

THE ILLINOIS TRUST CODE:

**A Version of the Uniform Trust Code
Modified for Illinois**

**As Drafted by the CBA Trust Law/UTC Subcommittee
Dated November 16, 2015**

**Adapted from the Uniform Trust Code
Originally drafted by the
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

THE ILLINOIS TRUST CODE

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ILLINOIS TRUST CODE

ARTICLE 1 GENERAL PROVISIONS AND DEFINITIONS

SECTION 101. SHORT TITLE. This Code may be cited as the Illinois Trust Code.

SECTION 102. SCOPE. Except as otherwise provided, this Code 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. The provisions of this Code do not apply to any:

- (1) land trust;
- (2) voting trust;
- (3) security instrument such as a trust deed or mortgage;
- (4) liquidation trust;
- (5) escrow;
- (6) instrument under which a nominee, custodian for property, or paying
or
receiving agent is appointed;
- (7) a trust created by a deposit arrangement in a banking or savings
institution, commonly known as a "Totten trust" unless in the trust instrument any of
the provisions of this Code are made applicable by specific reference; or

(8) a Grain Indemnity Trust Account or any other trust created under the Grain Code.

SECTION 103. DEFINITIONS. In this Code:

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

(2) “Ascertainable standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the IRC and any applicable regulations.

(3) “Beneficiary” means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent, assuming nonexercise of powers of appointment;

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

(C) is an identified charitable organization that will or may receive distributions under the terms of the trust.

(4) “Charitable interest” means an interest in a trust which:

(A) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(5) “Charitable organization” means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(6) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, municipal or other governmental purpose, or another purposes the achievement of which is beneficial to the community.

(7) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in Section 405(a).

(8) “Community property” means all personal property, wherever situated, which was acquired as or became, and remained, community property under the laws of another jurisdiction, and all real property situated in another jurisdiction which is community property under the laws of that jurisdiction.

(9) “Current beneficiary” means a beneficiary that on the date the beneficiary’s qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

(10) “Directing party” means any investment trust advisor, distribution trust advisor, or trust protector.

(11) “Donor” with reference to a power of appointment means a person that creates a power of appointment.

(12) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(13) “General power of appointment” means a power of appointment exercisable in favor of a powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the powerholder’s estate.

(14) “Guardian of the estate” means a person appointed by a court to administer the estate of a minor or adult individual.

(15) “Guardian of the person” means a person appointed by a court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual.

(16) “Incapacity” means the inability of an individual to manage property or business affairs because of one of the causes listed in subsection (A).

(A) An individual may be incapacitated because:

(i) the individual is a minor;

(ii) the individual is adjudicated incompetent;

(iii) the individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(iv) the individual’s location is unknown and not reasonably ascertainable.

(B) Without limiting the ways in which it may be established that an individual is incapacitated, an individual is incapacitated if:

(i) a plenary guardian has been appointed for such individual under 755 ILCS 11a-12(c);

(ii) a limited guardian has been appointed for such individual under 755 ILCS 11a-12(b) and the court has found that such individual lacks testamentary capacity; or

(iii) the individual was examined by a licensed physician who determined that the individual was incapacitated and the physician made a signed written record of the physician’s determination within 90 days after the examination and no licensed physician

subsequently made a signed written record of the physician's determination that the individual was not incapacitated within 90 days after examining the individual.

(17) "IRC" means the Internal Revenue Code of 1986, as amended from time to time and including corresponding provisions of any subsequent federal tax law.

(18) "Interested persons" means (A) the trustee and (B) all beneficiaries, or their respective representatives determined after giving effect to the provisions of Article 3, whose consent or joinder would be required in order to achieve a binding settlement were the settlement to be approved by the court. "Interested persons" also includes a trust advisor, investment advisor, distribution advisor, trust protector or other holder, or committee of holders, of fiduciary or nonfiduciary powers, if such person then holds powers material to a particular question or dispute to be resolved or affected by a nonjudicial settlement in accordance with Section 111 or by a judicial proceeding.

(19) "Interests of the beneficiaries" means the beneficial interests provided in the trust instrument.

(20) "Jurisdiction," with respect to a geographic area, includes a State or country.

(21) "Legal capacity" means that the person is not incapacitated.

(22) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(23) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(24) “Power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(25) “Power of withdrawal” means a presently exercisable general power of appointment other than a power: (A) exercisable by the powerholder as trustee that is limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(26) “Powerholder” means a person in which a donor creates a power of appointment.

(27) “Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) Includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(28) "Presumptive remainder beneficiary" means a beneficiary of a trust, as of the date of determination and assuming nonexercise of all powers of appointment, who either (A) would be eligible to receive a distribution of income or principal if the trust terminated on that date, or (B) would be eligible to receive a distribution of income or principal if the interests of all beneficiaries currently eligible to receive income or principal from the trust ended on that date without causing the trust to terminate.

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

(30) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined and assuming nonexercise of powers of appointment:

(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 subsection (A) terminated on that date without causing the trust to terminate; or

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

(31) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A revocable trust is deemed revocable during the settlor’s lifetime.

(32) “Settlor,” except as otherwise provided in Sections 114 and 1225, 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.

(33) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(34) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

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

(36) “Terms of the trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument, as may be established

by other evidence that would be admissible in a judicial proceeding, or as may be established by court order or nonjudicial settlement agreement.

(37) “Trust” means a trust created by will, deed, agreement, declaration or other written instrument;

(38) “Trust accounting” means one or more written communications from the trustee with respect to the accounting year that describe: (A) the trust property, liabilities, receipts, and disbursements (including the amount of the trustee's compensation), and (B) all other material facts related to the trustee's administration of the trust. The trust accounting shall identify and value trust assets on hand at the close of the accounting period, to the extent feasible. For each asset or class of assets for which there is no readily available market value, the trustee, in the trustee's discretion, may determine whether to estimate the value or use a nominal carrying value for such an asset, how to estimate the value of such an asset, and whether and how often to engage a professional appraiser to value such an asset.

(39) “Trust instrument” means the written instrument stating the terms of a trust, including any amendment, any court order or nonjudicial settlement agreement establishing, construing or modifying the terms of the trust in accordance with Section 111, Sections 410 through 416, or other applicable law, and any additional trust instrument under Article 12.

(40) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

(41) “Unascertainable beneficiary” means a beneficiary whose identity is uncertain or not reasonably ascertainable.

SECTION 104. KNOWLEDGE.

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

(1) has actual knowledge of it;

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

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

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

individual knows a matter involving the trust would be materially affected by the information.

SECTION 105. DEFAULT AND MANDATORY RULES.

(a) The trust instrument may specify the rights, powers, duties, limitations and immunities applicable to the trustee, beneficiary and others and those provisions, where not otherwise contrary to law, shall control, except to the extent specifically provided otherwise in this Section. The provisions of this Code apply to the trust to the extent that they are not inconsistent with specific provisions of the trust instrument.

(b) Specific terms of the trust instrument prevail over any provision of this Code except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith;
- (3) the requirement that a trust have a purpose that is lawful and not contrary to public policy;
- (4) the rules governing Designated Representatives as provided in Section 307;
- (5) the 21-year limitation contained in Section 409(a);

(6) the power of the court to modify or terminate a trust under Sections 411 through 417;

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

(8) the requirement under 602(e) that an agent under a power of attorney must have express authorization in the agency to exercise a settlor's powers with respect to a revocable trust;

(9) the power of the court under Section 708(b) to adjust a trustee's compensation specified in the trust instrument that is unreasonably low or high;

(10) for trusts becoming irrevocable after the Effective Date of this Code, the trustee's duty under Section 813.1(b)(1) to provide information to the qualified beneficiaries;

(11) for trusts becoming irrevocable after the Effective Date of this Code, the trustee's duty under Section 813.1(b)(2) to provide accountings to the current beneficiaries of the trust;

(12) for trusts becoming irrevocable after the Effective Date of this Code, the trustee's duty under Section 813.1(b)(4) to provide accountings to beneficiaries receiving a distribution of the residue of the trust upon a trust's termination;

(13) the effect of an exculpatory term under Section 1008;

(14) the rights under Sections 1010 through 1013 of a person other than a trustee or beneficiary; and

(15) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of equity.

SECTION 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY. The common law of trusts and principles of equity supplement this Code, except to the extent modified by this Code or another statute of this State.

SECTION 107. GOVERNING LAW.

(a) The meaning and effect of a trust instrument are determined by:

(1) the law of the jurisdiction designated in the trust instrument; or

(2) in the absence of a designation in the trust instrument, the law of the jurisdiction having the most significant relationship to the matter at issue.

(b) Except as otherwise expressly provided by the trust instrument or by court order, the laws of this State shall govern the administration of a trust while the trust is administered in this State.

SECTION 108. PRINCIPAL PLACE OF ADMINISTRATION.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, the trust instrument 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) The trustee as the trustee reasonably determines appropriate, may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States. Language in a trust instrument that the trust shall be governed by the laws of a particular State, shall not be deemed to expressly prohibit a transfer of the principal place of administration.

(c) Notwithstanding any other provision of this Code, the trustee has no duty to inform beneficiaries, or any other interested party, about the availability of this Section and further has no duty to review the trust instrument to determine whether any action should be taken under this Section unless requested to do so in writing by a beneficiary then entitled to receive reports and information related to the administration of the trust.

(d) 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 trust instrument or appointed pursuant to Section 704.

SECTION 109. METHODS AND WAIVER OF NOTICE.

(a) Notice to a person under this Code or the sending of a document to a person under this Code must 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 Code or a document otherwise required to be sent under this Code 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 Code or the sending of a document under this Code may be waived by the person to be notified or sent the document.

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

(e) Subject to subsection (d), receipt by a beneficiary or other person of a trustee's notice, account, or other report is presumed if the trustee has reasonable procedures in place requiring the mailing or delivery of the notice, account, or report to the beneficiary or other person. This presumption applies to the mailing or delivery of a notice, account, or other report

(including any communication required in writing) by electronic means or the provision of access to the information by electronic means so long as the beneficiary or other person has agreed to receive the information by such electronic delivery or access.

SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.

(a) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of a qualified beneficiary under this Code.

(b) The Attorney General's Charitable Trust Bureau has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this State.

SECTION 111. NONJUDICIAL SETTLEMENT AGREEMENTS.

(a) Interested persons, or their respective representatives determined after giving effect to the provisions of Article 3, may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust as provided in this Section.

(b) The following matters may be resolved by a nonjudicial settlement agreement:

(1) Validity, interpretation, or construction of the terms of the trust instrument.

- (2) Approval of a trustee's report or accounting.
- (3) Exercise or nonexercise of any power by a trustee.
- (4) The grant to a trustee of any necessary or desirable administrative power, provided the grant does not conflict with a clear material purpose of the trust.
- (5) Questions relating to property or an interest in property held by the trust, provided the resolution does not conflict with a clear material purpose of the trust.
- (6) Removal, appointment, or removal and appointment of a trustee, trust advisor, investment advisor, distribution advisor, trust protector or other holder, or committee of holders, of fiduciary or nonfiduciary powers, including without limitation designation of a plan of succession or procedure to determine successors to any such office.
- (7) Determination of a trustee's or other fiduciary's compensation.
- (8) Transfer of a trust's principal place of administration, including without limitation to change the law governing administration of the trust.
- (9) Liability or indemnification of a trustee for an action relating to the trust.
- (10) Resolution of bona fide disputes related to administration, investment, distribution or other matters.

(11) Modification of terms of the trust instrument pertaining to administration of the trust.

(12) Determining whether the aggregate interests of each beneficiary in severed trusts are substantially equivalent to the beneficiary's interests in the trusts before severance.

(13) Termination of the trust, provided that court approval of such termination must be obtained in accordance with subsection (d) of this Section, and the court must conclude continuance of the trust is not necessary to achieve any clear material purpose of the trust. The court shall consider spendthrift provisions as a factor in making a decision under this subsection, but a spendthrift provision is not necessarily a material purpose of a trust, and the court is not precluded from modifying or terminating a trust because the trust instrument contains spendthrift provisions. Upon such termination the court shall order the distribution of the trust property as agreed by the parties to the agreement, or if the parties cannot agree, then as the court determines is equitable consistent with the purposes of the trust.

(c) If a trust contains a charitable interest, the parties to any proposed nonjudicial settlement agreement affecting the trust shall deliver to the Attorney General's Charitable Trust Bureau written notice of the proposed agreement at least 60 days prior to its effective date. The Bureau need take no action, but if it objects in a writing delivered to one or more of the parties prior to the proposed effective date, the agreement shall not take effect unless the parties obtain court approval.

(d) Any beneficiary or other interested person may request the court to approve any part or all of a nonjudicial settlement agreement, including without limitation whether any representation is adequate and without material conflict of interest, provided that the petition for such approval must be filed before or within 60 days after the effective date of the agreement.

(e) An agreement entered into in accordance with this Section, or a judicial proceeding pursued in accordance with this Section, shall be final and binding on the trustee, on all beneficiaries of the trust, both current and future, and on all other interested persons as if ordered by a court with competent jurisdiction over the trust, the trust property, and all parties in interest.

(f) In the trustee's sole discretion, the trustee may, but is not required to, obtain and rely upon an opinion of counsel on any matter relevant to this Section, including without limitation:

(1) where required by this Section, that the agreement proposed to be made in accordance with this Section does not conflict with a clear material purpose of the trust;

(2) in the case of a trust termination, that continuance of the trust is not necessary to achieve any clear material purpose of the trust;

(3) that there is no material conflict of interest between a representative and the person represented with respect to the particular question or dispute; or

(4) that the representative and the person represented have substantially similar interests with respect to the particular question or dispute.

(g) This Section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in this State or that is governed by Illinois law with respect to the meaning and effect of its terms, except to the extent the trust instrument expressly prohibits the use of this Section by specific reference to this Section or a prior corresponding law. A provision in the trust instrument in the form: “Neither the provisions of Section 111 of the Illinois Trust Code nor any corresponding provision of future law may be used in the administration of this trust,” or a similar provision demonstrating that intent, is sufficient to preclude the use of this Section.

SECTION 112. RULES OF CONSTRUCTION. The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the trust instrument and the disposition of the trust property. This Code shall be liberally construed and the rule that statutes in derogation of the common law shall be strictly construed does not apply.

SECTION 113. INSURABLE INTEREST OF TRUSTEE.

(a) In this Section, “settlor” means a person who creates a trust or on whose behalf a trust is created by an agent, guardian of the estate or other authorized person.

(b) A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, on the date the policy is issued:

(1) the insured is:

(A) a settlor or beneficiary of the trust; or

(B) an individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

(2) the trustee determines the life insurance proceeds:

(A) are for the benefit of one or more trust beneficiaries that have an insurable interest in the life of the insured; or

(B) will carry out a purpose of the trust.

(c) If a trustee of a trust would have an insurable interest in the life of an individual insured as described in this Section, then such insurable interest includes the joint lives of such an individual and his or her spouse.

(d) Nothing in this Section shall limit or affect any provision of the Illinois Viatical Settlements Act or any successor provisions to that Act.

SECTION 114. GIFT TO A DECEASED BENEFICIARY UNDER AN INTER VIVOS TRUST.

(a) If a gift of a present or future interest is to a descendant of the settlor who dies before or after the settlor, the descendants of the deceased beneficiary living when the gift is to take effect in possession or enjoyment take per stirpes the gift so bequeathed.

(b) If a gift of a present or future interest is to a class and any member of the class dies before or after the settlor, the members of the class living when the gift is to take effect in possession or enjoyment take the share or shares that the deceased member would have taken if he or she were then living, except that, if the deceased member of the class is a descendant of the settlor, the descendants of the deceased member then living shall take per stirpes the share or shares that the deceased member would have taken if he or she were then living.

(c) Except as provided above in subsections (a) and (b), if the gift is not to a descendant of the settlor or is not to a class as provided in subsections (a) and (b) and if the beneficiary dies either before or after the settlor and before the gift is to take effect in possession or enjoyment, then the gift shall lapse. If the gift lapses by reason of the death of the beneficiary before the gift is to take possession or enjoyment, then the gift so given shall be included in and pass as part of the residue of the trust under the trust. If the gift is or becomes part of the residue, the gift so bequeathed shall pass to and be taken by the beneficiaries remaining, if any, of the residue in proportions and upon trusts corresponding to their respective interests in the residue of the

trust. The provisions of items (1) and (2) do not apply to a future interest that is or becomes indefeasibly vested at the settlor's death or at any time thereafter before it takes effect in possession or enjoyment. The provisions of this Section apply on and after January 1, 2005 for any gifts to a deceased beneficiary under an inter vivos trust where the deceased beneficiary dies after January 1, 2005 and before the gift is to take effect in possession or enjoyment.

ARTICLE 2 JUDICIAL PROCEEDINGS

SECTION 201. ROLE OF COURT IN ADMINISTRATION OF TRUSTS.

(a) The court may adjudicate any matter arising in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

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

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions.

SECTION 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY.

(a) By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee is subject to the jurisdiction of the courts of this State regarding any matter involving the trust.

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

(c) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in the Code of Civil Procedure, with the same force and effect as though summons had been personally served within this State.

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

SECTION 203. [RESERVED]

SECTION 204. VENUE.

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

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

ARTICLE 3 REPRESENTATION

SECTION 301. REPRESENTATION: BASIC EFFECT.

(a) Except as provided in Section 602 and subsection (c):

(1) Notice, information, accountings, or reports given to a person who may represent and bind another person under this Article has the same effect as if given directly to the person represented.

