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SENATE BILL NO. 506

Offered January 14, 2004

Prefiled January 14, 2004

A *BILL* to amend the Code of Virginia by adding in Title 55 a chapter numbered 31, consisting of sections numbered 55-541 through 55-632, relating to the Uniform Trust Code.

 Patron—Mims

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 55 a chapter numbered 31, consisting of sections numbered 55-541 through 55-632, as follows:

CHAPTER 31.**UNIFORM TRUST CODE.****Article 1.****General Provisions And Definitions.**

§ 55-541. *Short Title.*

This Act may be cited as the Uniform Trust Code.

§ 55-542. *Scope.*

This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

§ 55-543. *Definitions.*

In this chapter:

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

"Beneficiary" means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in § 55-566.

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

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

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

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

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

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

"Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

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

"Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

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

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in clause (A) terminated on that date; or

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

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

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

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

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

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

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

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

70 *§ 55-544. Knowledge.*

71 *(a) Subject to subsection (b), a person has knowledge of a fact if the person:*

72 *(1) Has actual knowledge of it;*

73 *(2) Has received a notice or notification of it; or*

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

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

85 *§ 55-545. Default and mandatory rules.*

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

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

89 *(1) the requirements for creating a trust;*

90 *(2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;*

91 *(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust*
92 *have a purpose that is lawful, not contrary to public policy, and possible to achieve;*

93 *(4) the power of the court to modify or terminate a trust under §§ 55-571 through 55-577;*

94 *(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a*
95 *trust as provided in Article 5;*

96 *(6) the power of the court under § 55-591 to require, dispense with, or modify or terminate a bond;*

97 *(7) the power of the court under § 55-597 (b) to adjust a trustee's compensation specified in the*
98 *terms of the trust which is unreasonably low or high;*

99 *(8) the duty under § 55-611 (b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust*
100 *who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their*
101 *right to request trustee's reports;*

102 *(9) the duty under § 55-611 (a) to respond to the request of a beneficiary of an irrevocable trust for*
103 *trustee's reports and other information reasonably related to the administration of a trust;*

104 *(10) the effect of an exculpatory term under § 55-623;*

105 *(11) the rights under §§ 55-625 through 55-628 of a person other than a trustee or beneficiary;*

106 *(12) periods of limitation for commencing a judicial proceeding; and*

107 *(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in*
108 *the interests of justice; and*

109 *(14) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided*
110 *in §§ 55-555 and 55-556.*

111 *§ 55-546. Common law of trusts; principles of equity.*

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

114 *§ 55-547. Governing law.*

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

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

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

§ 55-548. Principal place of administration.

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

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

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

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

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

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

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

(3) An explanation of the reasons for the proposed transfer;

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

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

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

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to § 55-593.

§ 55-549. Methods and waiver of notice.

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

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

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

(d) Notice of a judicial proceeding shall be given as provided in the applicable rules of civil procedure.

§ 55-550. Others treated as qualified beneficiaries.

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

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in § 55-569 or § 55-570 has the rights of a qualified beneficiary under this chapter.

(c) The attorney general of the Commonwealth has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the Commonwealth.

§ 55-551. Nonjudicial settlement agreements.

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

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

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

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

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

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

(3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any

182 necessary or desirable power;

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

184 (5) Transfer of a trust's principal place of administration; and

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

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

189 § 55-552. Rules of construction.

190 The rules of construction that apply in the Commonwealth to the interpretation of and disposition of
191 property by will also apply as appropriate to the interpretation of the terms of a trust and the
192 disposition of the trust property.

193 Article 2.

194 Judicial Proceedings.

195 § 55-553. Role of court in administration of trust.

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

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

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

201 § 55-554. Jurisdiction over trustee and beneficiary.

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

206 (b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place
207 of administration in the Commonwealth are subject to the jurisdiction of the courts of the
208 Commonwealth regarding any matter involving the trust. By accepting a distribution from such a trust,
209 the recipient submits personally to the jurisdiction of the courts of the Commonwealth regarding any
210 matter involving the trust.

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

213 § 55-555. Subject-matter jurisdiction.

214 (a) The designate court has exclusive jurisdiction of proceedings in the Commonwealth brought by a
215 trustee or beneficiary concerning the administration of a trust.

216 (b) The designate court has concurrent jurisdiction with other courts of the Commonwealth of other
217 proceedings involving a trust.

218 § 55-556. Venue.

219 (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust
220 is in the county of the Commonwealth in which the trust's principal place of administration is or will be
221 located and, if the trust is created by will and the estate is not yet closed, in the county in which the
222 decedent's estate is being administered.

223 (b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in the
224 county or city in the Commonwealth in which a beneficiary resides, in a county or city in which any
225 trust property is located, and if the trust is created by will, in the county or city in which the decedent's
226 estate was or is being administered.

