



Rep. Ann M. Williams

Filed: 3/3/2017

10000HB2526ham001

LRB100 08824 HEP 21905 a

1 AMENDMENT TO HOUSE BILL 2526

2 AMENDMENT NO. _____. Amend House Bill 2526 by replacing
3 everything after the enacting clause with the following:

4 "Article 1. General provisions and definitions.

5 Section 101. Short title. This Act may be cited as the
6 Illinois Trust Code.

7 Section 102. Scope. Except as otherwise provided, this Code
8 applies to express trusts, charitable or noncharitable, and
9 trusts created pursuant to a statute, judgment, or decree that
10 requires the trust to be administered in the manner of an
11 express trust. The provisions of this Code do not apply to any:

12 (1) land trust;

13 (2) voting trust;

14 (3) security instrument such as a trust deed or
15 mortgage;

- 1 (4) liquidation trust;
- 2 (5) escrow;
- 3 (6) instrument under which a nominee, custodian for
4 property, or paying or receiving agent is appointed;
- 5 (7) trust created by a deposit arrangement in a banking
6 or savings institution, commonly known as a "Totten trust"
7 unless in the trust instrument any of the provisions of
8 this Code are made applicable by specific reference; or
- 9 (8) Grain Indemnity Trust Account or any other trust
10 created under the Grain Code.

11 Section 103. Definitions. In this Code:

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

14 (2) "Ascertainable standard" means a standard relating to
15 an individual's health, education, support, or maintenance
16 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of
17 the Internal Revenue Code and any applicable regulations.

18 (3) "Beneficiary" means a person that:

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

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

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

1 (4) "Charitable interest" means an interest in a trust
2 that:

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

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

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

13 (5) "Charitable organization" means:

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

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

19 (6) "Charitable purpose" means the relief of poverty, the
20 advancement of education or religion, the promotion of health,
21 municipal or other governmental purpose, or another purpose the
22 achievement of which is beneficial to the community.

23 (7) "Charitable trust" means a trust, or portion of a
24 trust, created for a charitable purpose.

25 (8) "Community property" means all personal property,
26 wherever situated, that was acquired as or became, and

1 remained, community property under the laws of another
2 jurisdiction, and all real property situated in another
3 jurisdiction that is community property under the laws of that
4 jurisdiction.

5 (9) "Current beneficiary" means a beneficiary that on the
6 date the beneficiary's qualification is determined is a
7 distributee or permissible distributee of trust income or
8 principal. The term "current beneficiary" includes the holder
9 of a presently exercisable general power of appointment but
10 does not include a person who is a beneficiary only because the
11 person holds any other power of appointment.

12 (10) "Directing party" means any investment trust advisor,
13 distribution trust advisor, or trust protector.

14 (11) "Donor", with reference to a power of appointment,
15 means a person that creates a power of appointment.

16 (12) "Environmental law" means a federal, state, or local
17 law, rule, regulation, or ordinance relating to protection of
18 the environment.

19 (13) "General power of appointment" means a power of
20 appointment exercisable in favor of a powerholder, the
21 powerholder's estate, a creditor of the powerholder, or a
22 creditor of the powerholder's estate.

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

25 (15) "Guardian of the person" means a person appointed by a
26 court to make decisions regarding the support, care, education,

1 health, and welfare of a minor or adult individual.

2 (16) "Incapacitated" or "incapacity" means the inability
3 of an individual to manage property or business affairs because
4 the individual is a minor, adjudicated incompetent, has an
5 impairment in the ability to receive and evaluate information
6 or make or communicate decisions even with the use of
7 technological assistance; or is at a location that is unknown
8 and not reasonably ascertainable. Without limiting the ways in
9 which incapacity may be established, an individual is
10 incapacitated if:

11 (i) a plenary guardian has been appointed for the
12 individual under subsection (c) of Section 11a-12 of the
13 Probate Act of 1975;

14 (ii) a limited guardian has been appointed for the
15 individual under subsection (b) of Section 11a-12 of the
16 Probate Act of 1975 and the court has found that the
17 individual lacks testamentary capacity; or

18 (iii) the individual was examined by a licensed
19 physician who determined that the individual was
20 incapacitated and the physician made a signed written
21 record of the physician's determination within 90 days
22 after the examination and no licensed physician
23 subsequently made a signed written record of the
24 physician's determination that the individual was not
25 incapacitated within 90 days after examining the
26 individual.

1 (17) "Internal Revenue Code" means the Internal Revenue
2 Code of 1986 as amended from time to time and includes
3 corresponding provisions of any subsequent federal tax law.

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

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

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

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

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

24 (23) "Person" means an individual, estate, business or
25 nonprofit entity, public corporation, government or
26 governmental subdivision, agency, or instrumentality, or other

1 legal entity.

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

7 (25) "Power of withdrawal" means a presently exercisable
8 general power of appointment other than a power:

9 (A) exercisable by the powerholder as trustee that is
10 limited by an ascertainable standard; or

11 (B) exercisable by another person only upon consent of
12 the trustee or a person holding an adverse interest.

13 (26) "Powerholder" means a person in which a donor creates
14 a power of appointment.

