§ 55-551.03. Severability clause.*

1542 *If any provision of this chapter or its application to any person or circumstances is held invalid, the*  
 1543 *invalidity does not affect other provisions or applications of this chapter that can be given effect without*  
 1544 *the invalid provision or application, and to this end the provisions of this chapter are severable.*

1545 *§ 55-551.04. RESERVED.*

1546 *§ 55-551.05. RESERVED.*

1547 *§ 55-551.06. Application to existing relationships.*

1548 *A. Except as otherwise provided in this chapter:*

1549 *1. This chapter applies to all trusts created before, on, or after July 1, 2006;*

1550 *2. This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1,*  
 1551 *2006;*

1552 *3. This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2006,*  
 1553 *unless the court finds that application of a particular provision of this chapter would substantially*  
 1554 *interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in*  
 1555 *which case the particular provision of this chapter does not apply and the superseded law applies;*

1556 *4. Any rule of construction or presumption provided in this chapter applies to trust instruments*  
 1557 *executed before July 1, 2006, unless there is a clear indication of a contrary intent in the terms of the*  
 1558 *trust; and*

1559 *5. An act done before July 1, 2006, is not affected by this chapter;*

1560 *B. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has*  
 1561 *commenced to run under any other statute before July 1, 2006, that statute continues to apply to the*  
 1562 *right even if it has been repealed or superseded.*

1563 *§ 64.1-73. Devise or bequest to trustee of an established trust.*

1564 *A. A devise or bequest (including the exercise of a power of appointment) may be made by a will*  
 1565 *duly executed pursuant to the provisions of this chapter to the trustee or trustees of an inter vivos trust*  
 1566 *or testamentary trust, whether the trust was established by the testator, by the testator and another, or by*  
 1567 *some other person if:*

1568 *1. In the case of an inter vivos trust, the trust is identified in the testator's will and its terms are set*  
 1569 *forth in a written instrument (other than a will) executed before or concurrently with the execution of*  
 1570 *the testator's will; or*

1571 *2. In the case of a testamentary trust, the trust is identified in the testator's will and its terms are set*  
 1572 *forth in the valid last will of a person who has predeceased the testator and whose will was executed*  
 1573 *before or concurrently with the execution of the testator's will.*

1574 *In either event, at the time the devise or bequest is to be distributed to the trustee or trustees at least*  
 1575 *one trustee of the trust shall be (i) an individual; or (ii) a corporation or association authorized to do a*  
 1576 *trust business in this Commonwealth. However, prior to distribution of the devise or bequest to the*  
 1577 *trustee, each nonresident shall file, with the clerk of the circuit court of the jurisdiction wherein the*  
 1578 *testator's will was admitted to probate, his consent in writing that service of process in any action*  
 1579 *against him as trustee or any other notice with respect to administration of the trust in his charge, may*  
 1580 *be by service upon the clerk of the court in which he is qualified or upon a resident of this*  
 1581 *Commonwealth at such address as he may appoint in the written instrument filed with the clerk. Where*  
 1582 *any nonresident qualifies pursuant to this paragraph, bond with surety shall be required in every case*

1583 unless at least one other trustee is a resident or the court in which the nonresident qualifies waives  
1584 surety under the provisions of § 26-4.

1585 A corporation or association not authorized to do a trust business in this Commonwealth at the time  
1586 the devise or bequest is to be distributed shall not, in any case, be a trustee of such trust.

1587 B. The inter vivos trust may be an unfunded trust.

1588 For the purposes of this section:

1589 1. An inter vivos trust shall be deemed established upon execution of the instrument creating such  
1590 trust; and

1591 2. An inter vivos trust may contain provisions whereby the amount of corpus to be allocated to any  
1592 particular portion of the trust will be determined, measured or affected by the "adjusted gross estate" of  
1593 the settlor or testator for federal estate tax purposes, or by the amount of the "marital deduction  
1594 allowable" to the settlor's or testator's estate, the amount of deductions or credits available to the estate  
1595 of the settlor or testator for federal estate tax purposes, or by the value of such estate for federal estate  
1596 tax purposes, or by any other method, and such unfunded trust shall not be deemed testamentary by  
1597 reason thereof.