(2) Actions, including but not limited to the execution of an agreement, taken by a person who may represent and bind another person under this Article are binding on the person represented to the same extent as if the actions had been taken by the person represented.

(b) Except as otherwise provided in Section 602, a person under this Article who represents a settlor who is incapacitated may receive notice, information, accountings, or reports, give a binding consent or enter a binding agreement on the settlor's behalf.

(c) A settlor may not represent and bind a beneficiary under this Article with respect to a nonjudicial settlement agreement under Section 111, the termination or modification of a trust under Section 411(a), or an exercise of the decanting power under Article 12.

(d) If pursuant to this Article a person may be represented by two or more representatives, then the representative who has legal capacity, in the following order of priority, shall represent and bind said person:

(1) a representative or guardian ad litem appointed by a court as described in Section 305;

(2) the holder of a power of appointment as described in Section 302;

(3) a Designated Representative as described in Section 307;

(4) a court appointed guardian of the estate, or, if none, a court appointed guardian of the person as described in Section 303(b);

(5) an agent under a power of attorney for property as described in Section 303(c);

(6) a parent of a person as described in Section 303(d);

(7) another person having a substantially similar interest with respect to the particular question or dispute as described in Section 304(a); and

(8) a representative under this Article for a person who has a substantially similar interest to a person who has a representative described in Section 304(b).

(e) A trustee is not liable for giving notice, information, accountings, or reports to a person who is represented by another person under this Article, and nothing in this Article prohibits the trustee from giving notice, information, accountings, or reports to the person represented.

SECTION 302. REPRESENTATION BY HOLDERS OF CERTAIN POWERS.

(a) The holder of a testamentary or a presently exercisable power of appointment that is (1) a general power of appointment or (2) exercisable in favor of all persons other than the powerholder, the powerholder's estate, a creditor of the powerholder or a creditor of the powerholder's estate, may represent and bind all persons, including permissible appointees and takers in default, whose interests may be eliminated by the exercise or nonexercise of the power.

(b) To the extent there is no conflict of interest between a holder and the persons represented with respect to the particular question or dispute, the holder of a testamentary or presently exercisable power of appointment, other than a power described in subsection (a), may represent and bind all persons, including permissible appointees, and takers in default, whose interests may be eliminated by the exercise or nonexercise of the power.

SECTION 303. REPRESENTATION BY OTHERS.

(a) If all qualified beneficiaries of a trust either have legal capacity or have representatives under this Article who have legal capacity, an action taken by all qualified beneficiaries, in each case either by the beneficiary or by the beneficiary's representative, shall represent and bind all other beneficiaries who have a successor, contingent, future, or other interest in the trust.

(b) If a person is represented by a court appointed guardian of the estate or, if none, guardian of the person, then such guardian may represent and bind such person.

(c) If an individual is incapacitated, an agent under a power of attorney for property who has authority to act with respect to the particular question or dispute and who does not have a material conflict of interest with respect to the particular question or dispute may represent and bind the principal. An agent is deemed to have such authority if the power of attorney grants the agent the power to settle claims and to exercise powers with respect to trusts and estates, even if such powers do not include powers to make a will, to revoke or amend a trust, or to require the trustee to pay income or principal.

(d) If a person is incapacitated, a parent of such person may represent and bind the person, provided that there is no material conflict of interest between the represented person and either of such person's parents with respect to the particular question or dispute. If a disagreement arises

between parents who otherwise qualify to represent a child in accordance with this subsection and who are seeking to represent the same child, the parent who is a lineal descendant of the settlor of the trust that is the subject of the representation is entitled to represent the child; or if none, the parent who is a beneficiary of such trust is entitled to represent the child.

SECTION 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST.

(a) To the extent there is no material conflict of interest between the representative and the represented beneficiary with respect to the particular question or dispute, a beneficiary who is incapacitated, unborn, or unascertainable, may for all purposes be represented by and bound by another beneficiary having a substantially similar interest with respect to the particular question or dispute.

(b) A guardian, agent or parent who is the representative for a beneficiary under Section 303(b), 303(c) or 303(d) may, for all purposes, represent and bind any other beneficiary who is incapacitated, unborn or unascertainable and who has an interest, with respect to the particular question or dispute, that is substantially similar to the interest of the beneficiary represented by the representative, but only to the extent that there is no material conflict of interest between the beneficiary represented by the representative and the other beneficiary with respect to the particular question or dispute.

SECTION 305. APPOINTMENT OF REPRESENTATIVE.

(a) If the court determines that representation of an incapacitated, unborn or unascertainable beneficiary might otherwise be inadequate, the court may appoint a representative for any nonjudicial matter to receive any notice, information, accounting or report on behalf of the beneficiary and to represent and bind the beneficiary, or may appoint a guardian ad litem in any judicial proceeding to represent the interests of, bind and approve any order or agreement on behalf of the beneficiary.

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

(c) If not precluded by conflict of interest with respect to the particular question or dispute, a representative or guardian ad litem may be appointed to represent several persons or interests.

(d) In giving any consent or agreement, a representative or guardian ad litem may consider general family benefit accruing to the living members of the family of the person represented.

SECTION 306. REPRESENTATION OF CHARITY. If a trust contains a charitable interest, the Attorney General's Charitable Trust Bureau may, in accordance with this Section, represent, bind, and act on behalf of the charitable interest with respect to any particular question or dispute, including without limitation representing the charitable interest in a nonjudicial

settlement agreement under Section 111, in an agreement to convert a trust to a total return trust under Article 11 or a distribution in further trust under Article 12. A charitable organization that is specifically named as beneficiary of a trust or otherwise has a beneficial interest in a trust acts for itself. Notwithstanding any other provision, nothing in this Section shall be construed to limit or affect the Attorney General's Charitable Trust Bureau's authority to file an action or take other steps as he or she deems advisable at any time to enforce or protect the general public interest as to a trust that provides a beneficial interest or expectancy for one or more charitable organizations or charitable purposes whether or not a specific charitable organization is named in the trust. This Section shall be construed as being declarative of existing law and not as a new enactment.

SECTION 307. DESIGNATED REPRESENTATIVE.

(a) If specifically nominated in the trust instrument, one or more individuals with legal capacity may be designated to represent and bind an individual who is a qualified beneficiary. The trust instrument may also authorize any person or persons, other than a trustee of the trust, to designate one or more individuals with legal capacity to represent and bind an individual who is a qualified beneficiary. Any such person so nominated or designated is referred to in this Section as a "Designated Representative."

(b) Notwithstanding subsection (a):

(i) A Designated Representative may not represent and bind a current beneficiary who shall have attained age 30 and is not incapacitated.

(ii) A Designated Representative may not represent and bind a qualified beneficiary while the Designated Representative is serving as a trustee.

(iii) Subject to subsection (b)(i) and (b)(ii), a Designated Representative may not represent and bind a qualified beneficiary if the Designated Representative is also a qualified beneficiary of the trust, unless (A) the Designated Representative was specifically nominated in the trust instrument, or (B) the Designated Representative is the qualified beneficiary's spouse or a grandparent or descendant of a grandparent of the qualified beneficiary or of the qualified beneficiary's spouse.

(c) Each Designated Representative shall be a fiduciary of the trust subject to the standards applicable to a trustee of a trust under applicable law.

(d) In no event may a Designated Representative be relieved or exonerated from the duty to act, or withhold from acting, in good faith and as such Designated Representative reasonably believes is in the best interest of the represented qualified beneficiary.

**ARTICLE 4
CREATION, VALIDITY, MODIFICATION,
AND TERMINATION OF TRUST**

SECTION 401. METHODS OF CREATING TRUST. A trust may be created by:

(a) 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;

(b) declaration by the owner of property that the owner holds identifiable property as trustee; or

(c) exercise of a power of appointment in favor of a trustee.

SECTION 402. 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 Section 408; or
 - (C) a trust for a noncharitable purpose, as provided in Section 409;
- (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.

SECTION 403. 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.

SECTION 404. TRUST PURPOSES. A trust may be created only to the extent its purposes are lawful and not contrary to public policy.

SECTION 405. CHARITABLE PURPOSES; ENFORCEMENT.

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

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary and does not delegate to the trustee or others willing to exercise the authority to select one or more charitable purposes or beneficiaries, then the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

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

SECTION 406. EFFECT OF FRAUD, DURESS, OR UNDUE INFLUENCE. If the creation, amendment, or restatement of a trust is procured by fraud, duress, mistake, or undue influence, the trust or any part so procured is void. The remainder of the trust not procured by such means is valid if the remainder is not invalid for other reasons. If the revocation of a trust, or any part of the trust, is procured by fraud, duress, mistake, or undue influence, such revocation is void.

SECTION 407. EVIDENCE OF ORAL TRUST. Except as required by a statute other than this Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

SECTION 408. TRUSTS FOR DOMESTIC OR PET ANIMALS.

(a) A trust for the care of one or more designated domestic or pet animals is valid. The trust terminates when no living animal is covered by the trust. A trust instrument shall be liberally construed to bring the transfer within this Section, to presume against a merely precatory or honorary nature of its disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(b) A trust for the care of one or more designated domestic or pet animals is subject to the following provisions:

(1) Except as expressly provided otherwise in the instrument creating the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(A) as directed in the trust instrument;

(B) to the settlor, if then living;

(C) if there is no such direction in the trust instrument and if the trust was created in a nonresiduary clause in the transferor's will, then under the residuary clause in the transferor's will; or

(D) to the transferor's heirs, determined according to Section 2-1 of the Probate Act of 1975.

(3) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court having jurisdiction of the matter and parties, upon petition to it by an individual.

(4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds,

appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (2).

(6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this Section.

(7) The trust is exempt from the operation of the common law rule against perpetuities.

SECTION 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE

BENEFICIARY. Except as otherwise provided in Section 408 or by another statute:

(a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.

(b) The trust may not be enforced for more than 21 years. If the trust is still in existence after 21 years, the trust shall terminate. The unexpended trust property shall be distributed in the following order:

(1) as directed in the trust instrument;

(2) to the settlor, if then living;

(3) if the trust was created in a non-residuary clause in the settlor's will, then pursuant to the residuary clause in the settlor's will; or

(4) to the transferor's heirs, determined according to Section 2-1 of the Probate Act of 1975.

(c) A trust authorized by this Section may be enforced by a person appointed in the trust instrument or, if no person is so appointed, by a person appointed by the court.

(d) Property of a trust authorized by this Section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Property not required for the intended use must be distributed as provided in subsection (b) of this Section.

**SECTION 410. MODIFICATION OR TERMINATION OF TRUST;
PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.**

(a) In addition to the methods of termination prescribed by Sections 411 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to the trust instrument, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under Section 410(a) or Sections 411 through 416, or trust combination or division under Section 417, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 413.

SECTION 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.

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

(b) A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with any material purpose of the trust.

(c) The court shall consider spendthrift provisions as a factor in making a decision under this Section, but the court is not precluded from

modifying or terminating a trust because the trust contains spendthrift provisions.

(d) Upon termination of a trust under subsection (a) 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) a beneficiary who does not consent is treated equitably consistent with the purposes of the trust.

SECTION 412. 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 must 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 court shall order the distribution of the trust property as agreed by the beneficiaries, or if the beneficiaries cannot agree, then as the court determines is equitable consistent with the purposes of the trust.

SECTION 413. 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.

SECTION 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000 may terminate the trust if the trustee concludes that the costs of continuing the trust will substantially impair accomplishment of the purpose of the trust.

(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 to the current beneficiaries in the proportions to which they are entitled to mandatory current distributions, or if their interests are indefinite, to the current beneficiaries per stirpes if they have a common ancestor, or if not, then in equal shares. The trustee shall give notice to such

current beneficiaries at least 30 days prior to the effective date of the termination.

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

(e) If a particular trustee is a current beneficiary of the trust or is legally obligated to a current beneficiary, then that particular trustee may not participate as a trustee in the exercise of this termination power; provided, however, that if the trust has one or more co-trustees who are not so disqualified from participating, the co-trustee or co-trustees may exercise this power.

(f) This Section shall not apply to the extent that it would cause a trust otherwise qualifying for a federal or state tax benefit or other benefit not to so qualify, nor shall it apply to trusts for domestic or pet animals.

SECTION 415. 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 what the settlor's intention was and that the terms of the trust instrument were affected by a mistake of fact or law, whether in expression or inducement.

SECTION 416. 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.

SECTION 417. COMBINATION AND DIVISION OF TRUSTS.

(a) Subject to subsections (b), (c) and (d), after notice to the qualified beneficiaries, a trustee may:

(1) consolidate two or more trusts having substantially similar terms into a single trust;

(2) sever any trust estate on a fractional basis into two or more separate trusts; and

(3) segregate by allocation to a separate account or trust a specific amount or specific property.

(b) No consolidation, severance or segregation may be made pursuant to this Section if the result impairs the rights of any beneficiary or adversely affects achievement of the material purposes of the subject trust or trusts.

(c) A severance or consolidation may be made for any reason including to reflect a partial disclaimer, to reflect differences in perpetuities periods, to reflect or result in differences in federal or state tax attributes, to satisfy any federal tax requirement or election, or to reduce potential generation-skipping transfer tax liability, and shall be made in a manner consistent with the rules governing disclaimers, such federal tax attributes,

such requirements or elections, or any applicable federal or state tax rules or regulations.

(d) A separate account or trust created by severance or segregation:

(1) shall be treated as a separate trust for all purposes from and after the date on which the severance or segregation is effective; and

(2) shall be held on terms and conditions that are substantially equivalent to the terms of the trust from which it was severed or segregated so that the aggregate interests of each beneficiary in the several trusts are substantially equivalent to the beneficiary's interests in the trust before severance, provided, however, that any terms of the trust before severance that would affect the perpetuities period, qualification of the trust for any federal or state tax deduction, exclusion, election, exemption, or other special federal or state tax status must remain identical in each of the separate trusts created.

(e) Income earned on a severed or segregated amount or property after severance or segregation occurs shall pass to the designated taker of such amount or property.

(f) In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable federal or state tax elections, the trustee may consider the differences in federal or state tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate accounts or trusts.

ARTICLE 5
CREDITOR'S CLAIMS; SPENDTHRIFT AND
DISCRETIONARY TRUSTS

SECTION 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE. Except as provided in Section 504, to the extent a beneficiary's interest is not subject to 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.

SECTION 502. SPENDTHRIFT PROVISION.

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

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

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

(d) A valid spendthrift provision does not prevent the appointment of interests through the exercise of a power of appointment.

SECTION 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.

(a) In this Section, “child” includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary’s child, spouse, or former spouse who has a judgment or court order against the beneficiary for child support obligations owed by the beneficiary as provided in Section 4.1 of the Non-Support of Spouse and Children Act, Section 22 of the Non-Support Punishment Act, and similar Sections of other Acts which provide for support of a child;

(2) a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust; and

(3) a claim of this State or the United States to the extent a statute of this State or federal law so provides.

(c) Except as otherwise provided in this subsection and in Section 504, a claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. Notwithstanding this subsection the remedies provided in this subsection apply to a claim for unpaid child support obligations by a beneficiary’s child, spouse, former spouse, or a judgment

creditor described in subsection (b)(2) or (b)(3) only as a last resort upon an initial showing that traditional methods of enforcing the claim are insufficient.

SECTION 504. DISCRETIONARY DISTRIBUTIONS; EFFECT OF STANDARD.

(a) As used in this Section, the term “discretionary distribution” means a distribution that is subject to the trustee’s discretion whether or not the discretion is expressed in the form of a standard of distribution and whether or not the trustee has abused the discretion.

(b) Whether or not a trust contains a spendthrift provision, and whether or not the beneficiary is acting as trustee, if a trustee may make discretionary distributions to or for the benefit of a beneficiary, a creditor of the beneficiary, including a creditor as described in Section 503(b), may not:

(1) compel a distribution that is subject to the trustee’s discretion; or

(2) obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary, except as provided in Section 2-1403 of the Code of Civil Procedure.

(c) If the trustee’s discretion to make distributions for the trustee’s own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor’s claim were the beneficiary not acting as trustee.

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

SECTION 505. CREDITOR'S CLAIM AGAINST SETTLOR.

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

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors to the extent the property would not otherwise be exempt by law if owned directly by the settlor.

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

(3) Notwithstanding the provisions of subsection (a)(2), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust instrument, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

(4) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances; provided, however, that:

(A) sums recovered by the personal representative of the settlor's estate must be administered as part of the decedent's probate estate, and the liability created by this subsection shall not apply to any assets to the extent that such assets are otherwise exempt under the laws of this State or under federal law;

(B) with respect to claims, expenses, and taxes in connection with the settlement of the settlor's estate, any claim of a creditor that would be barred against the personal representative of a settlor's estate or the estate of the settlor, shall be barred against the trust property of a trust that was revocable at the settlor's death, the trustee of the revocable trust, and the beneficiaries of the trust, and distributees of the trust take property distributed after the settlor's death subject to such claims; and

(C) the provisions of the Probate Act of 1975 Sections 5/18-10 and 5/18-13 detailing the classification and priority of payment of claims, expenses, and taxes from the probate estate of a decedent (or comparable provisions of the law of the deceased settlor's domicile at death if such domicile was not Illinois) shall apply to a revocable trust to the extent the assets of the settlor's probate estate are inadequate and the personal

representative or creditor or taxing authority of the settlor's estate has perfected its right to collect from the settlor's revocable trust.