15 (27) "Presently exercisable power of appointment" means a
16 power of appointment exercisable by the powerholder at the
17 relevant time. The term "presently exercisable power of
18 appointment":

19 (A) includes a power of appointment exercisable only
20 after the occurrence of a specified event, the satisfaction
21 of an ascertainable standard, or the passage of a specified
22 time only after:

23 (i) the occurrence of the specified event;

24 (ii) the satisfaction of the ascertainable
25 standard; or

26 (iii) the passage of the specified time; and

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

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

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

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

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

20 (B) would be a distributee or permissible distributee
21 of trust income or principal if the interests of the
22 distributees described in subparagraph (A) terminated on
23 that date without causing the trust to terminate; or

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

1 (31) "Revocable", as applied to a trust, means revocable by
2 the settlor without the consent of the trustee or a person
3 holding an adverse interest. A revocable trust is deemed
4 revocable during the settlor's lifetime.

5 (32) "Settlor", except as otherwise provided in Sections
6 113 and 1225, means a person, including a testator, who
7 creates, or contributes property to, a trust. If more than one
8 person creates or contributes property to a trust, each person
9 is a settlor of the portion of the trust property attributable
10 to that person's contribution except to the extent another
11 person has the power to revoke or withdraw that portion.

12 (33) "Sign" means, with present intent to authenticate or
13 adopt a record:

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

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

17 (34) "Spendthrift provision" means a term of a trust that
18 restrains both voluntary and involuntary transfer of a
19 beneficiary's interest.

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

26 (36) "Terms of the trust" means the manifestation of the

1 settlor's intent regarding a trust's provisions as expressed in
2 the trust instrument, as may be established by other evidence
3 that would be admissible in a judicial proceeding, or as may be
4 established by court order or nonjudicial settlement
5 agreement.

6 (37) "Trust" means a trust created by will, deed,
7 agreement, declaration, or other written instrument.

8 (38) "Trust accounting" means one or more written
9 communications from the trustee with respect to the accounting
10 year that describe: (A) the trust property, liabilities,
11 receipts, and disbursements, including the amount of the
12 trustee's compensation; (B) the value of the trust assets on
13 hand at the close of the accounting period, to the extent
14 feasible; and (C) all other material facts related to the
15 trustee's administration of the trust.

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

22 (40) "Trustee" includes an original, additional, and
23 successor trustee, and a cotrustee.

24 (41) "Unascertainable beneficiary" means a beneficiary
25 whose identity is uncertain or not reasonably ascertainable.

1 Section 104. Knowledge.

2 (a) Except as provided in subsection (b), a person has
3 knowledge of a fact if the person:

4 (1) has actual knowledge of it;

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

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

8 (b) An organization that conducts activities through
9 employees has notice or knowledge of a fact involving a trust
10 only from the time the information was received by an employee
11 having responsibility to act for the trust, or would have been
12 brought to the employee's attention if the organization had
13 exercised reasonable diligence. An organization exercises
14 reasonable diligence if it maintains reasonable routines for
15 communicating significant information to the employee having
16 responsibility to act for the trust and there is reasonable
17 compliance with the routines. Reasonable diligence does not
18 require an employee of the organization to communicate
19 information unless the communication is part of the
20 individual's regular duties or the individual knows a matter
21 involving the trust would be materially affected by the
22 information.

23 Section 105. Default and mandatory rules.

24 (a) The trust instrument may specify the rights, powers,
25 duties, limitations, and immunities applicable to the trustee,

1 beneficiary, and others and those provisions, if not otherwise
2 contrary to law, shall control, except to the extent
3 specifically provided otherwise in this Section. The
4 provisions of this Code apply to the trust to the extent that
5 they are not inconsistent with specific provisions of the trust
6 instrument.

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

9 (1) the requirements for creating a trust;

10 (2) the duty of a trustee to act in good faith;

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

13 (4) the rules governing designated representatives as
14 provided in Section 307;

15 (5) the 21-year limitation contained in subsection (a)
16 of Section 409;

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

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

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

26 (9) the power of the court under subsection (b) of

1 Section 708 to adjust a trustee's compensation specified in
2 the trust instrument that is unreasonably low or high;

3 (10) for trusts becoming irrevocable after the
4 effective date of this Code, the trustee's duty under
5 paragraph (b) (1) of Section 813.1 to provide information to
6 the qualified beneficiaries;

7 (11) for trusts becoming irrevocable after the
8 effective date of this Code, the trustee's duty under
9 paragraph (b) (2) of Section 813.1 to provide accountings to
10 the current beneficiaries of the trust;

11 (12) for trusts becoming irrevocable after the
12 effective date of this Code, the trustee's duty under
13 paragraph (b) (4) of Section 813.1 to provide accountings to
14 beneficiaries receiving a distribution of the residue of
15 the trust upon a trust's termination;

16 (13) the effect of an exculpatory term under Section
17 1008;

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

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

23 Section 106. Common law of trusts; principles of equity.
24 The common law of trusts and principles of equity supplement
25 this Code, except to the extent modified by this Code or

1 another statute of this State.

2 Section 107. Governing law.

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

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

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

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

14 Section 108. Principal place of administration.

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

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

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

24 (b) A trustee is under a continuing duty to administer the

1 trust at a place appropriate to its purposes, its
2 administration, and the interests of the beneficiaries.