1598 C. The devise or bequest shall not be invalid because (i) the trust is amendable or revocable or both  
1599 by the settlor or any other person, either prior or subsequent to the testator's death, (ii) the trust  
1600 instrument or any amendment thereto was not executed in the manner required for wills, or (iii) the trust  
1601 was amended after the execution of the will or after the death of the testator.

1602 D. Unless the testator's will provides otherwise, the property so devised or bequeathed:

1603 1. Shall not be deemed held under a testamentary trust of the testator, but shall become a part of the  
1604 corpus of the trust to which it is given or, if the will so specifies, it shall become a part of any one or  
1605 more particular portions of the corpus; and

1606 2. Shall be administered and disposed of (i) in accordance with the terms of the trust as they appear  
1607 in writing at the testator's death, including any amendments thereto made before the death of the testator  
1608 and regardless of whether made before or after the execution of the testator's will, or (ii) if the testator  
1609 expressly so specifies in his will, and only in such event, as such terms are amended after the death of  
1610 the testator.

1611 E. In the event that the settlor or other person having the right to do so revokes or otherwise  
1612 terminates the trust pursuant to a power so to do reserved in the trust instrument, and such revocation or  
1613 termination is effected at a date subsequent to the death of a testator who has devised or bequeathed  
1614 property to such trust, the revocation or termination shall be ineffective as to property devised or  
1615 bequeathed to such trust by a testator other than the settlor, unless the testator's will expressly provides  
1616 to the contrary.

1617 F. The devise or bequest shall not be valid should the entire trust not be operative for any reason at  
1618 the testator's death. If the devise or bequest is to augment only one or more portions of the trust, the  
1619 devise or bequest shall not be valid should the trust not be operative for any reason as to such portion at  
1620 the testator's death.

1621 G. In any case in which the devise or bequest to the trustee of a trust such as is contemplated in the  
1622 foregoing provisions fails to take effect by reason of the fact that there is no qualified trustee acting at  
1623 the time the devise or bequest is to be distributed, or that one or more of the trustees then acting is a  
1624 corporation or association not authorized to do a trust business in this Commonwealth, the court having  
1625 jurisdiction with respect to the probate of the will or the administration of the testator's estate, upon  
1626 sufficient evidence of the existence of a trust estate for administration, independent of the testator's  
1627 estate, and of the validity of the trust established by virtue of such separate written instrument, may  
1628 determine that the trusts declared by such separate written instrument are the trusts upon which the  
1629 devise or bequest is made, so far as applicable in the nature of the case, to the same extent and with  
1630 like effect as if such trust provisions had been extensively incorporated in the testamentary documents,  
1631 and that such trusts will not fail for want of a qualified trustee to administer the trust estate so devised  
1632 or bequeathed. The court may then grant such further and ancillary relief as the nature of the case may  
1633 require, including the appointment of a qualified trustee to perform the trusts with respect to the estate  
1634 so devised or bequeathed, and granting instruction and guidance to the trustee so appointed in the  
1635 performance of his duties. Nothing herein shall be deemed to authorize any such trustee to be excused  
1636 from any obligations of accounting or performance such as are required by law of fiduciaries, nor to  
1637 prevent the transfer of the trust estate to a trustee appointed by or qualified in a court of record in a  
1638 foreign state in accordance with the provisions of ~~§ 26-64~~ § 55-541.08.

1639 H. This section shall apply to any devise or bequest under the will of a decedent dying on or after  
1640 July 1, 1994, and before July 1, 1999.

1641 **2. That the provisions of this act shall become effective on July 1, 2006.**

1642 **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,**  
1643 **55-19.4, 55-27 through 55-34, and 64.1-67.2 of the Code of Virginia are repealed.**