(5) After the death of a settlor, a trustee of a trust that was revocable at the settlor's death is released from liability under this Section on any assets distributed to the trust's beneficiaries in accordance with the governing trust instrument if:

(A) the trustee made the distribution nine months or later after the settlor's death; and

(B) the trustee did not receive a written notice from the decedent's personal representative asserting that the decedent's probate estate is or may be insufficient to pay allowed claims or, if the trustee received such notice, the notice was withdrawn by the personal representative or revoked by the court before the distribution.

(b) For purposes of this Section:

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

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the IRC, in each case as in effect on the effective date of this Code.

SECTION 506. OVERDUE DISTRIBUTION.

(a) In this Section, “mandatory distribution” means a distribution of income or principal which the trustee is required to make to a beneficiary under the trust instrument, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee’s discretion even if (1) the discretion is expressed in the form of a standard of distribution, or (2) the terms of the trust instrument authorizing a distribution couple language of discretion with language of direction.

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

SECTION 507. PERSONAL OBLIGATIONS OF TRUSTEE. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

SECTION 508. LAPSE OF POWER TO WITHDRAW. A beneficiary of a trust may not be considered to be a settlor or to have made a transfer to the trust merely because of a lapse, release, or waiver of his or her power of withdrawal to the extent that the value of the affected property does not exceed the greatest of the amounts specified in Sections 2041(b)(2), 2514(e), and 2503(b) of the IRC.

SECTION 509. TRUST FOR DISABLED BENEFICIARY.

(a) In this Section, “discretionary trust” means a trust in which the trustee has discretionary power to determine distributions to be made under the trust.

(b) A discretionary trust for the benefit of an individual who is incapacitated other than by reason of being a minor or an individual whose location is uncertain, or who otherwise has a disability that substantially impairs the individual’s ability to provide for his or her own care or custody and constitutes a substantial handicap, shall not be liable to pay or reimburse this State or any public agency for financial aid or services to the individual except to the extent the trust was created by the individual or trust property has been distributed directly to or is otherwise under the control of the individual, provided that such exception shall not apply to a trust created with the disabled individual's own property or property within his or her control if the trust complies with Medicaid reimbursement requirements of federal law. Notwithstanding any other provisions, a trust created with the disabled individual's own property or property within his or her control shall be liable, after reimbursement of Medicaid expenditures, to this State for reimbursement of any other service charges outstanding at the death of the disabled individual. Property, goods and services purchased or owned by a trust for and used or consumed by a disabled beneficiary shall not be considered trust property distributed to or under the control of the beneficiary.

**ARTICLE 6
REVOCABLE TRUSTS**

SECTION 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. The capacity required of the settlor to create, amend, revoke (in whole or in part), or add property to a revocable trust, is the same as that required to make a will.

SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.

(a) The settlor may revoke a trust only if the trust instrument expressly provides that the trust is revocable or that the settlor has an unrestricted power of amendment. The settlor may amend a trust only if the trust expressly provides that the trust is revocable or amendable by the settlor.

(b) If a revocable trust has 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 only 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 instrument:

(1) by substantially complying with a method provided in the trust instrument; or

(2) if the trust instrument does not provide a method or the method provided in the terms is not expressly made exclusive, by a later instrument in writing (other than a will) signed by the settlor specifically referring to the trust.

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

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may not be exercised by an agent under a power of attorney unless expressly authorized by the power and not prohibited by the trust instrument.

(f) A guardian of the estate of the settlor, if any, otherwise a guardian of the person of the settlor may not exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property unless ordered by the court supervising the guardianship.

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

SECTION 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL.

(a) While a trust is revocable, and the settlor personally 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) While a trust is revocable but the settlor does not personally have the capacity to revoke the trust, the duties of the trustee are owed only to the settlor and current beneficiaries. If the settlor is a beneficiary, the settlor's interests as a beneficiary shall take priority over the interests of all other beneficiaries.

(c) Except as provided in subsection (d), only the settlor, a representative of the settlor under Article III during the settlor's lifetime if the settlor is incapacitated, and the representative of the settlor's estate after the settlor's death, shall have the right to question the actions of the trustee of a revocable trust taken, or not taken, while the trust is revocable.

(d) An individual who is or was a current beneficiary during the settlor's lifetime, a representative of such individual under Article III or the representative of such individual's estate after the individual's death, shall have the right to question the actions of the trustee of a revocable trust while the trust is revocable but the settlor does not personally have capacity to revoke the trust, but only to the extent such action affects the interest of such individual as a current beneficiary of the trust during the lifetime of the settlor while the settlor does not personally have the capacity to revoke the trust.

(e) The holder of a non-lapsing power of withdrawal, during the period the power may be exercised, has the rights of a settlor of a revocable trust to the extent of the property subject to the power.

SECTION 604. 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 only within the earlier of:

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

(2) (A) in the case of a trust to which a legacy is provided by the settlor's will which is admitted to probate, the time to contest the validity of the settlor's will as provided in the Probate Act of 1975; or

(B) in the case of a trust other than a trust described in subsection (a)(2)(A), six months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the six month period allowed for commencing a proceeding.

(b) Following the nine month anniversary of 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 trust instrument. 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 was revocable at the settlor's death that is determined to have been invalid is liable to return any distribution received and all income and appreciation associated with the distribution from the date of receipt until the date of return of the distribution.

SECTION 605. REVOCATION OF PROVISIONS IN REVOCABLE TRUST BY DIVORCE OR ANNULMENT.

(a) For purposes of this Section:

(1) "Judicial termination of marriage" includes, but is not limited to, divorce, dissolution, annulment or declaration of invalidity of marriage.

(2) "Provision pertaining to the settlor's former spouse" includes, but is not limited to, every present or future gift or interest or power of appointment given to the settlor's former spouse or right of the settlor's former spouse to serve in a fiduciary capacity.

(3) "Trust" means a trust created by a nontestamentary instrument executed after January 1, 1982.

(4) Notwithstanding the definition of “revocable” in Section 103, a provision is revocable by the settlor if the settlor has the power at the time of the entry of the judgment or judicial termination of the settlor’s marriage to revoke, modify or amend said provision, either alone or in conjunction with any other person or persons.

(b) Unless the trust instrument or the judgment of judicial termination of marriage expressly provides otherwise, judicial termination of the marriage of the settlor of a trust revokes every provision which is revocable by the settlor pertaining to the settlor’s former spouse in a trust instrument or amendment thereto executed by the settlor before the entry of the judgment of judicial termination of the settlor’s marriage, and any such trust shall be administered and construed as if the settlor’s former spouse had died upon entry of the judgment of judicial termination of the settlor’s marriage.

(c) A trustee who has no actual knowledge of a judgment of judicial termination of the settlor’s marriage, shall have no liability for any action taken or omitted in good faith on the assumption that the settlor is married. The preceding sentence is intended to affect only the liability of the trustee and shall not affect the disposition of beneficial interests in any trust.

(d) Notwithstanding Section 102, the provisions of this Section may be made applicable by specific reference in the trust instrument to this Section in any (1) land trust; (2) voting trust; (3) security instrument such as a trust deed or mortgage; (4) liquidation trust; (5) escrow; (6) instrument under which a nominee, custodian for property or paying or receiving agent is

appointed; or (7) a trust created by a deposit arrangement in a bank or savings institution, commonly known as “Totten Trust.”

(e) If provisions of a trust are revoked solely by this Section, they are revived by the settlor’s remarriage to the former spouse.

**ARTICLE 7
OFFICE OF TRUSTEE**

SECTION 701. 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 trust instrument; or

(2) if the trust instrument does not provide a method or the method provided in the trust instrument 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 decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time, not to exceed 120 days after receiving notice of the designation, is deemed to have declined the trusteeship.

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

(1) act to preserve the trust property if, within a reasonable time, not to exceed 120 days after receiving notice of the designation, the person sends a declination of the trusteeship to the settlor or, if the settlor is deceased or incapacitated, to the qualified beneficiaries; and

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

(d) A person acting under subsection (c) will not be liable for actions taken in good faith.

SECTION 702. TRUSTEE'S BOND. A trustee is not required to give bond to secure performance of the trustee's duties unless bond is required by the trust instrument and the court has not dispensed with the requirement.

SECTION 703. COTRUSTEES.

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision after prior written notice to, or written waiver of notice by, each other trustee.

(b) If a vacancy occurs in a cotrusteeship, see Section 704(b).

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

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

(e) A trustee may delegate to a cotrustee for any period of time any or all of the trustee's rights, powers and duties. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

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

(g) Each trustee who is not an excluded fiduciary under Section 808 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.

SECTION 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR.

(a) A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee declines 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;
- (6) a guardian is appointed for an individual serving as trustee; or
- (7) an individual serving as trustee becomes incapacitated.

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

remaining trustee, or if the existing vacancy impairs the administration of the trust as determined by the remaining trustees.

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

(1) by a person designated in accordance with the trust instrument to act as successor trustee;

(2) by a person appointed by a majority in number of the beneficiaries who are distributees or permissible distributees of trust income; or

(3) by a person appointed by the court.

(d) If a trust contains a charitable interest then the appointment of a successor trustee provided under Section 704(c)(2) shall not take effect until 30 days after written notice is delivered to the Attorney General's Charitable Trust Bureau. The Attorney General's Charitable Trust Bureau may waive this notice requirement.

SECTION 705. RESIGNATION OF TRUSTEE.

(a) A trustee may resign:

(1) upon notice to the settlor, if living, to the beneficiaries who are distributees or permissible distributees of trust income 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.

SECTION 706. REMOVAL OF TRUSTEE.

(a) A settlor, a cotrustee, or a qualified 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 purposes of the trust and 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 any 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 Section 1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

SECTION 707. 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.

SECTION 708. COMPENSATION OF TRUSTEE.

(a) If the trust instrument does not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the trust instrument specifies 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 trust instrument would be unreasonably low or high.

SECTION 709. 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 and protection 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 right to reimbursement with reasonable interest.

**ARTICLE 8
DUTIES AND POWERS OF TRUSTEE**

SECTION 801. DUTY TO ADMINISTER TRUST. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its purposes and the terms of the trust instrument, and in accordance with this Code.

SECTION 802. DUTY OF LOYALTY.

(a) Subject to Section 905 and to the rights of persons dealing with or assisting the trustee, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the trust instrument or applicable law;

(2) the transaction was approved by the court or by nonjudicial settlement agreement in accordance with Section 111;

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

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

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

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

(1) the trustee's spouse;

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

(3) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment, except as otherwise authorized by law.

(c) A transaction between a trustee and a beneficiary that does not concern trust property, that occurs during the existence of the trust and from which the trustee obtains an advantage, is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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

(e) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust so long as the total compensation paid by the trust as trustee's fees and mutual fund or other investment fees is reasonable.

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

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

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

(2) payment of reasonable compensation to the trustee;

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

(4) the entry of agreements for bank or other deposit accounts, safe deposit boxes, custodian, agency or depository arrangements for all or any part of the trust property, including agreements for such services provided by a bank operated by or affiliated with the trustee, and to pay reasonable compensation for those services, including compensation to the bank operated by or affiliated with the trustee, except that nothing in this subsection shall be construed as removing any depository arrangements from the requirements of the prudent investor rule; or

(5) an advance by the trustee of money for the protection of the trust.

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

SECTION 803. IMPARTIALITY.

(a) If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property giving due regard to the beneficiaries respective interests. The trustee must treat the beneficiaries equitably in light of the purposes and terms of the trust, including any manifestation of an intention to favor one or more beneficiaries.

(b) In a judicial proceeding a trustee may, but need not, present the trustee's opinions and reasons:

(1) for supporting or opposing any part or all of the court findings, orders, or instructions sought by any party to the proceeding, including without limitation whether any proposed action or inaction would enable the trustee to better carry out the purposes of the trust; and

(2) about any other matters relevant to the proceeding.

(c) A trustee's actions in accordance with subsection (b) shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

SECTION 804. PRUDENT ADMINISTRATION. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

SECTION 805. COSTS OF ADMINISTRATION. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property and the purposes of the trust.

SECTION 806. [RESERVED]

SECTION 807. DELEGATION BY TRUSTEE.

(a) Except as provided in subsection (b), the trustee has a duty not to delegate to others the performance of any acts involving the exercise of judgment and discretion.

(b) 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 of the trust and the trust instrument; and

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

(c) 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.

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

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

SECTION 808. DIRECTED TRUSTS.

(a) In this Section:

(1) “Distribution trust advisor” means any one or more persons given authority by the trust instrument to direct, consent to, veto, or otherwise exercise all or any portion of the distribution powers and discretions of the trust, including but not limited to authority to make discretionary distribution of income or principal.

(2) “Excluded fiduciary” means any fiduciary that by the trust instrument is directed to act in accordance with the exercise of specified powers by a directing party, in which case such specified powers shall be deemed granted not to the fiduciary but to the directing party and such fiduciary shall be deemed excluded from exercising such specified powers. If a trust instrument provides that a fiduciary as to one or more specified matters is to act, omit action, or make decisions only with the consent of a directing party, then such fiduciary is an excluded fiduciary with respect to such matters. Notwithstanding any provision of this Section, a person does not fail to qualify as an excluded fiduciary solely by reason of having effectuated, participated in, or consented to a transaction, including but not limited to any transaction described in Section 111, 411 or Article 12 of this Code, invoking the provisions of this Section with respect to any new or existing trust.

(3) “Fiduciary” means any person expressly given one or more fiduciary duties by the trust instrument, including but not limited to a trustee.

(4) “Investment trust advisor” means any one or more persons given authority by the trust instrument to direct, consent to, veto, or otherwise exercise all or any portion of the investment powers of the trust.

(5) “Power” means authority to take or withhold an action or decision, including but not limited to an expressly specified power, the implied power necessary to exercise a specified power, and authority inherent in a general grant of discretion.

(6) “Trust protector” means any one or more persons given any one or more of the powers specified in subsection (d), whether or not designated with the title of trust protector by the trust instrument.

(b) An investment trust advisor may be designated in the trust instrument of a trust. The powers of an investment trust advisor may be exercised or not exercised in the sole and absolute discretion of the investment trust advisor, and are binding on all other persons, including but not limited to each beneficiary, fiduciary, excluded fiduciary, and any other party having an interest in the trust. The trust instrument may use the title “investment trust advisor” or any similar name or description demonstrating the intent to provide for the office and function of an investment trust advisor. Unless the terms of the trust instrument provide otherwise, the investment trust advisor has the authority to:

(1) direct the trustee with respect to the retention, purchase, transfer, assignment, sale, or encumbrance of trust property and the investment and reinvestment of principal and income of the trust;

(2) direct the trustee with respect to all management, control, and voting powers related directly or indirectly to trust assets, including but not limited to voting proxies for securities held in trust;

(3) select and determine reasonable compensation of one or more advisors, managers, consultants, or counselors, including the trustee, and to delegate to them any of the powers of the investment trust advisor in accordance with Section 807; and

(4) determine the frequency and methodology for valuing any asset for which there is no readily available market value.

(c) A distribution trust advisor may be designated in the trust instrument of a trust. The powers of a distribution trust advisor may be exercised or not exercised in the sole and absolute discretion of the distribution trust advisor, and are binding on all other persons, including but not limited to each beneficiary, fiduciary, excluded fiduciary, and any other party having an interest in the trust. The trust instrument may use the title “distribution trust advisor” or any similar name or description demonstrating the intent to provide for the office and function of a distribution trust advisor. Unless the terms of the trust instrument provide otherwise, the distribution trust advisor has authority to direct the trustee with regard to all decisions relating directly or indirectly to discretionary distributions to or for one or more beneficiaries.

(d) A trust protector may be designated in the trust instrument of a trust. The powers of a trust protector may be exercised or not exercised in the sole and absolute discretion of the trust protector, and are binding on all other persons, including but not limited to each beneficiary, investment trust advisor, distribution trust advisor, fiduciary, excluded fiduciary, and any other party having an interest in the trust. The trust instrument may use the title “trust protector” or any similar name or description demonstrating the intent to provide for the office and function of a trust protector. The powers granted to a trust protector by the trust instrument may include but are not limited to authority to do any one or more of the following:

(1) modify or amend the trust instrument to achieve favorable tax status or respond to changes in the IRC, federal laws, state law, or the rulings and regulations under such laws;

(2) increase, decrease, or modify the interests of any beneficiary or beneficiaries of the trust;

(3) modify the terms of any power of appointment granted by the trust; provided, however, such modification or amendment may not grant a beneficial interest to any individual, class of individuals, or other parties not specifically provided for under the trust instrument;

(4) remove, appoint, or remove and appoint, a trustee, investment trust advisor, distribution trust advisor, another directing party, investment committee

member, or distribution committee member, including designation of a plan of succession for future holders of any such office;

(5) terminate the trust, including determination of how the trustee shall distribute the trust property to be consistent with the purposes of the trust;

(6) change the situs of the trust, the governing law of the trust, or both;

(7) appoint one or more successor trust protectors, including designation of a plan of succession for future trust protectors;

(8) interpret terms of the trust instrument at the request of the trustee;

(9) advise the trustee on matters concerning a beneficiary; or

(10) amend or modify the trust instrument to take advantage of laws governing restraints on alienation, distribution of trust property, or to improve the administration of the trust.

If a trust contains a charitable interest a trust protector must give notice to the Attorney General's Charitable Trust Bureau at least 60 days before taking any of the actions authorized under subsections (2), (3), (4), (5), or (6) of this subsection. The Attorney General's Charitable Trust Bureau may waive this notice requirement.

(e) A directing party is a fiduciary of the trust subject to the same duties and standards applicable to a trustee of a trust as provided by applicable law unless the trust instrument provides otherwise, but the trust instrument may not, however, relieve or exonerate a directing party from the duty to act or

withhold acting as the directing party in good faith reasonably believes is in the best interests of the trust.