3 (c) Without precluding the right of the court to order,
4 approve, or disapprove a transfer, the trustee, in furtherance
5 of the duty under subsection (b), may transfer the trust's
6 principal place of administration to another State or to a
7 jurisdiction outside of the United States.

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

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

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

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

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

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

23 (e) The authority of a trustee under this Section to
24 transfer a trust's principal place of administration
25 terminates if a qualified beneficiary notifies the trustee of
26 an objection to the proposed transfer on or before the date

1 specified in the notice given under subsection (d).

2 (f) Notwithstanding any other provision of this Code, the
3 trustee has no duty to inform the beneficiaries, or any other
4 interested party, about the availability of this Section and
5 further has no duty to review the trust instrument to determine
6 whether any action should be taken under this Section unless
7 requested to do so by a qualified beneficiary.

8 (g) In connection with a transfer of the trust's principal
9 place of administration, the trustee may transfer some or all
10 of the trust property to a successor trustee designated by the
11 terms of the trust or appointed pursuant to Section 704.

12 Section 109. Methods and waiver of notice.

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

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

25 (c) Notice under this Code or the sending of a document

1 under this Code may be waived by the person to be notified or
2 sent the document.

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

5 (e) Subject to subsection (d), receipt by a beneficiary or
6 other person of a trustee's notice, account, or other report is
7 presumed if the trustee has reasonable procedures in place
8 requiring the mailing or delivery of the notice, account, or
9 report to the beneficiary or other person. This presumption
10 applies to the mailing or delivery of a notice, account, or
11 other report, including any communication required in writing,
12 by electronic means or the provision of access to the
13 information by electronic means so long as the beneficiary or
14 other person has agreed to receive the information by
15 electronic delivery or access.

16 Section 110. Others treated as qualified beneficiaries.

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

21 (b) The Attorney General has the rights of a qualified
22 beneficiary with respect to a charitable trust having its
23 principal place of administration in this State.

24 Section 111. Nonjudicial settlement agreements.

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

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

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

10 (2) Approval of a trustee's report or accounting.

11 (3) Exercise or nonexercise of any power by a trustee.

12 (4) The grant to a trustee of any necessary or
13 desirable administrative power if the grant does not
14 conflict with a clear material purpose of the trust.

15 (5) Questions relating to property or an interest in
16 property held by the trust if the resolution does not
17 conflict with a clear material purpose of the trust.

18 (6) Removal, appointment, or removal and appointment
19 of a trustee, trust advisor, investment advisor,
20 distribution advisor, trust protector, or other holder, or
21 committee of holders, of fiduciary or nonfiduciary powers,
22 including without limitation designation of a plan of
23 succession or procedure to determine successors to any such
24 office.

25 (7) Determination of a trustee's or other fiduciary's
26 compensation.

1 (8) Transfer of a trust's principal place of
2 administration, including, without limitation, to change
3 the law governing administration of the trust.

4 (9) Liability or indemnification of a trustee for an
5 action relating to the trust.

6 (10) Resolution of bona fide disputes related to trust
7 administration, investment, distribution, or other
8 matters.

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

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

15 (13) Termination of the trust, except that court
16 approval of the termination must be obtained in accordance
17 with subsection (d) of this Section, and the court must
18 find that continuance of the trust is not necessary to
19 achieve any clear material purpose of the trust. The court
20 shall consider spendthrift provisions as a factor in making
21 a decision under this subsection, but a spendthrift
22 provision is not necessarily a material purpose of a trust,
23 and the court is not precluded from modifying or
24 terminating a trust because the trust instrument contains
25 spendthrift provisions. Upon termination, the court shall
26 order the distribution of the trust property as agreed by

1 the parties to the agreement, or if the parties cannot
2 agree, then as the court determines is equitable and
3 consistent with the purposes of the trust.

4 (c) If a trust contains a charitable interest, the parties
5 to any proposed nonjudicial settlement agreement affecting the
6 trust shall deliver to the Attorney General's Charitable Trust
7 Bureau written notice of the proposed agreement at least 60
8 days prior to its effective date. The Bureau is not required to
9 take action, but if it objects in a writing delivered to one or
10 more of the parties prior to the proposed effective date, the
11 agreement shall not take effect unless the parties obtain court
12 approval.

13 (d) Any beneficiary or other interested person may request
14 the court to approve any part or all of a nonjudicial
15 settlement agreement, including, without limitation, whether
16 any representation is adequate and without material conflict of
17 interest, if the petition for approval is filed within 60 days
18 after the effective date of the agreement.

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

26 (f) In the trustee's sole discretion, the trustee may, but

1 is not required to, obtain and rely upon an opinion of counsel
2 on any matter relevant to this Section, including, without
3 limitation:

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

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

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

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

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

1 preclude the use of this Section.

2 Section 112. Rules of construction. The rules of
3 construction that apply in this State to the interpretation of
4 wills and the disposition of property by will also apply as
5 appropriate to the interpretation of the trust instrument and
6 the disposition of the trust property. This Code shall be
7 liberally construed and the rule that statutes in derogation of
8 the common law shall be strictly construed does not apply.