227 Article 3.

228 Representation.

229 § 55-557. Representation; basic effect.

230 (a) Notice to a person who may represent and bind another person under this article has the same
231 effect as if notice were given directly to the other person.

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

235 (c) Except as otherwise provided in §§ 55-572 and 55-587, a person who under this chapter may
236 represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's
237 behalf.

238 § 55-558. Representation by holder of general testamentary power of appointment.

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

243 § 55-559. Representation by fiduciaries and fiduciaries and parents.

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

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

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

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

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

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

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

§ 55-560. Representation by person having substantially identical interest.

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

§ 55-561. Appointment of representative.

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

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

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

Article 4.

Creation, Validity, Modification, And Termination Of Trust.

§ 55-562. Methods of creating trust.

A trust may be created by:

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

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

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

§ 55-563. Requirements for creation.

(a) A trust is created only if:

(1) The settlor has capacity to create a trust;

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

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in § 55-569; or

(C) A trust for a noncharitable purpose, as provided in § 55-570;

(4) The trustee has duties to perform; and

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

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

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

§ 55-564. Trusts created in other jurisdictions.

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

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

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

(3) Any trust property was located.

§ 55-565. Trust purposes.

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

305 § 55-566. Charitable purposes; enforcement.

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

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

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

313 § 55-567. Creation of trust induced by fraud, duress, or undue influence.

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

315 § 55-568. Evidence of oral trust.

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

319 § 55-569. Trust for care of animal.

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

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

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

332 § 55-570. Noncharitable trust without ascertainable beneficiary.

333 Except as otherwise provided in § 55-569 or by another statute, the following rules apply:

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

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

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

344 § 55-571. Modification or termination of trust proceedings for approval or disapproval.

345 (a) In addition to the methods of termination prescribed by §§ 55-572 through 55-575, a trust
346 terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust
347 remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or
348 impossible to achieve.

349 (b) A proceeding to approve or disapprove a proposed modification or termination under §§ 55-572
350 through 55-577, or trust combination or division under § 55-578, may be commenced by a trustee or
351 beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under
352 § 55-572 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding
353 to modify the trust under § 55-574.

354 § 55-572. Modification or termination of noncharitable irrevocable trust by consent.

355 (a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and
356 all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the
357 trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent
358 under a power of attorney only to the extent expressly authorized by the power of attorney or the terms
359 of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if
360 an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the
361 guardianship if an agent is not so authorized and a conservator has not been appointed.

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

366 (c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose

of the trust.

(d) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.

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

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

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

§ 55-573. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

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

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

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

§ 55-574. Cy Pres.

(a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

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

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

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

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

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

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

§ 55-575. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$50,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

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

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

§ 55-576. Reformation to correct mistakes.

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

§ 55-577. Modification to achieve settlor's tax objectives.

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

§ 55-578. Combination and division of trusts.

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

Article 5.

Creditor's Claims; Spendthrift And Discretionary Trusts.

§ 55-579. Rights of beneficiary's creditor or assignee.

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

428 § 55-580. Spendthrift provision.

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

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

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

437 § 55-581. Exceptions to spendthrift provision.

438 (a) In this section, "child" includes any person for whom an order or judgment for child support has
439 been entered in this or another state.

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

444 (c) A spendthrift provision is unenforceable against a claim of the Commonwealth or the United
445 States to the extent a statute of the Commonwealth or federal law so provides.

446 § 55-582. Discretionary trusts; effect of standard.

447 (a) In this section, "child" includes any person for whom an order or judgment for child support has
448 been entered in this or another state.

449 (b) Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift
450 provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's
451 discretion, even if:

452 (1) The discretion is expressed in the form of a standard of distribution; or

453 (2) The trustee has abused the discretion.

454 (c) To the extent a trustee has not complied with a standard of distribution or has abused a
455 discretion:

456 (1) A distribution may be ordered by the court to satisfy a judgment or court order against the
457 beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

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

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

464 § 55-583. Creditor's claim against settlor.

465 (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

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

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

472 (3) After the death of a settlor, and subject to the settlor's right to direct the source from which
473 liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to
474 claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the
475 settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to
476 the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and
477 allowances.

478 (b) For purposes of this section:

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

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

486 § 55-584. Overdue distribution.

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

designated distribution date.

§ 55-585. Personal obligations of trustee.

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

Article 6.

Revocable Trusts.

§ 55-586. Capacity of settlor of revocable trust.

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

§ 55-587. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2005.

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

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

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

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

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

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

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) Any other method manifesting clear and convincing evidence of the settlor's intent.

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

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

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

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

§ 55-588. Settlor's powers; powers of withdrawal.

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

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

§ 55-589. Limitation on action contesting validity of revocable trust; distribution of trust property.

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

(1) Three years after the settlor's death; or

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

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

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

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

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

Article 7.