(f) The excluded fiduciary shall act in accordance with the trust instrument and comply with the directing party's exercise of the powers granted to the directing party by the trust instrument. Unless otherwise provided in the trust instrument, an excluded fiduciary has no duty to monitor, review, inquire, investigate, recommend, evaluate, or warn with respect to a directing party's exercise or failure to exercise any power granted to the directing party by the trust instrument, including but not limited to any power related to the acquisition, disposition, retention, management, or valuation of any asset or investment. Except as otherwise provided in this Section or the trust instrument, an excluded fiduciary is not liable, either individually or as a fiduciary, for any action, inaction, consent, or failure to consent by a directing party, including but not limited to any of the following:

(1) if a trust instrument provides that an excluded fiduciary is to follow the direction of a directing party, and such excluded fiduciary acts in accordance with such a direction, then except in cases of willful misconduct on the part of the excluded fiduciary in complying with the direction of the directing party, the excluded fiduciary is not liable for any loss resulting directly or indirectly from following any such direction, including but not limited to compliance regarding the valuation of assets for which there is no readily available market value;

(2) if a trust instrument provides that an excluded fiduciary is to act or omit to act only with the consent of a directing party, then except in cases of willful misconduct on the part of the excluded fiduciary, the excluded fiduciary is not liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such directing party's failure to provide such consent after having been asked to do so by the excluded fiduciary; or

(3) if a trust instrument provides that, or for any other reason, an excluded fiduciary is required to assume the role or responsibilities of a directing party, or if the excluded fiduciary appoints a directing party or successor to a directing party other than in a nonjudicial settlement agreement under Section 111 or in a second trust under Article 12, then the excluded fiduciary shall also assume the same fiduciary and other duties and standards that applied to such directing party.

(g) By accepting an appointment to serve as a directing party of a trust that is subject to the laws of this State, the directing party submits to the jurisdiction of the courts of this State even if investment advisory agreements or other related agreements provide otherwise, and the directing party may be made a party to any action or proceeding if issues relate to a decision or action of the directing party.

(h) Each directing party shall keep the excluded fiduciary and any other directing party reasonably informed regarding the administration of the trust with respect to any specific duty or function being performed by the directing party to the extent that the duty or function would normally be

performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary or other directing party is reasonably necessary for the excluded fiduciary or other directing party to perform its duties, and the directing party shall provide such information as reasonably requested by the excluded fiduciary or other directing party. Neither the performance nor the failure to perform of a directing party's duty to inform as provided in this subsection affects whatsoever the limitation on the liability of the excluded fiduciary as provided in this Section.

(i) Other Required Notices.

(1) A directing party:

(A) within 90 days after becoming a directing party, shall notify each qualified beneficiary of the acceptance and of the directing party's name, address, and telephone number; provided, however, that the notice requirement of this subsection does not apply with respect to a succession of a business entity by merger or consolidation with another business entity or by transfer between holding company affiliates if there is no change in the contact information for the directing party, in which case the successor entity has discretion to determine what timing and manner of notice is appropriate;

(B) shall notify each qualified beneficiary in advance of any change in the rate of or the method of determining the directing party's compensation; and

(C) shall notify each qualified beneficiary of the directing party's resignation.

(2) In the event of the incapacity, death, disqualification, or removal of any directing party, a directing party who continues acting as directing party following such event shall notify each qualified beneficiary of the incapacity, death, disqualification, or removal of any other directing party within 90 days after such event.

(j) An excluded fiduciary may, but is not required to, obtain and rely upon an opinion of counsel on any matter relevant to this Section.

(k) On and after January 1, 2013 this Section applies to:

(1) all existing and future trusts that appoint or provide for a directing party, including but not limited to a party granted power or authority effectively comparable in substance to that of a directing party as provided in this Section; or

(2) any existing or future trust that:

(A) is modified in accordance with applicable law or the terms of the trust instrument to appoint or provide for a directing party; or

(B) is modified to appoint or provide for a directing party, including but not limited to a party granted power or authority effectively comparable in substance to that of a directing party, in accordance with (i) a court order, (ii) a nonjudicial settlement agreement made in accordance with Section 111, or (iii) an exercise of decanting power under Article 12, whether or not such order, agreement or second trust instrument specifies

that this Section governs the responsibilities, actions, and liabilities of persons designated as a directing party or excluded fiduciary.

SECTION 809. CONTROL AND PROTECTION OF TRUST PROPERTY. A trustee shall take reasonable steps to take control of and protect the trust property. If a corporation is acting as co-trustee with one or more individuals, the corporate trustee shall have custody of the trust estate, unless all the trustees otherwise agree.

SECTION 810. 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 not subject to federal or state banking regulation, 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 to whom the trustee has delivered the property.

(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.

SECTION 811. ENFORCEMENT AND DEFENSE OF CLAIMS. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. It may be reasonable for a trustee not to enforce a claim, not to defend an action, to settle an action, or to suffer a default, depending upon the likelihood of recovery and the cost of suit and enforcement.

SECTION 812. POWERS AND DUTIES OF SUCCESSOR; LIABILITY FOR ACTS OF PREDECESSOR; APPROVAL OF ACCOUNTS.

(a) A successor trustee shall have all the rights, powers and duties that are granted to or imposed on the predecessor trustee.

(b) A successor trustee shall be under no duty to inquire into the acts or doings of a predecessor trustee, and is not liable for any act or failure to act of a predecessor trustee.

(c) With the approval of a majority in interest of the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust, a successor trustee may accept the account rendered by, and the property received from, the predecessor trustee as a full and complete discharge of the predecessor trustee without incurring any liability for so doing.

SECTION 813. 1. DUTY TO INFORM AND ACCOUNT

(a) The provisions of Section 813.1 are prospective only and do not apply to any trust that was irrevocable prior to the effective date of this Code, or to a trustee who accepts a trusteeship before the effective date of this

Code. Subject to Section 105, this Section 813.1 supplants any common law duty of a trustee to inform and account to trust beneficiaries. For trusts that became irrevocable prior to the effective date of this Code, see Section 813.2.

(b) General Principles.

(1) The trustee, shall notify each qualified beneficiary: (A) of the trust's existence, (B) of the beneficiary's right to request a complete copy of the trust instrument, and (C) whether or not such beneficiary has a right to receive or request accountings. The notice required by this subsection must be given: (i) within 90 days of the trust becoming irrevocable or if no trustee is then acting, within 90 days of the trustee's acceptance of the trust; (ii) within 90 days of the trustee acquiring knowledge that a qualified beneficiary has a representative under Article 3 who did not previously receive such notice; (iii) within 90 days of the trustee acquiring knowledge that a qualified beneficiary who previously had a representative under Article 3 no longer has a representative under Article 3; and (iv) within 90 days of the trustee acquiring knowledge that there is a new qualified beneficiary.

(2) A trustee shall send, at least annually, a trust accounting to all current beneficiaries.

(3) A trustee shall send, at least annually, a trust accounting to all presumptive remainder beneficiaries.

(4) Upon termination of a trust, a trustee shall send a trust accounting to the beneficiaries entitled to receive a distribution of the residue of the trust.

(5) Notwithstanding any other provision, a trustee in its discretion may provide notice, information, trust accountings or reports to any beneficiary of the trust whether or not such communication is otherwise required to be so provided.

(6) Upon the reasonable request of a qualified beneficiary, the trustee shall promptly furnish to such qualified beneficiary a complete copy of the trust instrument.

(7) Notwithstanding any other provision, a trustee shall be deemed to have fully and completely discharged the trustee's duties to inform and account to all beneficiaries whether under this Section, at common law, or otherwise, by providing at least annually, and on termination of the trust, a trust accounting meeting the requirements of subsections (b)(2),(b)(3) and (b)(4) to each beneficiary entitled to such a trust accounting.

(c) Upon a vacancy in a trusteeship, unless a co-trustee remains in office, the trust accounting required by subsection (b) of this Section must be sent to the beneficiaries entitled to such accounting by the former trustee. A personal representative, guardian of the estate, or guardian of the person may send the trust accounting to the beneficiaries entitled to such accounting on behalf of a deceased or incapacitated trustee.

(d) Other Required Notices.

(1) A trustee:

(A) within 90 days after accepting a trusteeship, shall notify each qualified beneficiary of the acceptance and of the trustee's name, address, and telephone number; provided, however, that the notice requirement of this subsection does not apply with respect to a succession of a corporate trustee by merger or consolidation with another corporate fiduciary or by transfer between holding company affiliates if there is no change in the contact information for the trustee, in which case the successor trustee has discretion to determine what timing and manner of notice is appropriate;

(B) shall notify each qualified beneficiary in advance of any change in the rate of or the method of determining the trustee's compensation; and

(C) shall notify each qualified beneficiary of the trustee's resignation.

(2) In the event of the incapacity, death, disqualification, or removal of any trustee, a trustee who continues acting as trustee following such event shall notify each qualified beneficiary of the incapacity, death, disqualification, or removal of any other trustee within 90 days after such event.

(3) A trustee shall notify each qualified beneficiary of any change in the address, telephone number or other contact information for the trustee no later than the ninetieth day after the change goes into effect.

(e) Each request for information under this Section 813.1 must be with respect to a single trust that is sufficiently identified to enable the trustee to locate the trust's records. A trustee may charge a reasonable fee for providing information under this Section 813.1 to: (1) a nonqualified

beneficiary, (2) a qualified beneficiary for providing information that was previously provided to the qualified beneficiary or a representative under Article 3 for the qualified beneficiary, or (3) a representative under Article 3 for a qualified beneficiary for information that was previously provided to the qualified beneficiary or a representative under Article 3 for the qualified beneficiary.

(f) If a trustee is bound by any confidentiality restrictions regarding a trust asset, then, prior to receiving such information, a beneficiary eligible under this Section to receive any information about that asset must agree to be bound by the same confidentiality restrictions; provided, however, that the trustee has no duty or obligation to disclose to any beneficiary any information that is otherwise prohibited to be disclosed by applicable law.

(g) A qualified beneficiary may waive the right to receive information otherwise required to be furnished under this Section, such as a trust accounting, by an instrument in writing delivered to the trustee. A qualified beneficiary, with respect to future trust accountings, may at any time withdraw a waiver previously given by an instrument in writing delivered to the trustee.

(h) Receipt of information, notices or a trust accounting by a beneficiary is presumed if the trustee has procedures in place requiring the mailing or delivery of such item to such beneficiary. This presumption shall apply to the mailing or delivery of information, notices or a trust accounting by

electronic means or the provision of access to an account by electronic means so long as the beneficiary has agreed to receive such electronic delivery or access.

(i) A trustee may request approval of the trustee's current or final trust accounting by judicial proceeding at the trustee's election, with all reasonable and necessary costs of such proceeding payable by the trust and allocated between income and principal in accordance with the Principal and Income Act.

(j) Notwithstanding any other provision, the provisions of this Section are not intended to, and do not, impose on any trustee a duty to inform any beneficiary in advance of transactions relating to the trust property.

SECTION 813.2 DUTY TO INFORM AND ACCOUNT; TRUSTS IRREVOCABLE AND TRUSTEES ACCEPTING APPOINTMENT PRIOR TO THE EFFECTIVE DATE OF THIS CODE.

(a) This Section applies to all trusts which were irrevocable prior to the effective date of this Code and to a trustee who accepts a trusteeship before the effective date of this Code.

(b) Every trustee at least annually shall furnish to the beneficiaries then entitled to receive or receiving the income from the trust estate, or if none, then those beneficiaries eligible to have the benefit of the income from

the trust estate a current account showing the receipts, disbursements and inventory of the trust estate.

(c) Every trustee shall on termination of the trust furnish to the beneficiaries then entitled to distribution of the trust estate a final account for the period from the date of the last current account to the date of distribution showing the inventory of the trust estate, the receipts, disbursements and distributions and shall make available to such beneficiaries copies of prior accounts not theretofore furnished.

(d) If a beneficiary is incapacitated, the account shall be provided to the representative of the estate of the beneficiary. If no representative for the estate of a beneficiary under legal disability has been appointed, the account shall be provided to a spouse, parent, adult child, or guardian of the person of the beneficiary.

SECTION 814. DISCRETIONARY POWERS; TAX SAVINGS.

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

(b) Subject to subsection (e), and unless the trust instrument expressly indicates that a rule in this subsection does not apply:

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

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

(c) Subject to subsections (d) and (e), if a beneficiary of a trust, in an individual, trustee or other capacity, removes a fiduciary and appoints a successor fiduciary who would be related or subordinate to that beneficiary within the meaning of Section 672(c) of the IRC if the beneficiary were the grantor, that successor fiduciary's discretionary powers shall be limited as follows:

(1) the fiduciary's discretionary power to make distributions to or for the benefit of that beneficiary shall be limited to an ascertainable standard;

(2) the fiduciary's discretionary power may not be exercised to satisfy any of that beneficiary's legal obligations for support or other purposes; and

(3) the fiduciary's discretionary power may not be exercised to grant to that beneficiary a general power of appointment.

(d) Subsection (c) shall not apply if:

(1) the appointment of the trustee or other fiduciary by the beneficiary may be made only in conjunction with another person having a substantial interest in the property of the trust subject to the power which is adverse to the interest of the beneficiary within the meaning of Section 2041(b)(1)(C)(ii) of the IRC; or

(2) the appointment is in conformity with a procedure governing appointments approved by the court before the effective date of this Code.

(e) Subsections (b) and (c) do not apply to:

(1) A person other than a settlor who is a beneficiary and trustee or other fiduciary of a trust that confers on such fiduciary a power exercisable only in conjunction with another person having a substantial interest in the property subject to the power which is adverse to the interest of that fiduciary within the meaning of Section 2041(b)(1)(C)(ii) of the IRC;

(2) a power held by the settlor's spouse who is the trustee or other fiduciary of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the IRC, was previously allowed;

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

(4) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the IRC; or

(5) any portion of a trust over which the trustee or other fiduciary is expressly granted in the trust instrument a presently exercisable or testamentary general power of appointment.

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

SECTION 815. GENERAL POWERS OF TRUSTEE.

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

(1) powers conferred by the trust instrument; or

(2) except as limited by the trust instrument:

(A) all powers over the trust property which an unmarried owner with legal capacity 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 Code.

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

SECTION 816. SPECIFIC POWERS OF TRUSTEE. Without limiting the authority

conferred by Section 815, 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 or otherwise encumber 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, pledging other trust assets or guaranteeing a debt obligation of the business or enterprise, 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;

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

(E) participate in mergers, consolidations, foreclosures, reorganizations or liquidations.

(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 any interest in real estate, dedicate land to public use or grant public or private easements, enter into contracts relating to real estate, 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 which 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, contest, prosecute or abandon any claim, settle a claim or charges in favor of 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 related to such asset, 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 to act as sole or cotrustee with respect to any part or all of trust property located in the other jurisdiction, confer upon the appointed trustee any or all of the rights, powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) distribute income and principal in such one or more of the following ways, without being required to see to the application of any distribution so made, as the trustee believes to be for the best interests of any beneficiary who at the time of distribution is incapacitated or in the opinion of the trustee is unable to manage property or business affairs because of incapacity.

(A) directly to the beneficiary;

(B) to the guardian of the estate, or if none, the guardian of the person of the beneficiary;

(C) to a custodian for the beneficiary under the Uniform Transfers to Minors Act, Uniform Gifts to Minors Act or Uniform Custodial Trust Act, and, for that purpose, to create a custodianship or custodial trust;

(D) to an adult relative of the beneficiary to be expended on the beneficiary's behalf;

(E) by expending the money or using the property directly for the benefit of the beneficiary;

(F) to a trust, created prior to the time the distribution becomes payable, for the sole benefit of the beneficiary and those dependent upon the beneficiary during his or her lifetime, to be administered as a part of such trust, except that any amount distributed to the trust pursuant to this subsection (F) shall be separately accounted for by the trustee of the trust and shall be indefeasibly vested in the beneficiary so that if the beneficiary dies prior to complete distribution of such amounts, the amounts and the accretions, earnings, and income thereon, if any, shall be paid to the beneficiary's estate; provided, however, that this subsection (F) shall not apply to the extent that it would cause a trust otherwise qualifying for the federal estate tax marital deduction not to qualify; and

(G) by managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

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

(23) resolve a dispute concerning the interpretation of the trust or its administration by judicial proceeding, nonjudicial settlement agreement under Section 111, mediation, arbitration, or other procedure for alternative dispute resolution;

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

(25) execute contracts, notes, conveyances and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers, whether or not containing covenants and warranties binding upon and creating a charge against the trust estate or excluding personal liability;

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

(27) enter into agreements for bank or other deposit accounts, safe deposit boxes, custodian, agency or depositary arrangements for all or any part of the trust estate, including, to the extent fair to the beneficiaries, agreements for such services provided by a bank operated by or affiliated with the trustee, and to pay reasonable compensation for those services, including, to the extent fair to the beneficiaries, compensation to the bank operated by or affiliated with the trustee, except that nothing in this Section shall be construed as removing any depositary arrangements from the requirements of the prudent investor rule;

(28) engage attorneys, auditors, financial advisers and other agents and pay reasonable compensation to such persons;

(29) invest in or hold undivided interests in property;

(30) if fair to the beneficiaries, deal with the executor, trustee or other representative of any other trust or estate in which a beneficiary of the trust has an interest, notwithstanding the fact that the trustee is an executor, trustee or other representative of the other trust or estate;

(31) make equitable division or distribution in cash or in kind, or both, and for that purpose to value any property divided or distributed in kind;

(32) rely upon an affidavit, certificate, letter or other evidence reasonably believed to be genuine and on the basis of any such evidence to make any payment or distribution in good faith without liability;

(33) have all of the rights, powers and duties given to or imposed upon the trustee by law and the provisions of the trust instrument during the period between the termination of the trust and the distribution thereof and during any period in which any litigation is pending which may void or invalidate the trust in whole or in part or affect the rights, powers, duties or discretions of the trustee except as otherwise directed by the court;

(34) plant and harvest crops; breed, raise, purchase and sell livestock; lease land, equipment or livestock for cash or on shares, purchase and sell, exchange or otherwise acquire or dispose of farm equipment and farm produce of all kinds; make improvements, construct, repair, or demolish and remove any buildings, structures or fences, engage agents, managers and employees and delegate powers to them; engage in drainage and conservation programs; terrace, clear, ditch and drain lands and install

irrigation systems; replace improvements and equipment; fertilize and improve the soil; engage in the growing, improvement, and sale of trees and other forest crops; participate or decline to participate in governmental agricultural or land programs; and perform such acts as the trustee deems appropriate, using such methods as are commonly employed by other farm owners in the community in which the farm property is located;

(35) drill, mine and otherwise operate for the development of oil, gas and other minerals; enter into contracts relating to the installation and operation of absorption and repressuring plants; enter into unitization or pooling agreements for any purpose including primary, secondary or tertiary recovery; place and maintain pipe lines; execute oil, gas and mineral leases, division and transfer orders, grants, deeds, releases and assignments and other instruments; participate in a cooperative coal marketing association or similar entity; and perform such other acts as the trustee deems appropriate, using such methods as are commonly employed by owners of such interests in the community in which the interests are located;

(36) continue an unincorporated business and participate in its management by having the trustee or one or more agents of the trustee act as a manager with appropriate compensation from the business and incorporate the business;

(37) continue a business in the partnership form and participate in its management by having the trustee or one or more agents of the trustee act as a partner, limited partner or employee with appropriate compensation from the business; enter into new partnership agreements, and incorporate the business; and with respect to the foregoing activities, the trustee or the agent or agents of the trustee shall not be personally

liable to third persons with respect to actions, not sounding in tort, unless the trustee or agent fails to identify the trust estate and disclose that the trustee or agent is acting in a representative capacity; provided, however, that nothing in this subsection shall impair in any way the liability of the trust estate with respect to the foregoing activities to the extent of the assets of the trust estate.