9 Section 113. Insurable interest of trustee.

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

15 (1) the insured is:

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

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

20 (2) the trustee determines the life insurance
21 proceeds:

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

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

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

6 (c) Nothing in this Section limits or affects any provision
7 of the Viatical Settlements Act of 2009.

8 Section 114. Gift to a deceased beneficiary under an inter
9 vivos trust.

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

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

25 (c) Except as provided in subsections (a) and (b), if the

1 gift is not to a descendant of the settlor or is not to a class
2 as provided in subsections (a) and (b) and if the beneficiary
3 dies either before or after the settlor and before the gift is
4 to take effect in possession or enjoyment, then the gift shall
5 lapse. If the gift lapses by reason of the death of the
6 beneficiary before the gift is to take effect in possession or
7 enjoyment, then the gift so given shall be included in and pass
8 as part of the residue of the trust under the trust. If the
9 gift is or becomes part of the residue, the gift so bequeathed
10 shall pass to and be taken by the beneficiaries remaining, if
11 any, of the residue in proportions and upon trusts
12 corresponding to their respective interests in the residue of
13 the trust. The provisions of subsections (a) and (b) do not
14 apply to a future interest that is or becomes indefeasibly
15 vested at the settlor's death or at any time thereafter before
16 it takes effect in possession or enjoyment. The provisions of
17 this Section apply on and after January 1, 2005 for any gifts
18 to a deceased beneficiary under an inter vivos trust if the
19 deceased beneficiary dies after January 1, 2005 and before the
20 gift is to take effect in possession or enjoyment.

21 Article 2. Judicial proceedings.

22 Section 201. Role of court in administration of trusts.

23 (a) The court may adjudicate any matter arising in the
24 administration of a trust to the extent its jurisdiction is

1 invoked by an interested person or as provided by law.

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

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

7 Section 202. Jurisdiction over trustee and beneficiary.

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

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

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

1 Section 301. Representation: basic effect.

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

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

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

12 (b) Except as otherwise provided in Section 602, a person
13 under this Article who represents a settlor who is
14 incapacitated may, on the settlor's behalf: (i) receive notice,
15 information, accountings, or reports; (ii) give a binding
16 consent; or (iii) enter a binding agreement.

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

22 (d) If pursuant to this Article a person may be represented
23 by 2 or more representatives, then the representative who has
24 legal capacity, in the following order of priority, shall
25 represent and bind the person:

1 (1) a representative or guardian ad litem appointed by
2 a court under Section 305;

3 (2) the holder of a power of appointment under Section
4 302;

5 (3) a designated representative under Section 307;

6 (4) a court-appointed guardian of the estate, or, if
7 none, a court-appointed guardian of the person under
8 subsection (b) of Section 303;

9 (5) an agent under a power of attorney for property
10 under subsection (c) of Section 303;

11 (6) a parent of a person under subsection (d) of
12 Section 303;

13 (7) another person having a substantially similar
14 interest with respect to the particular question or dispute
15 under subsection (a) of Section 304; and

16 (8) a representative under this Article for a person
17 who has a substantially similar interest to a person who
18 has a representative under subsection (b) of Section 304.

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

24 Section 302. Representation by holders of certain powers.

25 (a) The holder of a testamentary or a presently exercisable

1 power of appointment that is: (1) a general power of
2 appointment; or (2) exercisable in favor of all persons other
3 than the powerholder, the powerholder's estate, a creditor of
4 the powerholder, or a creditor of the powerholder's estate, may
5 represent and bind all persons, including permissible
6 appointees and takers in default, whose interests may be
7 eliminated by the exercise or nonexercise of the power.

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

16 Section 303. Representation by others.

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

24 (b) If a person is represented by a court-appointed
25 guardian of the estate or, if none, guardian of the person,

1 then the guardian may represent and bind the person.

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

13 (d) If a person is incapacitated, a parent of the person
14 may represent and bind the person if there is no material
15 conflict of interest between the represented person and either
16 of the person's parents with respect to the particular question
17 or dispute. If a disagreement arises between parents who
18 otherwise qualify to represent a child in accordance with this
19 subsection and who are seeking to represent the same child, the
20 parent who is a lineal descendant of the settlor of the trust
21 that is the subject of the representation is entitled to
22 represent the child; or if none, the parent who is a
23 beneficiary of the trust is entitled to represent the child.

24 Section 304. Representation by person having substantially
25 identical interest.

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

8 (b) A guardian, agent, or parent who is the representative
9 for a beneficiary under subsection (b), (c), or (d) of Section
10 303 may, for all purposes, represent and bind any other
11 beneficiary who is incapacitated, unborn, or unascertainable
12 and who has an interest, with respect to the particular
13 question or dispute, that is substantially similar to the
14 interest of the beneficiary represented by the representative,
15 but only to the extent that there is no material conflict of
16 interest between the beneficiary represented by the
17 representative and the other beneficiary with respect to the
18 particular question or dispute.

19 Section 305. Appointment of representative.

20 (a) If the court determines that representation of an
21 incapacitated, unborn, or unascertainable beneficiary might
22 otherwise be inadequate, the court may appoint a representative
23 for any nonjudicial matter to receive any notice, information,
24 accounting, or report on behalf of the beneficiary and to
25 represent and bind the beneficiary, or may appoint a guardian

1 ad litem in any judicial proceeding to represent the interests
2 of, bind, and approve any order or agreement on behalf of the
3 beneficiary.