Office Of Trustee.

§ 55-590. Accepting or declining trusteeship.

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

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

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

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

(c) A person designated as trustee, without accepting the trusteeship, may:

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

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

§ 55-591. Trustee's bond.

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

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

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

§ 55-592. Cotrustees.

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

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

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

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

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

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

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

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

§ 55-593. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

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

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

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

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

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

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

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

- (3) By a person appointed by the court.
- (d) A vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:
- (1) By a person designated in the terms of the trust to act as successor trustee;
 - (2) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or
 - (3) By a person appointed by the court.
- (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.
- § 55-594. Resignation of trustee.
- (a) A trustee may resign:
- (1) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
 - (2) With the approval of the court.
 - (b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
 - (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.
- § 55-595. Removal of trustee.
- (a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
- (b) The court may remove a trustee if:
- (1) The trustee has committed a serious breach of trust;
 - (2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;
 - (3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
 - (4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
- (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under § 55-616 (b) as may be necessary to protect the trust property or the interests of the beneficiaries.
- § 55-596. Delivery of property by former trustee.
- (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.
- (b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.
- § 55-597. Compensation of trustee.
- (a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.
- (b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:
- (1) The duties of the trustee are substantially different from those contemplated when the trust was created; or
 - (2) The compensation specified by the terms of the trust would be unreasonably low or high.
- § 55-598. Reimbursement of expenses.
- (a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:
- (1) Expenses that were properly incurred in the administration of the trust; and
 - (2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
- (b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Article 8.

Duties And Powers Of Trustee.

- § 55-599. Duty to administer trust.
- Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

674 § 55-600. *Duty of loyalty.*

675 (a) *A trustee shall administer the trust solely in the interests of the beneficiaries.*

676 (b) *Subject to the rights of persons dealing with or assisting the trustee as provided in § 55-627, a*
677 *sale, encumbrance, or other transaction involving the investment or management of trust property*
678 *entered into by the trustee for the trustee's own personal account or which is otherwise affected by a*
679 *conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the*
680 *transaction unless:*

681 (1) *The transaction was authorized by the terms of the trust;*

682 (2) *The transaction was approved by the court;*

683 (3) *The beneficiary did not commence a judicial proceeding within the time allowed by § 55-620;*

684 (4) *The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee*
685 *in compliance with § 55-624; or*

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

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

691 (1) *The trustee's spouse;*

692 (2) *The trustee's descendants, siblings, parents, or their spouses;*

693 (3) *An agent or attorney of the trustee; or*

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

696 (d) *A transaction between a trustee and a beneficiary that does not concern trust property but that*
697 *occurs during the existence of the trust or while the trustee retains significant influence over the*
698 *beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the*
699 *trustee establishes that the transaction was fair to the beneficiary.*

700 (e) *A transaction not concerning trust property in which the trustee engages in the trustee's*
701 *individual capacity involves a conflict between personal and fiduciary interests if the transaction*
702 *concerns an opportunity properly belonging to the trust.*

703 (f) *An investment by a trustee in securities of an investment company or investment trust to which the*
704 *trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be*
705 *affected by a conflict between personal and fiduciary interests if the investment complies with the*
706 *Uniform Prudent Investor Act (§ 26-45.3 et seq.). In addition to its compensation for acting as trustee,*
707 *the trustee may be compensated by the investment company or investment trust for providing those*
708 *services out of fees charged to the trust. If the trustee receives compensation from the investment*
709 *company or investment trust for providing investment advisory or investment management services, the*
710 *trustee shall at least annually notify the persons entitled under § 55-611 to receive a copy of the*
711 *trustee's annual report of the rate and method by which that compensation was determined.*

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

716 (h) *This section does not preclude the following transactions, if fair to the beneficiaries:*

717 (1) *An agreement between a trustee and a beneficiary relating to the appointment or compensation of*
718 *the trustee;*

719 (2) *Payment of reasonable compensation to the trustee;*

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

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

723 (5) *An advance by the trustee of money for the protection of the trust.*

724 (i) *The court may appoint a special fiduciary to make a decision with respect to any proposed*
725 *transaction that might violate this section if entered into by the trustee.*

726 § 55-601. *Impartiality.*

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

729 § 55-602. *Prudent administration.*

730 *A trustee shall administer the trust as a prudent person would, by considering the purposes, terms,*
731 *distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee*
732 *shall exercise reasonable care, skill, and caution.*

733 § 55-603. *Costs of administration.*

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

§ 55-604. Trustee's skills.

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

§ 55-605. Delegation by trustee.

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

(1) Selecting an agent;

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

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

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

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

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

§ 55-606. Powers to direct.

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

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

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

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

§ 55-607. Control and protection of trust property.

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

§ 55-608. Recordkeeping and identification of trust property.

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

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

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

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

§ 55-609. Enforcement and defense of claims.