SECTION 817. DISTRIBUTION UPON TERMINATION.

Before distributing property to a beneficiary upon the termination of a trust in whole or in part (including the exercise by a beneficiary of a right to withdraw trust principal), the trustee shall have the right to require a written approval of the trustee's accountings provided to the beneficiary and, at the trustee's election, a refunding agreement from the beneficiary for liabilities that would otherwise be payable from trust property to the extent of the beneficiary's share of such distribution. An accounting approved under this Section shall be binding on the beneficiary providing the approval and on such beneficiary's successors, heirs, representatives and assigns. A trustee can elect to withhold a distribution or require a reasonable reserve for the payment of debts, expenses and taxes payable from the trust pending receipt of a written approval of the trustee's accountings provided to the beneficiary and refunding agreement from a beneficiary or a judicial settlement of accounts.

SECTION 818. NOTICE OF PROPOSED ACTION.

(a) A trustee or directing party may give a notice of proposed action under this Section regarding any matter governed by this Code over which such trustee or directing party is granted power or discretion under the

trust instrument or any provision of this Code, provided that there is no other notice or consent procedure prescribed for such matter in another Section of this Code.

(b) Any notice of proposed action issued by a trustee or directing party shall be provided to all qualified beneficiaries of a trust; provided, however, that a trustee or directing party is not required to give a notice of proposed action to any person who consents, at any time before or after the proposed action is taken, in writing to the proposed action.

(c) A notice of proposed action shall state that the notice is given as set forth in this Section and shall state all of the following:

(1) The name and mailing address of the trustee or directing party.

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

(3) A description of the proposed action and an explanation of the reasons for the action.

(4) The time within which objections to the proposed action may be made, which shall be at least 60 days after the trustee or directing party provides notice of proposed action and that if no objection is received by such date, that the trustee or directing party is not liable to any current or future beneficiary with respect to the proposed action.

(5) The date on or after which the proposed action may be taken or is effective.

(6) If the notice is sent to a representative of a beneficiary under Article 3, the beneficiary or beneficiaries represented by such representative.

(d) A qualified beneficiary may object to a proposed action by delivering a written objection to the trustee or directing party at the address stated in the notice of proposed action within the period specified in the notice of proposed action.

(e) A trustee or directing party is not liable to any beneficiary for an action regarding a matter governed by this Section if:

(1) the action to which the notice of proposed action pertained does not constitute a per se breach of trust;

(2) the trustee or directing party does not receive a written objection to the proposed action from such beneficiary within the applicable period; and

(3) the other requirements of this Section are satisfied.

(f) If the trustee or directing party receives a written objection within the applicable period, either the trustee or directing party or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the

trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee or directing party decides not to implement the proposed action, the trustee or directing party shall provide written notice to each qualified beneficiary of the decision not to take the action. The trustee's or directing party's decision not to implement the proposed action does not itself give rise to liability to any beneficiary. Within 60 days after receiving notice from the trustee or directing party that it will not to implement the proposed action, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

(g) Notwithstanding any other provision of this Section, the trustee or directing party may not use a notice of proposed action to address any of the following actions:

- (1) Allowance of the trustee's or directing party's compensation.
- (2) Allowance of compensation of the attorney for the trustee or directing party.
- (3) Settlement of a trustee's or directing party's accounts.
- (4) Preliminary and final distributions from a trust and discharge of any trustee or directing party.

(5) Sale of property of the trust to the trustee or directing party or to the attorney for the trustee or directing party.

(6) Exchange of property of the trust for property of the trustee or directing party or for property of the attorney for the trustee.

(7) Grant of an option to purchase property of the trust to the trustee or directing party or to the attorney for the trustee or directing party.

(8) Allowance, payment, or compromise of a claim of the trustee or directing party, or the attorney for the trustee or directing party, against the trust.

(9) Compromise or settlement of a claim, action, or proceeding by the trust against the trustee or directing party or against the attorney for the trust.

(10) Extension, renewal, or modification of the terms of a debt or other obligation of the trustee or directing party, or the attorney for the trustee or directing party, owing to or in favor of the trust.

(h) Notwithstanding any other provision of this Code, delivery of notice of a proposed action to a representative under Article 3 on behalf of a beneficiary shall be effective for purposes of this Section only if the representative previously acknowledged or acknowledges prior to the end of the period for objections to the proposed action, in writing, that the representative is representing such beneficiary.

(i) Notwithstanding any other provision, the provisions of this Section are not intended to, and do not, impose on any trustee or directing party a duty to inform any beneficiary in advance of transactions relating to the trust property.

SECTION 819. NOMINEE REGISTRATION. The trustee may cause stocks, bonds, and other property, real or personal, belonging to the trust to be registered and held in the name of a nominee without mention of the trust in any instrument or record constituting or evidencing title thereto. The trustee shall be liable for the acts of the nominee with respect to any investment so registered. The records of the trustee shall show at all times the ownership of the investment by the trustee, and the stocks, bonds and other similar investments shall be in the possession and control of the trustee and be kept separate and apart from assets which are the individual property of the trustee.

SECTION 820. PROCEEDS OF EMINENT DOMAIN OR PARTITION. If a trustee is appointed by a court of this State to receive money under eminent domain or partition proceedings and to invest it for the benefit of the person who would be entitled to the real estate or its income if it had not been taken or sold, on petition of any interested person describing the real estate to be purchased, the price to be paid, the probable income to be derived and the state of the title, the court may authorize the trustee to invest all or any part of the money in other real estate in this State. Title to the real estate so purchased shall be taken in the name of the trustee. If the interest of the beneficiary in the real estate taken or sold was a legal interest, the court shall direct the trustee to convey to the beneficiary a legal estate upon the same conditions and limitations of

title, but the conveyance by the trustee shall preserve any right of entry for condition broken, possibility of reverter created by the instrument of title or any reversion or other vested interest which arose by operation of law at the time the instrument took effect. The court shall not direct the conveyance by the trustee unless there is a person or class of persons in being who would have a vested interest in the real estate taken or sold under the instrument of title to the real estate and who would be entitled to possession of the real estate if it had not been taken or sold.

SECTION 821. LANDS OR ESTATES SUBJECT TO FUTURE INTEREST OR POWER OF APPOINTMENT; WASTE; APPOINTMENT OF TRUSTEE. Where lands or any estate therein are subject to any legal or equitable future interest of any kind or to any power of appointment, whether a trust is involved or not, and it is made to appear that such lands or estate are liable to waste or depreciation in value, or that the sale thereof and the safe and proper investment of the proceeds will inure to the benefit and advantage of the persons entitled thereto, or that it is otherwise necessary for the conservation, preservation or protection of the property or estate or of any present or future interest therein that such lands or estate be sold, mortgaged, leased, converted, exchanged, improved, managed or otherwise dealt with, the court may, pending the happening of the contingency, if any, and the vesting in possession of such future interest, declare a trust, and appoint a trustee or trustees for such lands or estate and vest in a trustee or trustees title to the property, and authorize and direct the sale of such property, either at a public sale or at private sale, and upon such terms and conditions as the court may direct, and in such case may authorize the trustee or trustees to make such sale and to receive, hold and invest the proceeds thereof under the direction of the court for the benefit of the persons entitled or who may become entitled thereto according to their respective rights and interests, authorize and direct that all or any

portion of the property, or the proceeds thereof, so subject to such future interests or powers of appointment, be leased, mortgaged, converted, exchanged, improved, managed, invested, re-invested, or otherwise dealt with, as the rights and interests of the parties and the equities of the case may require, and to that end may confer all necessary powers on the trustee or trustees. All orders of every court entered pursuant to this Section subsequent to June 30, 1982 and prior to September 16, 1985 vesting title to property in a trustee are hereby validated and such title is vested in such trustee effective the day the court entered such order.

**ARTICLE 9
PRUDENT INVESTOR ACT, LIFE INSURANCE AND AFFILIATED INVESTMENTS**

SECTION 901. PRUDENT INVESTOR RULE.

(a) Except as otherwise provided in subsection (b), a trustee administering a trust has a duty to invest and manage the trust assets to comply with the prudent investor rule set forth in this Prudent Investor Act.

(b) The provisions of this prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by express provisions of the trust instrument. A trustee is not liable to a beneficiary for the trustee's reasonable and good faith reliance on those express provisions.

SECTION 902. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES.

(a) A trustee has a duty to invest and manage trust assets as a prudent investor would, considering the purposes, terms, distribution

requirements, and other circumstances of the trust. This standard requires the exercise of reasonable care, skill, and caution and is to be applied not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy that should incorporate risk and return objectives reasonably suitable to the trust.

(b) A trustee has a duty to pursue an investment strategy that considers both the reasonable production of income and safety of capital, consistent with the trustee's duty of impartiality and the purposes of the trust. Whether investments are underproductive or over productive of income shall be judged by the portfolio as a whole and not as to any particular asset.

(c) The circumstances that a trustee may consider in making investment decisions include, without limitation:

- (1) the general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role each investment or course of action plays within the overall portfolio;
- (5) the expected total return (including both income yield and appreciation of capital);

(6) the duty to incur only reasonable and appropriate costs;

(7) environmental, social and governance considerations;

(8) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(9) an asset's special relationship or value, if any, to the purpose of the trust or to one or more of the beneficiaries.

(d) In addition to the circumstances listed in subsection (c) above, a trustee may, but need not, consider related trusts and the assets of beneficiaries known to the trustee when making investment decisions.

SECTION 903. DIVERSIFICATION. A trustee has a duty to diversify the investments of the trust unless, under the circumstances, the trustee reasonably believes it is in the interests of the beneficiaries and furthers the purposes of the trust not to diversify.

SECTION 904. DUTIES AT INCEPTION OF TRUSTEESHIP. A trustee has a duty, within a reasonable time after the acceptance of a trusteeship, to review trust assets and to make and implement decisions concerning the retention and disposition of original pre-existing investments, in order to conform to the provisions of this Prudent Investor Act. A trustee's decision to retain or dispose of an asset may properly be influenced by the asset's special relationship or value to the purposes of the trust or to some or all of the beneficiaries, consistent with the trustee's duty of impartiality.

SECTION 905. COURT ACTION. Nothing in this Prudent Investor Act abrogates or restricts the power of an appropriate court in proper cases (i) to direct or permit the trustee to deviate from the terms of the trust instrument or (ii) to direct or permit the trustee to take, or to retrain the trustee from taking, any action regarding the making or retention of investments.

SECTION 906. [RESERVED]

SECTION 907. [RESERVED]

SECTION 908. REVIEWING COMPLIANCE. No specific investment course of action is, taken alone, prudent or imprudent. The trustee may invest in every kind of property and type of investment, subject to this Prudent Investor Rule. A trustee's investment decisions and actions are to be judged in terms of the trustee's reasonable business judgment regarding the anticipated effect on the trust portfolio as a whole under the facts and circumstances prevailing at the time of the decision or action. This Prudent Investor Rule is a test of conduct and not of resulting performance.

SECTION 909. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. Notwithstanding any other provision of this Code, prior to delegating any investment functions to an agent in accordance with the provisions of Section 807(b), a trustee shall conduct an inquiry into the experience, performance history, professional licensing or registration, if any, and financial stability of the investment agent.

SECTION 910. LANGUAGE INVOKING STANDARD OF ARTICLE. The following terms or comparable language in the investment powers and related provisions of a trust instrument, unless otherwise limited or modified by that instrument, shall be construed as

authorizing any investment or strategy permitted under this Prudent Investor Act: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule" and "prudent investor rule."

SECTION 911. SHORT TITLE. Section 901 through 910 of this Article may be cited as the "Illinois Uniform Prudent Investor Act" and is referred to herein as the "Prudent Investor Act."

SECTION 912. EFFECTIVE DATE. Sections 901 through 911 apply to all existing and future trusts, but only as to actions or inactions occurring on or after January 1, 1992.

SECTION 913. LIFE INSURANCE.

(a) Notwithstanding any other provision, the duties of a trustee with respect to acquiring or retaining as a trust asset a contract of insurance upon the life of the settlor, upon the lives of the settlor and the settlor's spouse, or upon the life of any person for which such trustee has an insurable interest in accordance with Section 113, do not include any of the following duties:

(1) to determine whether any contract of life insurance in the trust, or to be acquired by the trust, is or remains a proper investment as to:

(A) the type of insurance contract;

(B) the quality of the insurance contract;

(C) the quality of the insurance company;

(D) the investments held within the insurance contract;

(E) or otherwise.

(2) to diversify the investment among different policies or insurers, among available asset classes, or within an insurance contract;

(3) to inquire about or investigate into the health or financial condition of an insured;

(4) to prevent the lapse of a life insurance contract if the trust does not receive contributions or hold other readily marketable assets to pay the life insurance contract premiums; or

(5) to exercise any policy options, rights, or privileges available under any contract of life insurance in the trust, including any right to borrow the cash value or reserve of the policy, acquire a paid-up policy, or convert to a different policy.

(b) The trustee is not liable to the beneficiaries of the trust, the beneficiaries of the contract of insurance, or to any other party for loss arising from the absence of these duties regarding insurance contracts under subsection (a).

(c) Subsection (a) of this Section applies to an irrevocable trust created after the effective date of this Code or to a revocable trust that becomes irrevocable after the effective date of this Code. The trustee of a trust described under subsection (a) of this Section established prior to the effective date of this Code shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 90 days of the trustee's notice, the provisions of subsection (a) of this Section shall apply to the trust. Subsection (a) of this Section does not apply if, within 90 days of the trustee's notice, the settlor notifies the trustee in writing that subsection (a) of this Section does not apply. If the settlor is deceased, then the trustee shall give such notice to all of the legally competent current beneficiaries, and subsection (a) of this Section shall apply to the trust unless the majority of such beneficiaries notify the trustee to the contrary in writing within 90 days of the trustee's notice.

**SECTION 914. INVESTMENTS IN AFFILIATED INVESTMENTS;
TRANSACTIONS WITH AFFILIATES.**

(a) As used in this Section:

(1) "Affiliate" means any corporation or other entity that directly or indirectly is controlled by financial institution acting in a fiduciary capacity, or is related to such financial institution by shareholding or other means of common ownership and control.

(2) “Affiliated investment” means an investment for which the fiduciary or an affiliate of the fiduciary acts as adviser, administrator, distributor, placement agent, underwriter, broker, or in any other capacity for which the fiduciary or an affiliate of the fiduciary receives or has received compensation from such investment.

(3) “Fiduciary capacity” includes an agent with investment discretion to determine what securities or other assets to purchase or sell on behalf of a fiduciary account.

(b) A financial institution acting in any fiduciary capacity may purchase any affiliated investment, including, but not limited to, insurance, equity derivatives, or securities underwritten or otherwise distributed by the financial institution or by an affiliate, through or directly from the financial institution or an affiliate or from a syndicate or selling group that includes the financial institution or an affiliate, provided that the purchase is otherwise prudent under the applicable fiduciary investment standard.

(c) The compensation paid to a financial institution acting in any fiduciary capacity or an affiliate of the financial institution for any affiliated investment under this Section must be reasonable and may not be prohibited by the instrument governing the fiduciary relationship. The compensation for the affiliated investment may be in addition to the compensation that the financial institution is otherwise entitled to receive from the fiduciary account.