4 (b) A representative may act on behalf of the individual
5 represented with respect to any matter arising under this Code,
6 regardless of whether a judicial proceeding concerning the
7 trust or estate is pending.

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

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

15 Section 306. Representation of charity. If a trust contains
16 a charitable interest, the Attorney General may, in accordance
17 with this Section, represent, bind, and act on behalf of the
18 charitable interest with respect to any particular question or
19 dispute, including without limitation representing the
20 charitable interest in a nonjudicial settlement agreement
21 under Section 111, in an agreement to convert a trust to a
22 total return trust under Article 11, or in a distribution in
23 further trust under Article 12. A charitable organization that
24 is specifically named as beneficiary of a trust or otherwise
25 has a beneficial interest in a trust may act for itself.

1 Notwithstanding any other provision, nothing in this Section
2 shall be construed to limit or affect the Attorney General's
3 authority to file an action or take other steps as he or she
4 deems advisable at any time to enforce or protect the general
5 public interest as to a trust that provides a beneficial
6 interest or expectancy for one or more charitable organizations
7 or charitable purposes whether or not a specific charitable
8 organization is named in the trust. This Section shall be
9 construed as declarative of existing law and not as a new
10 enactment.

11 Section 307. Designated representative.

12 (a) If specifically nominated in the trust instrument, one
13 or more individuals with legal capacity may be designated to
14 represent and bind an individual who is a qualified
15 beneficiary. The trust instrument may also authorize any person
16 or persons, other than a trustee of the trust, to designate one
17 or more individuals with legal capacity to represent and bind
18 an individual who is a qualified beneficiary. Any person so
19 nominated or designated is referred to in this Section as a
20 "designated representative".

21 (b) Notwithstanding subsection (a):

22 (1) A designated representative may not represent and
23 bind a current beneficiary who is age 30 or older and is
24 not incapacitated.

25 (2) A designated representative may not represent and

1 bind a qualified beneficiary while the designated
2 representative is serving as a trustee.

3 (3) Subject to paragraphs (1) and (2) of this
4 subsection (b), a designated representative may not
5 represent and bind a qualified beneficiary if the
6 designated representative is also a qualified beneficiary
7 of the trust, unless:

8 (A) the designated representative was specifically
9 nominated in the trust instrument; or

10 (B) the designated representative is the qualified
11 beneficiary's spouse or a grandparent or descendant of
12 a grandparent of the qualified beneficiary or of the
13 qualified beneficiary's spouse.

14 (c) Each designated representative is a fiduciary of the
15 trust subject to the standards applicable to a trustee of a
16 trust under applicable law.

17 (d) In no event may a designated representative be relieved
18 or exonerated from the duty to act, or withhold from acting, in
19 good faith and as the designated representative reasonably
20 believes is in the best interest of the represented qualified
21 beneficiary.

22 Article 4. Creation, validity, modification, and termination
23 of trust.

24 Section 401. Methods of creating trust. A trust may be

1 created by:

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

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

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

9 Section 402. Requirements for creation.

10 (a) A trust is created only if:

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

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

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

15 (A) a charitable trust;

16 (B) a trust for the care of an animal, as provided
17 in Section 408; or

18 (C) a trust for a noncharitable purpose, as
19 provided in Section 409;

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

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

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

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

6 Section 403. Trusts created in other jurisdictions. A trust
7 not created by will is validly created if its creation complies
8 with the law of the jurisdiction in which the trust instrument
9 was executed, or the law of the jurisdiction in which, at the
10 time of creation:

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

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

15 (3) any trust property was located.

16 Section 404. Trust purposes. A trust may be created only to
17 the extent its purposes are lawful and not contrary to public
18 policy.

19 Section 405. Charitable purposes; enforcement.

20 (a) A charitable trust may be created for any charitable
21 purpose.

22 (b) If the terms of a charitable trust do not indicate a
23 particular charitable purpose or beneficiary and do not

1 delegate to the trustee or others willing to exercise the
2 authority to select one or more charitable purposes or
3 beneficiaries, then the court may select one or more charitable
4 purposes or beneficiaries. The selection must be consistent
5 with the settlor's intention to the extent it can be
6 ascertained.

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

9 Section 406. Creation of trust induced by fraud, duress, or
10 undue influence. If the creation, amendment, or restatement of
11 a trust is procured by fraud, duress, mistake, or undue
12 influence, the trust or any part so procured is void. The
13 remainder of the trust not procured by such means is valid if
14 the remainder is not invalid for other reasons. If the
15 revocation of a trust, or any part of the trust, is procured by
16 fraud, duress, mistake, or undue influence, the revocation is
17 void.

18 Section 407. Evidence of oral trust. Except as required by
19 a statute other than this Code, a trust need not be evidenced
20 by a trust instrument, but the creation of an oral trust and
21 its terms may be established only by clear and convincing
22 evidence.

23 Section 408. Trusts for domestic or pet animals.

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

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

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

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

18 (A) as directed in the trust instrument;

19 (B) to the settlor, if then living;

20 (C) if there is no direction in the trust
21 instrument and if the trust was created in a
22 non-residuary clause in the transferor's will, then
23 under the residuary clause in the transferor's will;

24 (D) to the transferor's heirs under Section 2-1 of
25 the Probate Act of 1975.