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

§ 55-610. Collecting trust property.

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

§ 55-611. Duty to inform and report.

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

(b) A trustee:

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

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

(3) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable,

whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c); and

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

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

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

§ 55-612. Discretionary powers; tax savings.

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

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

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986; and

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

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

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

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

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

(3) A trust if contributions to the trust qualify for the annual exclusion under § 2503(c) of the Internal Revenue Code of 1986.

§ 55-613. General powers of trustee.

(a) A trustee, without authorization by the court, may exercise:

(1) Powers conferred by the terms of the trust; and

(2) Except as limited by the terms of the trust:

(A) All powers over the trust property that an unmarried competent owner has over individually owned property;

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

(C) Any other powers conferred by this chapter.

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

§ 55-614. Specific powers of trustee.

Without limiting the authority conferred by § 55-613, a trustee may:

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

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

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

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

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

(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging,

dissolving, or otherwise changing the form of business organization or contributing additional capital;
 (7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

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

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

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

(D) Deposit the securities with a depository or other regulated financial-service institution;

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

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

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

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

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

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

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

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

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

(D) Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

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

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

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

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

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

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

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

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

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

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

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

(C) If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it

920 to an adult relative or other person having legal or physical care or custody of the beneficiary, to be
921 expended on the beneficiary's behalf; or

922 (D) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's
923 continuing right to withdraw the distribution;

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

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

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

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

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

935 § 55-615. Distribution upon termination.

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

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

943 (c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

944 (1) It was induced by improper conduct of the trustee; or

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

947 Article 9.

948 Liability Of Trustees And Rights

949 Of Persons Dealing With Trustee.

950 § 55-616. Remedies for breach of trust.

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

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

953 (1) Compel the trustee to perform the trustee's duties;

954 (2) Enjoin the trustee from committing a breach of trust;

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

957 (4) Order a trustee to account;

958 (5) Appoint a special fiduciary to take possession of the trust property and administer the trust;

959 (6) Suspend the trustee;

960 (7) Remove the trustee as provided in § 55-595;

961 (8) Reduce or deny compensation to the trustee;

962 (9) Subject to § 55-627, void an act of the trustee, impose a lien or a constructive trust on trust
963 property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

964 (10) Order any other appropriate relief.

965 § 55-617. Damages for breach of trust.

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

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

969 (2) The profit the trustee made by reason of the breach.

970 (b) Except as otherwise provided in this subsection, if more than one trustee is liable to the
971 beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.

972 A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee
973 or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes
974 of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of

975 trust is not entitled to contribution from another trustee to the extent of the benefit received.

976 § 55-618. Damages in absence of breach

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

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

981 § 55-619. Attorney's fees and costs.

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

§ 55-620. Limitation of action against trustee.

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

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

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

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

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

(3) The termination of the trust.

§ 55-621. Reliance on trust instrument.

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

§ 55-622. Event affecting administration or distribution.

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

§ 55-623. Exculpation of trustee.

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

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

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

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

§ 55-624. Beneficiary's consent, release, or ratification.

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

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

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

§ 55-625. Limitation on personal liability of trustee.

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

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

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

§ 55-626. Interest as general partner.

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

(b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general

partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

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

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

§ 55-627. Protection of person dealing with trustee.

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

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

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

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

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

§ 55-628. Certification of trust.

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

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

(2) The identity of the settlor;

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

(4) The powers of the trustee;

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

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

(7) The trust's taxpayer identification number; and

(8) The manner of taking title to trust property.

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

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

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

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

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

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

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

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

Article 10.

Miscellaneous Provisions.

§ 55-629. Uniformity of application and construction.

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

§ 55-630. Electronic records and signatures.

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

1105 *Signatures in Global and National Commerce Act.*

1106 § 55-631. Severability clause. If any provision of this chapter or its application to any person or
1107 circumstances is held invalid, the invalidity does not affect other provisions or applications of this
1108 chapter which can be given effect without the invalid provision or application, and to this end the
1109 provisions of this chapter are severable.

1110 § 55-632. Application to existing relationships.

1111 (a) Except as otherwise provided in this chapter:

1112 (1) This chapter applies to all trusts created before, on, or after July 1, 2005;

1113 (2) This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1,
1114 2005;

1115 (3) This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2005
1116 unless the court finds that application of a particular provision of this chapter would substantially
1117 interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in
1118 which case the particular provision of this chapter does not apply and the superseded law applies;

1119 (4) Any rule of construction or presumption provided in this chapter applies to trust instruments
1120 executed before July 1, 2005, unless there is a clear indication of a contrary intent in the terms of the
1121 trust; and

1122 (5) An act done before July 1, 2005, is not affected by this chapter.

1123 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has
1124 commenced to run under any other statute before July 1, 2005 that statute continues to apply to the
1125 right even if it has been repealed or superseded.