(d) A financial institution shall disclose, at least annually:

(1) Any purchase of an affiliated investment authorized by this Section, including all compensation paid or to be paid by the fiduciary account or to be received by an affiliate arising from such affiliated investment;

(2) The capacities in which the financial institution or an affiliate acts for the issuer of the securities or the provider of the products or services; and

(3) That the financial institution or an affiliate may have an interest in the affiliated investment.

(e) The disclosure shall be given, in writing or electronically by any document prepared for an affiliated investment under federal or state securities laws or in a written summary that includes all compensation received or to be received by the financial institution or any affiliate and an explanation of the manner in which such compensation is calculated (either as a percentage of the assets invested or by some other formula or method), to each principal in an agency relationship, and to all persons entitled to receive account statements of any other fiduciary account.

(f) This Section shall apply to the purchase of securities made at the time of the initial offering of the securities or at any time thereafter.

(g) A financial institution that has complied with the terms of this Section shall have full authority to administer an affiliated investment, including the authority to vote proxies thereon.

ARTICLE 10
LIABILITY OF TRUSTEES AND RIGHTS
OF PERSONS DEALING WITH TRUSTEE

SECTION 1001. REMEDIES FOR BREACH OF TRUST.

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

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

- (1) compel the trustee to perform the trustee's duties;
- (2) enjoin the trustee from committing a breach of trust;
- (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) order a trustee to account;
- (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) suspend the trustee;
- (7) remove the trustee as provided in Section 706;
- (8) reduce or deny compensation to the trustee; or

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

(c) Nothing in this Section limits the equitable powers of the court to order other appropriate relief.

SECTION 1002. DAMAGES FOR BREACH OF TRUST.

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

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

(2) the value of any benefit received by the trustee by reason of the breach.

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

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

SECTION 1003. NO DAMAGES IN ABSENCE OF BREACH. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for any benefit received by the trustee by reason of the administration of the trust.

SECTION 1004. ATTORNEY'S FEES AND COSTS. In a judicial proceeding involving the administration of a trust, the court, as 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.

SECTION 1005. LIMITATION ON ACTION AGAINST TRUSTEE.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust for any matter disclosed in writing by a trust accounting, or otherwise as provided in Sections 813.1-813.2 and Section 1102, after the date on which such disclosure becomes binding upon the beneficiary as provided below:

(1) With respect to a trust that becomes irrevocable after the effective date of this Code and to trustees accepting appointment after the effective date of this Code, matters disclosed in writing by a trust accounting or otherwise pursuant to Section 813.1 and Section 1102 shall be binding on each person who receives such information and each person represented as provided in Article 3 by a person who receives such information, and all of their respective successors, representatives, heirs and assigns,

unless an action against the trustee is instituted within two years from the date such information is furnished. A trust accounting or other communication adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the person entitled to receive such information knows of the potential claim or should have inquired into its existence.

(2) With respect to a trust that became irrevocable prior to the effective date of this Code or a trustee that accepted appointment prior to the effective date of this Code, a current account shall be binding on the beneficiaries receiving the account and on such beneficiaries' heirs and assigns unless an action against the trustee is instituted by the beneficiary or such beneficiary's heirs and assigns within three years from the date the current account is furnished, and a final accounting shall be binding on the beneficiaries receiving the same and all persons claiming by or through them, unless an action against the trustee is instituted by the beneficiary or person claiming by or through him or her within three years from the date the final account is furnished. If the account is provided to the representative of the estate of the beneficiary or to a spouse, parent, adult child, or guardian of the person of the beneficiary, such account shall be binding on the beneficiary unless an action is instituted against the trustee by the representative of the estate of the beneficiary or by the spouse, parent, adult child, or guardian of the person to whom the account is furnished within three years from the date it is furnished.

(3) Notwithstanding subsections (1) and (2) of this subsection (a), with respect to trust estates which terminated and were distributed 10 years or less prior to January 1, 1988, the final account furnished to the beneficiaries entitled to distribution of

the trust estate shall be binding on the beneficiaries receiving the same and all persons claiming by or through them, unless an action against the trustee is instituted by the beneficiary or person claiming by or through him or her within five years from January 1, 1988 or within 10 years from the date the final account was furnished, whichever is longer.

(4) Notwithstanding subsections (1), (2) and (3) of this subsection (a), with respect to trust estates which terminated and were distributed more than 10 years prior to January 1, 1988, the final account furnished to the beneficiaries entitled to distribution of the trust estate shall be binding on the beneficiaries receiving the same and all persons claiming by or through them, unless an action against the trustee is instituted by the beneficiary or person claiming by or through him or her within two years from January 1, 1988.

(b) Unless barred earlier under subsection (a), a judicial proceeding by a beneficiary against a trustee for breach of trust must 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.

(c) Notwithstanding any other provision of this section, a beneficiary may bring any action against the trustee for fraudulent concealment

within the time limit set forth in Section 13-215 of the Code of Civil Procedure.

SECTION 1006. RELIANCE ON TRUST INSTRUMENT. A trustee who acts in reasonable reliance on the express language of the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

SECTION 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION. If the happening of an event, including, but not limited to, 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.

SECTION 1008. 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. These conditions are satisfied if the settlor was represented by independent counsel.

SECTION 1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION.

(a) A trustee is not liable to a beneficiary, or to anyone claiming by or through such 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.

(b) If the beneficiary's consent, release or ratification involves a self-dealing transaction, such consent, release or ratification is binding only if the transaction was fair and reasonable. These conditions that a self-dealing transaction must be fair and reasonable are satisfied if the beneficiary was represented by independent counsel. No consideration is required for the consent, release, or ratification to be valid.

SECTION 1010. 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.

SECTION 1011. 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 or Uniform Limited Partnership Act or any other similar state law.

(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.

SECTION 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE.

(a) A person other than a beneficiary or a beneficiary's representative under Article 3 acting in a representative capacity 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 or a beneficiary's representative under Article 3 acting in a representative capacity 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, including a beneficiary, 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.

SECTION 1013. 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, whether the trust is amendable or unamendable, and the identity of any person holding a power to revoke the trust;

(6) the authority of co-trustees 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 must be signed or otherwise authenticated by one or more of the trustees. A third party may require that the certification of trust be acknowledged.

(c) A certification of trust must 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 which 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 actual 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 trust instrument may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(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. A person required to examine a complete copy of the trust instrument for purposes of complying with applicable federal, state, or local law, a person acting in a fiduciary capacity with respect to a trust, and the Attorney General's Charitable Trust Bureau are deemed to be acting in good faith when demanding a copy of the trust instrument. This Section does not modify or limit any obligation a trustee may have to furnish a copy of a trust instrument to the Attorney General under the Charitable Trust Act or the Solicitation for Charity Act.

(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.

(j) A certification of trust may be substantially as follows, provided that nothing in this subsection shall invalidate or bar the use of a certification of trust in any other or different form:

CERTIFICATION OF TRUST

Name of trust:

Date trust instrument was executed:

Tax Identification Number of trust (SSN or EIN):

Name(s) of settlor(s) of trust:

Name(s) of currently acting trustee(s):

Address(es) of currently acting trustee(s):

..... This trust states that of co-trustee(s) are required to exercise the powers of the trustee

..... The co-trustees authorized to sign or otherwise authenticate on behalf of the trust are:

..... There are no co-trustees authorized to sign or otherwise authenticate on behalf of the trust.

Name(s) of successor trustee(s):

The trustee(s) has (have) the power to (state, synopsize, or describe relevant powers):

Title to the trust property shall be taken as follows (for example, "John Doe and Jane Doe, co-trustees of the Doe

Family Living Trust, dated January 4, 1999):

..... This is an irrevocable trust.

..... This is a revocable trust. Name(s) of person(s) holding power to revoke the trust:

..... This is an unamendable trust.

..... This trust is amendable. Name(s) of person(s) holding power to amend the trust:

I (we) certify that the above named trust is in full force and has not been revoked, modified, or amended in any manner which would cause the representations in this Certification of Trust to be incorrect.

IN WITNESS THEREOF, each of the undersigned, being a trustee of the above-named trust with the authority to execute this Certification of Trust, does hereby execute it this day of

Trustee Signature:

Printed Name:

Trustee Signature:

Printed Name:

[OPTIONAL:

State of _____)

County of _____)

This instrument was signed and acknowledged before me on (date) by (name/s of person/s)

(Signature of Notary Public)

(SEAL)]

SECTION 1014. RELIANCE ON COMMISSIONER OF BANKS AND REAL ESTATE. No trustee or other person shall be liable under this Code for any act done or omitted in good faith in conformity with any rule, interpretation, or opinion issued by the Commissioner of Banks and Real Estate, notwithstanding that after the act or omission has occurred, the rule, opinion, or interpretation upon which reliance is placed is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**ARTICLE 11
TOTAL RETURN TRUSTS**

SECTION 1101. GENERAL.

(a) In this Article, “total return trust” means a trust converted in accordance with this Article which the trustee shall manage and invest seeking

a total return without regard to whether the return is from income or appreciation of principal.

(b) Notwithstanding any other provision of this Article, a trustee has no duty to inform beneficiaries about the availability of this Article and has no duty to review the trust to determine whether any action should be taken under this Article unless requested to do so in writing by a qualified beneficiary.

SECTION 1102. CONVERSION BY TRUSTEE. A trustee may convert a trust to a total return trust as described in this Article if all of the following apply:

(a) The trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines that conversion to a total return trust will enable the trustee to better carry out the purposes of the trust and the conversion is in the best interests of the beneficiaries;

(b) the trustee sends a written notice of the trustee's decision to convert the trust to a total return trust, specifying a prospective effective date for the conversion and including a copy of this Article, to all of the qualified beneficiaries; and;

(c) no qualified beneficiary objects to the conversion to a total return trust in a writing delivered to the trustee within 60 days after the notice is sent.

SECTION 1103. CONVERSION BY AGREEMENT. Conversion to a total return trust may be made by agreement between a trustee and all qualified beneficiaries. The agreement may include any actions a court could properly order under Section 1108 of this Article; however, any distribution percentage determined by the agreement may not be less than 3% nor greater than 5%.

SECTION 1104. CONVERSION OR RECONVERSION BY COURT.

(a) The trustee may for any reason elect to petition the court to order conversion to a total return trust, including without limitation the reason that conversion under Section 1102 is unavailable because a beneficiary timely objects to the conversion to a total return trust.

(b) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within 6 months after receiving a written request to do so, the beneficiary may petition the court to order the conversion or adjustment.

(c) The trustee may petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(d) In a judicial proceeding under this Section, the trustee may, but need not, present the trustee's opinions and reasons (1) for supporting or opposing conversion to (or reconversion from or adjustment of the distribution percentage of) a total return trust, including whether the trustee believes conversion (or reconversion or adjustment of the distribution percentage) would enable the trustee to better carry out the purposes of the trust, and (2) about any other matters relevant to the proposed conversion (or reconversion or adjustment of the distribution percentage). A trustee's actions in accordance with this Section shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(e) The court shall order conversion to (or reconversion prospectively from or adjustment of the distribution percentage of) a total return trust if the court determines that the conversion (or reconversion or adjustment of the distribution percentage) will enable the trustee to better carry out the purposes of the trust and the conversion (or reconversion or adjustment of the distribution percentage) is in the best interests of the beneficiaries.

(f) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary under this Section:

- (1) select a distribution percentage other than 4%;

(2) average the valuation of the trust's net assets over a period other than three years;

(3) reconvert prospectively from or adjust the distribution percentage of a total return trust;

(4) direct the distribution of net income (determined as if the trust were not a total return trust) in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(5) change or direct any administrative procedure as the court determines necessary or helpful for the proper functioning of the total return trust.

(g) Nothing in this Section limits the equitable powers of the court to grant other relief.

SECTION 1105. POST CONVERSION. While a trust is a total return trust, all of the following shall apply to the trust:

(a) the trustee shall make income distributions in accordance with the trust instrument subject to the provisions of this Article;

(b) the term “income” in the trust instrument means an annual amount (the “distribution amount”) equal to a percentage (the “distribution percentage”) of the net fair market value of the trust's assets, whether the assets are considered income or principal under the Principal and Income Act, averaged over the lesser of:

(1) the three preceding years; or

(2) the period during which the trust has been in existence;

(c) the distribution percentage for any trust converted to a total return trust by a trustee in accordance with Section 1102 shall be 4%;

(d) the trustee shall pay to a beneficiary (in the case of an underpayment) and shall recover from a beneficiary (in the case of an overpayment) an amount equal to the difference between the amount properly payable and the amount actually paid, plus interest compounded annually at a rate per annum equal to the distribution percentage in the year or years while the underpayment or overpayment exists; and

(e) a change in the method of determining a reasonable current return by converting to a total return trust in accordance with this Article and substituting the distribution amount for net trust accounting income is a proper change in the definition of trust income notwithstanding any contrary provision of the Principal and Income Act, and the distribution amount shall be deemed a reasonable current return that fairly apportions the total return of a total return trust.

SECTION 1106. ADMINISTRATION.

(a) For purposes of this Section, an “excluded asset” is an asset for which there is no readily available market value and which the trustee

determines in accordance with subsection (d) shall be excluded from the net fair market value of the trust's assets for purposes of determining the distribution amount under Section 1105(b).

(b) The trustee, in the trustee's discretion, may determine any of the following matters in administering a total return trust as the trustee from time to time determines necessary or helpful for the proper functioning of the trust:

(1) the effective date of a conversion to a total return trust;

(2) the manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases;

(3) whether distributions are made in cash or in kind;

(4) the manner of adjusting valuations and calculations of the distribution amount to account for other payments from or contributions to the trust;

(5) whether to value the trust's assets annually or more frequently;

(6) what valuation dates and how many valuation dates to use;

(7) valuation decisions about any asset for which there is no readily available market value, including:

(A) how frequently to value such an asset; and

(B) whether and how often to engage a professional appraiser to value such an asset; and

(8) which trust assets are excluded assets; and

(9) any other administrative matters as the trustee determines necessary or helpful for the proper functioning of the total return trust.

(c) The trustee shall distribute any net income received from excluded assets as provided in the trust instrument.

(d) Unless the trustee determines there are compelling reasons to the contrary considering all relevant factors including the best interests of the beneficiaries, the trustee shall treat each asset for which there is no readily available market value as an excluded asset. Examples of assets for which there is a readily available market value include: cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. Examples of assets for which there is no readily available market value include: stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles.

(e) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee shall not limit or restrict any right of the beneficiary to use the property in accordance with the trust instrument whether or not the trustee treats the property as an excluded asset.

SECTION 1107. ALLOCATIONS.

(a) Expenses, taxes, and other charges that would be deducted from income if the trust were not a total return trust shall not be deducted from the distribution amount.

(b) Unless otherwise provided by the trust instrument, the trustee shall fund the distribution amount each year from the following sources for that year in the order listed:

(1) first from net income (as the term would be determined if the trust were not a total return trust);

(2) then from other ordinary income as determined for federal income tax purposes;

(3) then from net realized short-term capital gains as determined for federal income tax purposes;

(4) then from net realized long-term capital gains as determined for federal income tax purposes;

(5) then from trust principal comprised of assets for which there is a readily available market value; and

(6) then from other trust principal.

SECTION 1108. RESTRICTIONS. Conversion to a total return trust does not affect any provision in the trust instrument:

(a) directing or authorizing the trustee to distribute principal;

(b) directing or authorizing the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(c) authorizing a beneficiary to withdraw a portion or all of the principal; or

(d) in any manner that would diminish an amount permanently set aside for charitable purposes under the trust instrument unless both income and principal are so set aside.

SECTION 1109. TAX LIMITATIONS.

(a) If a particular trustee is a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of the trustee, or if possession or exercise of the conversion power by a particular trustee would alone cause any individual to be treated as owner of a part of the trust for income tax purposes or cause a part of the trust to be included in the

gross estate of any individual for estate tax purposes, then the particular trustee may not participate as a trustee in the exercise of the conversion power except that the particular trustee may petition the court under Section 1104(a) to order conversion in accordance with this Article.

(b) If the particular trustee has one or more cotrustees to whom subsection (a) does not apply, the cotrustee or cotrustees may convert the trust to a total return trust in accordance with this Article.

SECTION 1110. RELEASES. A trustee may irrevocably release the power granted by this Article if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or may apply generally to some or all subsequent trustees, and the release may be for any specified period, including a period measured by the life of an individual.

SECTION 1111. REMEDIES. A trustee who reasonably and in good faith takes any action under this Article is not liable to any interested person. If a trustee reasonably and in good faith takes any action under this Article and an interested person opposes the action, the person's exclusive remedy is to obtain an order of the court directing the trustee to convert the trust to a total return trust, to reconvert from a total return trust, to change the distribution percentage, or to order any administrative procedures the court determines necessary or helpful for the proper functioning of the trust. An action by a trustee under this Article is presumed taken or omitted reasonably and in good faith unless it is determined by the court to have been an abuse of discretion.

SECTION 1112. APPLICATION. This Article is available to trusts in existence on or after August 22, 2002. This Article shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Illinois or that is governed by Illinois law with respect to the meaning and effect of its terms unless:

(1) the trust is a trust described in Section 642(c)(5), 664(d), 2702(a)(3), or 2702(b) of the IRC; or

(2) the trust instrument expressly prohibits use of this Article by specific reference to this Article or a prior corresponding law. A provision in the trust instrument in the form: “Neither the provisions of Article 11 of the Illinois Trust Code nor any corresponding provision of future law may be used in the administration of this trust” or a similar provision demonstrating that intent is sufficient to preclude the use of this Article.