26 (3) The intended use of the principal or income may be

1 enforced by an individual designated for that purpose in
2 the trust instrument or, if none, by an individual
3 appointed by a court having jurisdiction of the matter and
4 parties, upon petition to it by an individual.

5 (4) Except as ordered by the court or required by the
6 trust instrument, no filing, report, registration,
7 periodic accounting, separate maintenance of funds,
8 appointment, or fee is required by reason of the existence
9 of the fiduciary relationship of the trustee.

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

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

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

1 Section 409. Noncharitable trust without ascertainable
2 beneficiary.

3 (a) Except as otherwise provided in Section 408 or by
4 another statute, a trust may be created for a noncharitable
5 purpose without a definite or definitely ascertainable
6 beneficiary or for a noncharitable but otherwise valid purpose
7 to be selected by the trustee.

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

12 (1) as directed in the trust instrument;

13 (2) to the settlor, if then living;

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

17 (4) to the transferor's heirs under Section 2-1 of the
18 Probate Act of 1975.

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

22 (d) Property of a trust authorized by this Section may be
23 applied only to its intended use, except to the extent the
24 court determines that the value of the trust property exceeds
25 the amount required for the intended use. Property not required

1 for the intended use must be distributed as provided in
2 subsection (b) of this Section.

3 Section 410. Modification or termination of trust;
4 proceedings for approval or disapproval.

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

11 (b) A proceeding to approve or disapprove a proposed
12 modification or termination under Sections 411 through 416, or
13 trust combination or division under Section 417, may be
14 commenced by a trustee or beneficiary or by the Attorney
15 General for a trust with a charitable interest. The settlor of
16 a charitable trust may maintain a proceeding to modify the
17 trust under Section 413.

18 Section 411. Modification or termination of noncharitable
19 irrevocable trust by consent.

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

24 (b) A noncharitable irrevocable trust may be modified upon

1 consent of all of the beneficiaries if the court concludes that
2 modification is not inconsistent with any material purpose of
3 the trust.

4 (c) The court shall consider spendthrift provisions as a
5 factor in making a decision under this Section, but the court
6 is not precluded from modifying or terminating a trust because
7 the trust contains spendthrift provisions.

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

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

15 (1) if all of the beneficiaries had consented, the
16 trust could have been modified or terminated under this
17 Section; and

18 (2) a beneficiary who does not consent is treated
19 equitably and consistent with the purposes of the trust.

20 Section 412. Modification or termination because of
21 unanticipated circumstances or inability to administer trust
22 effectively.

23 (a) The court may modify the administrative or dispositive
24 terms of a trust or terminate the trust if, because of
25 circumstances not anticipated by the settlor, modification or

1 termination will further the purposes of the trust. To the
2 extent practicable, the modification must be made in accordance
3 with the settlor's probable intention.

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

8 (c) Upon termination of a trust under this Section, the
9 court shall order the distribution of the trust property as
10 agreed by the beneficiaries, or if the beneficiaries cannot
11 agree, then as the court determines is equitable and consistent
12 with the purposes of the trust.

13 (d) Notwithstanding any other provision of this Section, if
14 the trust contains a charitable interest, the modification may
15 not diminish the charitable interest or alter the charitable
16 purpose, except as is permitted under Section 413, and upon
17 termination of a trust under this Section, any charitable
18 distribution shall be made in a manner consistent with the
19 settlor's charitable purpose as determined by the court.

20 Section 413. Cy pres.

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

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

25 (2) the trust property does not revert to the settlor

1 or the settlor's successors in interest; and

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

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

11 (1) the trust property is to revert to the settlor and
12 the settlor is still living; or
13 (2) fewer than 21 years have elapsed since the date of
14 the trust's creation.

15 Section 414. Modification or termination of uneconomic
16 trust.

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

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

1 cost of administration.

2 (c) Upon termination of a trust under this Section, the
3 trustee shall distribute the trust property to the current
4 beneficiaries in the proportions to which they are entitled to
5 mandatory current distributions, or if their interests are
6 indefinite, to the current beneficiaries per stirpes if they
7 have a common ancestor, or if not, then in equal shares. The
8 trustee shall give notice to the current beneficiaries at least
9 30 days prior to the effective date of the termination.

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

12 (e) If a particular trustee is a current beneficiary of the
13 trust or is legally obligated to a current beneficiary, then
14 that particular trustee may not participate as a trustee in the
15 exercise of this termination power; provided, however, that if
16 the trust has one or more cotrustees who are not so
17 disqualified from participating, the cotrustee or cotrustees
18 may exercise this power.

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

23 Section 415. Reformation to correct mistakes. The court may
24 reform the terms of a trust, even if unambiguous, to conform
25 the terms to the settlor's intention if it is proved by clear

1 and convincing evidence what the settlor's intention was and
2 that the terms of the trust instrument were affected by a
3 mistake of fact or law, whether in expression or inducement.

4 Section 416. Modification to achieve settlor's tax
5 objectives. To achieve the settlor's tax objectives, the court
6 may modify the terms of a trust in a manner that is not
7 contrary to the settlor's probable intention. The court may
8 provide that the modification has retroactive effect.