SECTION 1113. APPLICATION TO EXPRESS TRUSTS.

(a) In this Section:

(1) “Unitrust” means a trust the terms of which require distribution of a unitrust amount, without regard to whether the trust has been converted to a total return trust in accordance with this Article or whether the trust is established by express terms of the trust instrument.

(2) “Unitrust amount” means an amount equal to a percentage of a trust’s assets that may or must be distributed to one or more beneficiaries annually in accordance with the terms of the trust. The unitrust amount may be determined by reference to the

net fair market value of the trust's assets as of a particular date or as an average determined on a multiple year basis.

(b) A unitrust changes the definition of income by substituting the unitrust amount for net trust accounting income as the method of determining current return and shall be given effect notwithstanding any contrary provision of the Principal and Income Act. By way of example and not limitation, a unitrust amount determined by a percentage of not less than 3% nor greater than 5% is conclusively presumed a reasonable current return that fairly apportions the total return of a unitrust.

(c) The allocations provision of Section 1107(b) applies to a unitrust except to the extent its trust instrument expressly provides otherwise.

(d) This Section does not apply to a charitable remainder unitrust as defined by Section 664(d) of the IRC.

ARTICLE 12 TRUST DECANTING ACT

SECTION 1201. SHORT TITLE. This Article may be cited as the Trust Decanting Act.

SECTION 1202. DEFINITIONS. In this Article:

(1) “Appointive property” means the property or property interest subject to a power of appointment.

(2) “Authorized fiduciary” means:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) a special fiduciary appointed under Section 1209; or

(C) a special-needs fiduciary under Section 1213.

(3) “Court” means the court in this state having jurisdiction in matters relating to trusts.

(4) “Decanting power” or “the decanting power” means the power of an authorized fiduciary under this Article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(5) “Expanded distributive discretion” means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(6) “First trust” means a trust over which an authorized fiduciary may exercise the decanting power.

(7) “First-trust instrument” means the trust instrument for a first trust.

(8) “Reasonably definite standard” means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of Section 674(b)(5)(A) of the IRC, as amended, and any applicable regulations.

(9) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “Second trust” means:

(A) a first trust after modification under this Article; or

(B) a trust to which a distribution of property from a first trust is or may be made under this Article.

(11) “Second-trust instrument” means the trust instrument for a second trust.

SECTION 1203. SCOPE.

(a) Except as otherwise provided in subsections (b) and (c), this Article applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(b) This Article does not apply to a trust held solely for charitable purposes.

(c) Subject to Section 1215, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) This Article does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a

trust under the trust instrument, law of this state other than this Article, common law, a court order, or a nonjudicial settlement agreement.

(e) This Article does not affect the ability of a settlor to provide in a trust instrument for the distribution or appointment in further trust of the trust property or for modification of the trust instrument.

SECTION 1204. FIDUCIARY DUTY.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) This Article does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this Article.

(c) Except as otherwise provided in a first-trust instrument, for purposes of this Article and Section 801 of this Code, the terms of the first trust are deemed to include the decanting power.

SECTION 1205. APPLICATION; GOVERNING LAW. This Article applies to a trust created before, on, or after the effective date of this Code that:

(1) has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for purposes of:

(A) administration, including a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) construction of terms of the trust; or

(C) determining the meaning or effect of terms of the trust.

SECTION 1206. REASONABLE RELIANCE. A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this Article, law of this state other than this Article or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

SECTION 1207. NOTICE.

(a) In this Section, a notice period begins on the day notice is given under subsection (c) and ends 59 days after the day notice is given.

(b) Except as otherwise provided in this Article, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f), an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

(1) each settlor of the first trust, if living or then in existence;

(2) each qualified beneficiary of the first trust;

(3) each holder of a presently exercisable power of appointment over any part or all of the first trust;

(4) each person that currently has the right to remove or replace the authorized fiduciary;

(5) each other fiduciary of the first trust;

(6) each fiduciary of the second trust; and

(7) the Attorney General's Charitable Trust Bureau, if the first trust contains a charitable interest.

(d) An authorized fiduciary is not required to give notice under subsection (c) to a qualified beneficiary who is a minor and has no representative. The authorized fiduciary is not required to give notice under subsection (c) to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(e) A notice under subsection (c) must:

(1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) specify the proposed effective date for exercise of the power;

(3) include a copy of the first-trust instrument; and

(4) include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under Section 1209 with the court asserting that:

(1) an attempted exercise of the decanting power is ineffective because it did not comply with this Article or was an abuse of discretion or breach of fiduciary duty;
or

(2) Section 1222 applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) if the authorized fiduciary acted with reasonable care to comply with subsection (c).

SECTION 1208. [RESERVED]

SECTION 1209. COURT INVOLVEMENT.

(a) On application of an authorized fiduciary, a person entitled to notice under Section 1207(c), a beneficiary, or with respect to a charitable interest the Attorney General's Charitable Trust Bureau or any other person that has standing to enforce the charitable interest, the court may:

(1) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this Article and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this Article and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) after applying Section 1222, the proposed or attempted exercise does not or did not comply with this Article; or

(B) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) determine the extent to which Section 1222 applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of Section 1222 to a prior exercise of the decanting power; or

(7) order other appropriate relief to carry out the purposes of this Article.

(b) On application of an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under Section 1216; or

(2) a modification under Section 1218 of a provision granting a person the right to remove or replace the fiduciary.

SECTION 1210. FORMALITIES. An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by Section 1207, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

SECTION 1211. DECANTING POWER UNDER EXPANDED DISTRIBUTIVE DISCRETION.

(a) In this Section:

(1) “Presumptive remainder beneficiary” means a qualified beneficiary other than a current beneficiary.

(2) “Noncontingent” right means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the interest to any person other than the beneficiary or the beneficiary’s estate.

(3) “Successor beneficiary” means a beneficiary that on the date the beneficiary’s qualification is determined is not a qualified beneficiary. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) “Vested interest” means:

(A) a right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) a current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) a current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) a presently exercisable general power of appointment; or

(E) a right to receive an ascertainable part of the trust property on the trust's termination that is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) and Section 1214, an authorized fiduciary that has expanded distributive discretion to distribute the principal of a first trust to one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to Section 1213, in an exercise of the decanting power under this Section, a second trust may not:

(1) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d);

(2) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d);
or

(3) reduce or eliminate a vested interest.

(d) Subject to subsection (c)(3) and Section 1214, in an exercise of the decanting power under this Section, a second trust may be a trust created or administered under the laws of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary;

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary; and

(5) be a trust created or administered under the law of any jurisdiction.

(e) A power of appointment described in subsection (d)(1) through (4) may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion to distribute part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this Section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

SECTION 1212. DECANTING POWER UNDER LIMITED DISTRIBUTIVE DISCRETION.

(a) In this Section, “limited distributive discretion” means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this Section and subject to Section 1214, a second trust may be created or administered under the law of any jurisdiction. Under this Section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

- (1) the distribution is applied for the benefit of the beneficiary;

(2) the beneficiary is incapacitated or in the opinion of the trustee is unable to manage property or business affairs, and the distribution is made as permitted under this Code; or

(3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this Section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

SECTION 1213. TRUST FOR BENEFICIARY WITH DISABILITY.

(a) In this Section:

(1) “Beneficiary with a disability” means a beneficiary of the first trust who the special needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incompetent.

(2) “Governmental benefits” means financial aid or services from a state, federal, or other public agency.

(3) “Special-needs fiduciary” means, with respect to a trust that has a beneficiary with a disability:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(B) if no trustee or fiduciary has discretion under subsection (A), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(C) if no trustee or fiduciary has discretion under subsections (A) and (B), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(4) “Special-needs trust” means a trust the trustee believes would not be considered a resource for purposes of determining whether the beneficiary with a disability is eligible for governmental benefits.

(b) A special needs fiduciary may exercise the decanting power under Section 1211 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this Section, the following rules apply:

(1) Notwithstanding Section 1211(c)(2), the interest in the second trust of a beneficiary with a disability may:

(A) be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. Section 1396p(d)(4)(C), as amended; or

(B) contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. Section 1396p(d)(4)(A), as amended.

(2) Section 1211(c)(3) does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trusts, in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

SECTION 1214. PROTECTION OF CHARITABLE INTERESTS.

(a) In this Section:

(1) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified

event, or after the passage of a specified time and which is unconditional or which will in all events be held for charitable purposes.

(2) “Unconditional” means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the IRC on the date of the distribution if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest, the Attorney General’s Charitable Trust Bureau has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trusts, in the aggregate may not:

(1) diminish the charitable interest;

(2) diminish the interest of an identified charitable organization that holds the charitable interest;

(3) alter any charitable purpose stated in the first-trust instrument; or

(4) alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the

decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c).

(e) If a first trust contains a determinable charitable interest, the second trusts that include charitable interests pursuant to subsection (c) must be administered under the law of this state unless:

(1) the Attorney General's Charitable Trust Bureau, after receiving notice under Section 1207, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) the Attorney General's Charitable Trust Bureau consents in a signed record to the second trusts being administered under the law of another jurisdiction; or

(3) the court approves the exercise of the decanting power.

(f) This Article does not limit the powers and duties of the Attorney General's Charitable Trust Bureau under Illinois law.

SECTION 1215. TRUST LIMITATION ON DECANTING.

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) the decanting power; or

(2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) the decanting power; or

(2) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b), an authorized fiduciary may exercise the decanting power under this Article even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) or an express restriction described in subsection (b), that provision must be included in the second-trust instrument.

SECTION 1216. CHANGE IN COMPENSATION.

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation beyond the specified compensation unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by Section 708 unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b).

SECTION 1217. RELIEF FROM LIABILITY AND INDEMNIFICATION.

(a) Except as otherwise provided in this Section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c), a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this Article.

SECTION 1218. REMOVAL OR REPLACEMENT OF AUTHORIZED FIDUCIARY. An authorized fiduciary may not exercise the decanting power to modify a provision in the first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) the court approves the modification and the modification grants a substantially similar power to another person.

SECTION 1219. TAX-RELATED LIMITATIONS.

(a) In this Section:

(1) “Grantor trust” means a trust as to which a settlor of a first trust is considered the owner under Sections 671 through 677 of the IRC or Section 679 of the IRC.

(2) “Nongrantor trust” means a trust that is not a grantor trust.

(3) “Qualified benefits property” means property subject to the minimum distribution requirements of Section 401(a)(9) of the IRC, and any applicable regulations, or to any similar requirements that refer to Section 401(a)(9) of the IRC or the regulations.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of this Article other than this Section, for a marital deduction for

purposes of the gift or estate tax under the IRC or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the IRC or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of this Article other than this Section, for a charitable deduction for purposes of the income, gift, or estate tax under the IRC or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the IRC or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of this Article other than this Section, for the exclusion from the gift tax described in Section 2503(b) of the IRC, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under the same provision of Section 2503 of the IRC. If the first trust contains property that qualified, or would have qualified but for provisions of this Article other than this Section, for the exclusion from the gift tax described in Section 2503(b) of the IRC, by

application of Section 2503(c) of the IRC, the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under Section 2503(c) of the IRC.

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in Section 1361 of the IRC and the first trust is, or but for provisions of this Article other than this Section would be, a permitted shareholder under any provision of Section 1361 of the IRC, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under Section 1361(c)(2) of the IRC. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this Article other than this Section, would be, a qualified subchapter-S trust within the meaning of Section 1361(d) of the IRC, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of this Article other than this Section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under Section 2642(c) of the IRC the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under Section 2642(a) of the IRC.

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under Section 401(a)(9) of the IRC and any applicable regulations, or any similar requirements that refer to Section 401(a)(9) of the IRC or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and Section 1222 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of Section 672(f)(2)(A) of the IRC the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under Section 672(f)(2)(A) of the IRC.

(8) In this subsection, “tax benefit” means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this Section, except for a benefit arising from being a grantor trust. Subject to subsection (b)(9), a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) the transfer of property held by the first trust or the first trust qualified, or but for provisions of this Article other than this Section, would have qualified for the tax benefit.

(9) Subject to subsection (b)(4):

(A) except as otherwise provided in subsection (b)(7), the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) except as otherwise provided in subsection (b)(10), the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(A) the first trust and second trusts are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the second trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(B) the first trust is a nongrantor trust and the second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(i) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

SECTION 1220. DURATION OF SECOND TRUST.

(a) Subject to subsection (b), a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the second trust is subject to any maximum perpetuity, accumulation, or suspension of the power of alienation that were applicable to property of the first trust.

SECTION 1221. NEED TO DISTRIBUTE NOT REQUIRED. An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

SECTION 1222. SAVINGS PROVISION.

(a) If exercise of the decanting power would be effective under this Article except that the second-trust instrument in part does not comply with this Article, the exercise of the power is effective and the following rules apply to the principal of the first trust subject to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under this Article is void to the extent necessary to comply with this Article.

(2) A provision required by this Article to be in the second-trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this Article.

(b) If a trustee or other fiduciary of a second trust discovers that subsection (a) applies to a prior exercise of the decanting power, the fiduciary shall take such appropriate corrective action as is consistent with the fiduciary's duties.

SECTION 1223. TRUST FOR CARE OF ANIMAL.

(a) In this Section:

(1) "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the animal trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this Article as if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the decanting power.

(c) A protector for an animal has the rights under this Article of a qualified beneficiary.

(d) Notwithstanding any other provision of this Article, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

SECTION 1224. [RESERVED]

SECTION 1225. SETTLOR.

(a) For purposes of law of this state other than this Article and subject to subsection (b), a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, the intent of a settlor of the second trust, and the intent of the authorized fiduciary may be considered.

SECTION 1226. LATER-DISCOVERED PROPERTY.

(a) Except as otherwise provided in subsection (c), if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property otherwise belonging to

the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust.

(b) Except as otherwise provided in subsection (c), if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the decanting power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the decanting power.

SECTION 1227. OBLIGATIONS. A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against that property when held by the second trust after exercise of the decanting power.

ARTICLE 13 UNIFORM POWERS OF APPOINTMENT

SECTION 1301. SHORT TITLE. This Article may be cited as the Illinois Uniform Powers of Appointment Act.

SECTION 1302. DEFINITIONS. In this Article:

(1) “Appointee” means a person to which a powerholder makes an appointment of appointive property.

(2) “Appointive property” means the property or property interest subject to a power of appointment.

(3) “Blanket-exercise clause” means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(A) expressly uses the words “any power” in exercising any power of appointment the powerholder has;

(B) expressly uses the words “any property” in appointing any property over which the powerholder has a power of appointment; or

(C) disposes of all property subject to disposition by the powerholder.

(4) “Exclusionary power of appointment” means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(5) “Gift-in-default clause” means a clause identifying a taker in default of appointment.

(6) “Impermissible appointee” means a person that is not a permissible appointee.

(7) “Instrument” means a writing.

(8) “Permissible appointee” means a person in whose favor a powerholder may exercise a power of appointment.

(9) “Powerholder” means a person in which a donor creates a power of appointment.

(10) “Specific-exercise clause” means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(11) “Taker in default of appointment” means a person that takes part or all of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

SECTION 1303. GOVERNING LAW. Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) the creation, revocation, or amendment of the power is governed by the law of the donor’s domicile at the relevant time; and

(2) the exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by the law of the powerholder’s domicile at the relevant time.

SECTION 1304. COMMON LAW AND PRINCIPLES OF EQUITY. The common law and principles of equity supplement this Article, except to the extent modified by this Article or law of the State other than this Article.

SECTION 1305. CREATION OF POWER OF APPOINTMENT.

(a) A power of appointment is created only if:

(1) the instrument creating the power:

(A) is valid under applicable law; and

(B) except as otherwise provided in subsection (b), transfers the appointive property; and

(2) the terms of the instrument creating the power manifest the donor's intent to create, in a powerholder, a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(b) Subsection (a)(1)(B) does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

SECTION 1306. NONTRANSFERABILITY. A powerholder may not transfer a power of appointment. If the powerholder dies without exercising or releasing the power, the power lapses.

SECTION 1307. PRESUMPTION OF UNLIMITED AUTHORITY. Subject to Section 1309, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

- (1) presently exercisable;
- (2) exclusionary; and
- (3) except as otherwise provided in Section 1308, general.

SECTION 1308. EXCEPTION TO PRESUMPTION OF UNLIMITED AUTHORITY. Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

- (1) the power is exercisable only at the powerholder's death; and
- (2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

SECTION 1309. RULES OF CLASSIFICATION.

(a) In this Section, "adverse party" means a person with a substantial beneficial interest in property which would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(b) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

SECTION 1310. POWER TO REVOKE OR AMEND. A donor may revoke or amend a power of appointment only to the extent that:

(1) the instrument creating the power is revocable by the donor; or

(2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

SECTION 1311. REQUISITES FOR EXERCISE OF POWER OF APPOINTMENT.

A power of appointment is exercised only:

(a) if the instrument exercising the power is valid under applicable law;

(b) if the terms of the instrument exercising the power:

(1) manifest the powerholder's intent to exercise the power; and

(2) subject to Section 1314, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

SECTION 1312. INTENT TO EXERCISE: DETERMINING INTENT FROM RESIDUARY CLAUSE.

(a) In this Section:

(1) “Residuary clause” does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(2) “Will” includes a codicil and a testamentary instrument that revises another will.

(b) A residuary clause in a powerholder’s will, or a comparable clause in the powerholder’s revocable trust, manifests the powerholder’s intent to exercise a power of appointment only if:

(1) the terms of the instrument containing the residuary clause do not manifest a contrary intent;

(2) the power is a general power exercisable in favor of the powerholder’s estate;

(3) there is no gift-in-default clause or it is ineffective; and

(4) the powerholder did not release the power.