9 Section 417. Combination and division of trusts.

10 (a) Subject to subsections (b), (c), and (d) of this
11 Section, after notice to the qualified beneficiaries, a trustee
12 may:

13 (1) consolidate 2 or more trusts having substantially
14 similar terms into a single trust;

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

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

19 (b) No consolidation, severance, or segregation may be made
20 if the result impairs the rights of any beneficiary or
21 adversely affects achievement of the material purposes of the
22 subject trust or trusts.

23 (c) A severance or consolidation may be made for any reason
24 including to reflect a partial disclaimer, to reflect

1 differences in perpetuities periods, to reflect or result in
2 differences in federal or state tax attributes, to satisfy any
3 federal tax requirement or election, or to reduce potential
4 generation-skipping transfer tax liability, and shall be made
5 in a manner consistent with the rules governing disclaimers,
6 federal tax attributes, requirements or elections, or any
7 applicable federal or state tax rules or regulations.

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

10 (1) shall be treated as a separate trust for all
11 purposes on and after the effective date of the severance
12 or segregation; and

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

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

1 beneficiary is held subject to a "spendthrift trust", or words
2 of similar import, is sufficient to restrain both voluntary and
3 involuntary transfer of the beneficiary's interest.

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

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

12 Section 503. Exceptions to spendthrift provision.

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

16 (b) A spendthrift provision is unenforceable against:

17 (1) a beneficiary's child, spouse, or former spouse who
18 has a judgment or court order against the beneficiary for
19 child support obligations owed by the beneficiary as
20 provided in the Income Withholding for Support Act, the
21 Non-Support Punishment Act, the Illinois Parentage Act of
22 2015, the Illinois Marriage and Dissolution of Marriage
23 Act, and similar provisions of other Acts that provide for
24 the support of a child;

25 (2) a judgment creditor who has provided services for

1 the protection of a beneficiary's interest in the trust;
2 and

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

5 (c) Except as otherwise provided in this subsection and in
6 Section 504, a claimant against which a spendthrift provision
7 cannot be enforced may obtain from a court an order attaching
8 present or future distributions to or for the benefit of the
9 beneficiary. The court may limit the award to such relief as is
10 appropriate under the circumstances. Notwithstanding this
11 subsection, the remedies provided in this subsection apply to a
12 claim for unpaid child support obligations by a beneficiary's
13 child, spouse, former spouse, judgment creditor, or claim
14 described in subsection (b) only as a last resort upon an
15 initial showing that traditional methods of enforcing the claim
16 are insufficient.

17 Section 504. Discretionary distributions; effect of
18 standard.

19 (a) As used in this Section, "discretionary distribution"
20 means a distribution that is subject to the trustee's
21 discretion regardless of whether the discretion is expressed in
22 the form of a standard of distribution and regardless of
23 whether the trustee has abused the discretion.

24 (b) Regardless of whether a trust contains a spendthrift
25 provision, and regardless of whether the beneficiary is acting

1 as trustee, if a trustee may make discretionary distributions
2 to or for the benefit of a beneficiary, a creditor of the
3 beneficiary, including a creditor described in subsection (b)
4 of Section 503, may not:

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

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

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

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

21 Section 505. Creditor's claim against settlor.

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

24 (1) During the lifetime of the settlor, the property of
25 a revocable trust is subject to claims of the settlor's

1 creditors to the extent the property would not otherwise be
2 exempt by law if owned directly by the settlor.

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

10 (3) Notwithstanding the provisions of paragraph (2),
11 the assets of an irrevocable trust may not be subject to
12 the claims of an existing or subsequent creditor or
13 assignee of the settlor, in whole or in part, solely
14 because of the existence of a discretionary power granted
15 to the trustee by the terms of the trust instrument, or any
16 other provision of law, to pay directly to the taxing
17 authorities or to reimburse the settlor for any tax on
18 trust income or principal that is payable by the settlor
19 under the law imposing the tax.

20 (4) Paragraph (2) does not apply to the assets of an
21 irrevocable trust established for the benefit of a person
22 with a disability that meets the requirements of 42 U.S.C.
23 1396p(d)(4) or similar federal law governing the transfer
24 to such a trust.

25 (5) After the death of a settlor, and subject to the
26 settlor's right to direct the source from which liabilities

1 will be paid, the property of a trust that was revocable at
2 the settlor's death is subject to claims of the settlor's
3 creditors, costs of administration of the settlor's
4 estate, the expenses of the settlor's funeral and disposal
5 of remains, and statutory allowances to a surviving spouse
6 and children to the extent the settlor's probate estate is
7 inadequate to satisfy those claims, costs, expenses, and
8 allowances. Distributees of the trust take property
9 distributed after payment of such claims; subject to the
10 following conditions:

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

17 (B) with respect to claims, expenses, and taxes in
18 connection with the settlement of the settlor's
19 estate, any claim of a creditor that would be barred
20 against the personal representative of a settlor's
21 estate or the estate of the settlor is barred against
22 the trust property of a trust that was revocable at the
23 settlor's death, the trustee of the revocable trust,
24 and the beneficiaries of the trust; and

25 (C) Sections 18-10 and 18-13 of the Probate Act of
26 1975, detailing the classification and priority of

1 payment of claims, expenses, and taxes from the probate
2 estate of a decedent, or comparable provisions of the
3 law of the deceased settlor's domicile at death if not
4 Illinois, apply to a revocable trust to the extent the
5 assets of the settlor's probate estate are inadequate
6 and the personal representative or creditor or taxing
7 authority of the settlor's estate has perfected its
8 right to collect from the settlor's revocable trust.