SECTION 1313. INTENT TO EXERCISE: AFTER-ACQUIRED POWER. Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) except as otherwise provided in subsection (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or it is ineffective.

SECTION 1314. SUBSTANTIAL COMPLIANCE WITH DONOR-IMPOSED FORMAL REQUIREMENT. A powerholder's substantial compliance with a formal requirement of an appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) the powerholder knows of and intends to exercise the power; and

(2) the powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

SECTION 1315. PERMISSIBLE APPOINTMENT.

(a) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(b) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate is restricted to appointing to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(1) make an appointment in any form, with any conditions and limitations, including an appointment in trust to any trustee, in favor of a permissible appointee;

(2) create a general or nongeneral power in a permissible appointee which may be exercisable in favor of persons other than permissible appointees of the original nongeneral power; or

(3) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power.

SECTION 1316. APPOINTMENT TO DECEASED APPOINTEE. Subject to Section 4-11 of the Probate Act of 1975, an appointment to a deceased appointee is ineffective.

SECTION 1317. IMPERMISSIBLE APPOINTMENT.

(a) Except as otherwise provided in Section 1316, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

SECTION 1318. SELECTIVE ALLOCATION DOCTRINE. If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned and appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

SECTION 1319. CAPTURE DOCTRINE: DISPOSITION OF INEFFECTIVELY APPOINTED PROPERTY UNDER GENERAL POWER. To the extent a powerholder of a general power of appointment, other than a power to revoke, amend, or withdraw property from a trust, makes an ineffective appointment:

(a) the gift-in-default clause controls the disposition of the ineffectively appointed property; or

(b) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(1) passes to:

(A) the powerholder if the powerholder is a permissible appointee and living; or

(B) if the powerholder is an impermissible appointee or not living, the powerholder's estate if the estate is a permissible appointee; or

(2) if there is no taker under subsection (b)(1), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

SECTION 1320. DISPOSITION OF UNAPPOINTED PROPERTY UNDER RELEASED OR UNEXERCISED GENERAL POWER. To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to revoke, amend, or withdraw property from a trust:

(a) the gift-in-default clause controls the disposition of the unappointed property; or

(b) if there is no gift-in-default clause or to the extent the clause is ineffective:

(1) except as otherwise provided in subsection (b)(2), the unappointed property passes to:

(A) the powerholder if the powerholder is a permissible appointee and living; or

(B) if the powerholder is an impermissible appointee or not living, the powerholder's estate if the estate is a permissible appointee; or

(2) to the extent the powerholder released the power, or if there is no taker under subsection (b)(1), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

SECTION 1321. DISPOSITION OF UNAPPOINTED PROPERTY UNDER RELEASED OR UNEXERCISED NONGENERAL POWER. To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(a) the gift-in-default clause controls the disposition of the unappointed property; or

(b) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(1) passes to the permissible appointees if:

(A) the permissible appointees are defined and limited; and

(B) the terms of the instrument creating the power do not manifest a contrary intent; or

(2) if there is no taker under subsection (b)(1), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

SECTION 1322. DISPOSITION OF UNAPPOINTED PROPERTY IF PARTIAL APPOINTMENT TO TAKER IN DEFAULT. Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

SECTION 1323. APPOINTMENT TO TAKER IN DEFAULT. If a powerholder of a general power makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised, and the appointee takes under the gift-in-default clause.

SECTION 1324. POWERHOLDER'S AUTHORITY TO REVOKE OR AMEND EXERCISE. A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) the powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation;
or

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

SECTION 1325. DISPOSITION OF TRUST PROPERTY SUBJECT TO POWER.
In disposing of trust property subject to a power of appointment exercisable by an instrument other than a will, a trustee acting in good faith shall have no liability to any appointee or taker in default of appointment for relying upon an instrument believed to be genuine purporting to exercise a power of appointment or for assuming that there is no instrument exercising the power of appointment in the absence of actual knowledge thereof within 3 months of the last date on which the power of appointment may be exercised.

SECTION 1326. DISCLAIMER. As provided by Section 2-7 of the Probate Act of 1975:

(1) A powerholder may disclaim all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

SECTION 1327. AUTHORITY TO RELEASE. A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

SECTION 1328. METHOD OF RELEASE. A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by an instrument manifesting the powerholder's intent by clear and convincing evidence.

SECTION 1329. REVOCATION OR AMENDMENT OF RELEASE. A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

SECTION 1330. POWER TO CONTRACT: PRESENTLY EXERCISABLE POWER OF APPOINTMENT. A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

SECTION 1331. POWER TO CONTRACT: POWER OF APPOINTMENT NOT PRESENTLY EXERCISABLE. A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) is also the donor of the power; and

(2) has reserved the power in a revocable trust.

SECTION 1332. REMEDY FOR BREACH OF CONTRACT TO APPOINT OR NOT TO APPOINT. The remedy for a powerholder's breach of a contract to appoint or not to appoint is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

SECTION 1333. CREDITOR CLAIM: GENERAL POWER CREATED BY POWERHOLDER.

(a) In this section, “power of appointment created by the powerholder” includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder’s estate to the extent provided in 740 ILCS 160/1 *et seq.*

(c) Subject to subsection (b), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder’s estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder’s estate.

(d) Subject to subsections (b) and (c), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

SECTION 1334. CREDITOR CLAIM: GENERAL POWER NOT CREATED BY POWERHOLDER.

(a) Except as otherwise provided in subsection (b), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(2) the powerholder's estate if the power is exercised at the powerholder's death, to the extent the estate is insufficient, subject to the right of the deceased powerholder to direct the source from which liabilities are paid.

(b) Subject to Section 1336(c), a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) of the IRC or Section 2514(c)(1) of the IRC, as amended, is treated for purposes of this Article as a nongeneral power.

SECTION 1335. POWER TO WITHDRAW.

(a) For purposes of Sections 1333 through 1336, and except as otherwise provided in subsection (b), a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(b) A power to withdraw property from a trust ceases to be treated as a presently exercisable general power of appointment upon its lapse, release or waiver.

SECTION 1336. CREDITOR CLAIM: NONGENERAL POWER.

(a) Except as otherwise provided in subsections (b) and (c), appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of 740 ILCS 160/1 *et seq.*

(c) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this Section as a general power.

SECTION 1337. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing the Illinois Uniform Power of Appointment Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1338. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this Section, on and after the effective date of the Code:

(1) this Section applies to a power of appointment created before, on, or after its effective date;

(2) this Section applies to a judicial proceeding concerning a power of appointment commenced on or after its effective date;

(3) this Section applies to a judicial proceeding concerning a power of appointment commenced before its effective date unless the court finds that application of a particular provision of this Section would substantially interfere with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this Section does not apply and the superseded law applies;

(4) a rule of construction or presumption provided in this Section applies to an instrument executed before the effective date of the Section unless there is a clear indication of a contrary intent in the terms of the instrument; and

(5) an act done before the effective date of the Code is not affected by this Section.

(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this State other than this Section before the effective date of the Code, the law continues to apply to the right.

(c) No trustee shall be liable to any person in whose favor a power of appointment may have been exercised for any distribution of property made to persons entitled to take in default of the effective exercise of the power of appointment to the extent that the distribution shall have been completed prior to the effective date of this Code.

ARTICLE 14 PERPETUITIES PROVISIONS

SECTION 1401. SHORT TITLE. Sections 1401-1406 may be cited as the Statute Concerning Perpetuities.

SECTION 1402. PURPOSE. This Article modifies the common law rule of property known as the rule against perpetuities, which, except as modified by statutes in force at the effective date of this Article and by this Article, shall remain in full force and effect.

SECTION 1403. DEFINITIONS AND TERMS. As used in this Article unless the context otherwise requires:

(a) Any reference in this Act to income to be “paid” or to income “payments” or to “receiving” income includes income payable or distributable to or applicable for the benefit of a beneficiary.

(b) “Instrument” means any writing pursuant to which any legal or equitable interest in property or in the income therefrom is affected, disposed of or created.

(c) “Qualified perpetual trust” means any trust created by any written instrument executed on or after January 1, 1998, including an amendment to an instrument in existence prior to that date and the exercise of a power of appointment granted by an instrument executed or amended on or after that date:

(1) to which, by the specific terms governing the trust, the rule against perpetuities does not apply; and

(2) the power of the trustee (or other person to whom the power is properly granted or delegated) to sell property of which is not limited by the trust instrument or any provision of law for any period of time beyond the period of the rule against perpetuities.

SECTION 1404. APPLICATION OF THE RULE AGAINST PERPETUITIES.

(a) The rule against perpetuities shall not apply:

(1) to any disposition of property or interest therein which, at the effective date of this Article, does not violate, or is exempted by statute from the operation of, the common law rule against perpetuities;

(2) to powers of a trustee to sell, lease or mortgage property or to powers which relate to the administration or management of trust assets, including, without limitation, discretionary powers of a trustee to determine what receipts constitute principal and what receipts constitute income and powers to appoint a successor trustee;

(3) to mandatory powers of a trustee to distribute income, or to discretionary powers of a trustee to distribute principal prior to termination of a trust, to a beneficiary having an interest in the principal which is irrevocably vested in quality and quantity;

(4) to discretionary powers of a trustee to allocate income and principal among beneficiaries, but no exercise of any such power after the expiration of the period of the rule against perpetuities is valid;

(5) to leases to commence in the future or upon the happening of a future event, but no such lease shall be valid unless the term thereof actually commences in possession within 40 years from the date of execution of the lease;

(6) to commitments (A) by a lessor to enter into a lease with a subtenant or with the holder of a leasehold mortgage or (B) by a lessee or sublessee to enter into a lease with the holder of a mortgage;

(7) to options in gross or to preemptive rights in the nature of a right of first refusal, but no option in gross shall be valid for more than 40 years from the date of its creation; or

(8) to qualified perpetual trusts as defined in Section 1403.

(b) The period of the rule against perpetuities shall not commence to run in connection with any disposition of property or interest therein, and no instrument shall be regarded as becoming effective for purposes of the rule against perpetuities, and no interest or power shall be deemed to be created for purposes of the rule against perpetuities as long as, by the terms of the instrument, the maker of the instrument has the power to revoke the instrument or to transfer or direct to be transferred to himself the entire legal and equitable ownership of the property or interest therein.

(c) In determining whether an interest violates the rule against perpetuities:

(1) it shall be presumed:

(A) that the interest was intended to be valid;

(B) in the case of an interest conditioned upon the probate of a will, the appointment of an executor, administrator or trustee, the completion of the administration of an estate, the payment of debts, the sale or distribution of property, the determination of

federal or state tax liabilities or the happening of any administrative contingency, that the contingency must occur, if at all, within the period of the rule against perpetuities; and

(C) where the instrument creates an interest in the “widow,” “widower,” or “spouse” of another person, that the maker of the instrument intended to refer to a person who was living at the date that the period of the rule against perpetuities commences to run;

(2) where any interest, but for this subsection, would be invalid because it is made to depend upon any person attaining or failing to attain an age in excess of 21 years, the age specified shall be reduced to 21 years as to every person to whom the age contingency applies;

(3) if, notwithstanding the provisions of subsections (c)(1) and (2) of this Section, the validity of any interest depends upon the possibility of the birth or adoption of a child, (A) no person shall be deemed capable of having a child until he has attained the age of 13 years, (B) any person who has attained the age of 65 years shall be deemed incapable of having a child, (C) evidence shall be admissible as to the incapacity of having a child by a living person who has not attained the age of 65 years, and (D) the possibility of having a child or more remote descendant by adoption shall be disregarded.

(d) Subsections (a)(2), (3) and (6) and subsection (b) of this Section shall be deemed to be declaratory of the law prevailing in this State at the effective date of this Article.

SECTION 1405. TRUSTS.

(a) Subject to the provisions of subsections (e) and (f) of this Section a trust containing any limitation which, but for this subsection, would violate the rule against perpetuities (as modified by Section 1404) shall terminate at the expiration of a period of (A) 21 years after the death of the last to die of all of the beneficiaries of the instrument who were living at the date when the period of the rule against perpetuities commenced to run or (B) 21 years after that date if no beneficiary of the instrument was then living, unless events occur which cause an earlier termination in accordance with the terms of the instrument and then the principal shall be distributed as provided by the instrument.

(b) Subject to the provisions of subsections (c), (d) and (e) of this Section when a trust terminates because of the application of subsection (a) of this Section, the trustee shall distribute the principal to those persons who would be the heirs at law of the maker of the instrument if he died at the expiration of the period specified in subsection (a) of this Section and in the proportions then specified by statute, unless the trust was created by the exercise of a power of appointment and then the principal shall be distributed to the person who would have received it if the power had not been exercised.

(c) Before any distribution of principal is made pursuant to subsection (b) of this Section, the trustee shall distribute, out of principal, to each living beneficiary who, but for termination of the trust because of the application of subsection (a) of this Section, would have been entitled to be

paid income after the expiration of the period specified in subsection (a) of this Section, an amount equal to the present value (determined as provided in subsection (d) of this Section of the income which the beneficiary would have been entitled to be paid after the expiration of that period.

(d) In determining the present value of income for purposes of any distribution to a beneficiary pursuant to subsection (c) of this Section:

(1) when income payments would have been subject in whole or in part to any discretionary power, it shall be assumed:

(A) that the income which would have been paid to an individual income beneficiary would have been the maximum amount of income which could have been paid to him in the exercise of the power;

(B) if the income would or might have been payable to more than one beneficiary, that (except as hereinafter provided) each beneficiary would have received an equal share of the income, unless the instrument specifies less than an equal share as the maximum amount or proportion of income which would have been paid to any beneficiary in the exercise of the power, in which event the maximum specified shall control; and

(C) if the income would or might have been payable to the descendants of the maker of the instrument or of another person, that, unless the instrument provides otherwise, the descendants would have received the income per stirpes;

(2) (A) present value shall be computed on an actuarial basis and there shall be assumed a return of 5%, at simple interest, on the value of the principal from which the beneficiary would have been entitled to receive income; and

(B) where the interest in income was to be for the life of the beneficiary or for the life of another, the computation shall be made on the expectancy set forth in the most recently published American Experience Tables of Mortality and no other evidence of duration or expectancy shall be considered;

(3) if the trustee cannot determine the present value of any income interest in accordance with the provisions of the instrument and the foregoing rules concerning income payments, the present value of the interest shall be deemed to be zero.

(e) This Section applies only when a trust would violate the rule against perpetuities as modified by Section 1404 and does not apply to any trust which would have been valid apart from this Act.

(f) This Section does not apply when a trust violates the rule against perpetuities because the trust estate may not vest in the trustee within the period of the rule.

SECTION 1406. EFFECTIVE DATE. Sections 1401-1405 shall apply only to instruments, including instruments which exercise a power of appointment, which become effective after September 22, 1969.

SECTION 1407. VESTING OF ANY LIMITATION OF PROPERTY. The vesting of any limitation of property, whether created in the exercise of a power of appointment or in any other manner, shall not be regarded as deferred for purposes of the rule against perpetuities merely because the limitation is made to the estate of a person or to a personal representative, or to a trustee under a will, or to take effect on the probate of a will. The provisions of this Section shall apply only to limitations created after the effective date hereof. This Section may be cited as the Perpetuities Vesting Act.

**ARTICLE 15
MISCELLANEOUS PROVISIONS**

SECTION 1501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Code, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact comparable provisions of the Uniform Trust Code.

SECTION 1502. [RESERVED]

SECTION 1503. EFFECTIVE DATE. This Code takes effect upon becoming law.

SECTION 1504. REPEALS. The following Acts and certain Sections of the Probate Act of 1975 are repealed and replaced by this Code:

- (1) Trusts and Trustees Act (765 ILCS 5);
- (2) Trust Accumulation Act (765 ILCS 315);
- (3) Power of Appointment Exercise Act (765 ILCS 320);

(4) Termination of Powers Act (765 ILCS 325);

(5) Section 2-7 of the Probate Act of 1975 (regarding disclaimers) (755 ILCS 5/2-7);

(6) Section 4-2 of the Probate Act of 1975 (regarding testamentary powers of appointment) (755 ILCS 5/4-2); and

(7) Trusts and Dissolutions of Marriage Act (760 ILCS 35).

SECTION 1505. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this Code, on the effective date of this Code:

(1) this Code applies to all trusts created before, on, or after its effective date;

(2) this Code applies to all judicial proceedings concerning trusts commenced on or after its effective date. For this purpose, judicial proceedings include any proceeding before a court or administrative tribunal of this State, and any arbitration or mediation proceedings;

(3) this Code applies to all nonjudicial matters concerning trusts commenced before, on or after its effective date. For this purpose, nonjudicial matters include, but are not limited to, nonjudicial settlement agreements entered into under Section 111, and the grant of any consent, release, ratification, or indemnification;

(4) this Code applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this Code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this Code does not apply and the superseded law applies;

(5) any rule of construction or presumption provided in this Code applies to trust instruments executed before the effective date of the Code unless there is a clear indication of a contrary intent in the trust instrument; and

(6) an act done before the effective date of the Code is not affected by this Code.

(7) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the Code, that statute continues to apply to the right even if it has been repealed or superseded.

(8) This Section shall be construed as pertaining to administration of a trust and shall be available to any trust that is administered in Illinois under Illinois law or that is governed by Illinois law with respect to the meaning and effect of its terms, except to the extent the trust instrument expressly prohibits use of this Section by specific reference to this Section.