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

14 (A) the trustee made the distribution 6 months or
15 later after the settlor's death; and

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

23 (b) For purposes of this Section:

24 (1) during the period the power may be exercised, the
25 holder of a power of withdrawal is treated in the same
26 manner as the settlor of a revocable trust to the extent of

1 the property subject to the power; and

2 (2) upon the lapse, release, or waiver of the power,
3 the holder is treated as the settlor of the trust only to
4 the extent the value of the property affected by the lapse,
5 release, or waiver exceeds the greater of the amount
6 specified in Section 2041(b)(2) or 2514(e) of the Internal
7 Revenue Code.

8 Section 506. Overdue distribution.

9 (a) In this Section, "mandatory distribution" means a
10 distribution of income or principal that the trustee is
11 required to make to a beneficiary under the trust instrument,
12 including a distribution upon termination of the trust. The
13 term does not include a distribution subject to the exercise of
14 the trustee's discretion even if (1) the discretion is
15 expressed in the form of a standard of distribution, or (2) the
16 terms of the trust instrument authorizing a distribution couple
17 language of discretion with language of direction.

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

24 Section 507. Personal obligations of trustee. Trust

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

3 Section 508. Lapse of power to withdraw. A beneficiary of a
4 trust may not be considered to be a settlor or to have made a
5 transfer to the trust merely because of a lapse, release, or
6 waiver of his or her power of withdrawal to the extent that the
7 value of the affected property does not exceed the greatest of
8 the amounts specified in Sections 2041(b)(2), 2514(e), and
9 2503(b) of the Internal Revenue Code.

10 Section 509. Trust for disabled beneficiary.

11 (a) In this Section, "discretionary trust" means a trust in
12 which the trustee has discretionary power to determine
13 distributions to be made under the trust.

14 (b) A discretionary trust for the benefit of an individual
15 who is incapacitated other than by reason of being a minor or
16 an individual whose location is uncertain, or who otherwise has
17 a disability that substantially impairs the individual's
18 ability to provide for his or her own care or custody and
19 constitutes a substantial disability, is not be liable to pay
20 or reimburse this State or any public agency for financial aid
21 or services to the individual except to the extent the trust
22 was created by the individual or trust property has been
23 distributed directly to or is otherwise under the control of
24 the individual, except that this exception does not apply to a

1 trust created with the individual with a disability's own
2 property or property within his or her control if the trust
3 complies with Medicaid reimbursement requirements of federal
4 law. Notwithstanding any other provisions, a trust created with
5 the individual with a disability's own property or property
6 within his or her control is liable, after the reimbursement of
7 Medicaid expenditures, to this State for reimbursement of any
8 other service charges outstanding at the death of the
9 individual with a disability. Property, goods, and services
10 purchased or owned by a trust for and used or consumed by a
11 beneficiary with a disability shall not be considered trust
12 property distributed to or under the control of the
13 beneficiary.

14 Article 6. Revocable trusts.

15 Section 601. Capacity of settlor of revocable trust. The
16 capacity required of the settlor to create, amend, revoke in
17 whole or in part, or add property to a revocable trust is the
18 same as that required to make a will.

19 Section 602. Revocation or amendment of revocable trust.

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

1 that the trust is revocable or amendable by the settlor.

2 (b) If a revocable trust has more than one settlor:

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

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

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

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

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

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

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

26 (e) A settlor's powers with respect to revocation,

1 amendment, or distribution of trust property may not be
2 exercised by an agent under a power of attorney unless
3 expressly authorized by the power and not prohibited by the
4 trust instrument.

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

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

14 Section 603. Settlor's powers; powers of withdrawal.

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

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

25 (c) Except as provided in subsection (d), only the settlor,

1 a representative of the settlor under Article 3 during the
2 settlor's lifetime if the settlor is incapacitated, and the
3 representative of the settlor's estate after the settlor's
4 death have standing to contest, challenge, or bring any
5 proceeding in any court regarding any action of the trustee of
6 a revocable trust taken or not taken while the trust is
7 revocable.

8 (d) An individual who is or was a current beneficiary
9 during the settlor's lifetime, a representative of such an
10 individual under Article 3 or the representative of such
11 individual's estate after the individual's death, has standing
12 to contest, challenge, or bring any proceeding in any court
13 regarding any action of the trustee of a revocable trust while
14 the trust is revocable but the settlor does not personally have
15 capacity to revoke the trust, but only to the extent the action
16 of the trustee affects the interest of the individual as a
17 current beneficiary of the trust during the lifetime of the
18 settlor while the settlor does not personally have the capacity
19 to revoke the trust.

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

24 Section 604. Limitation on action contesting validity of
25 revocable trust; distribution of trust property.

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

4 (1) 2 years after the settlor's death; or

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

9 (B) in the case of a trust other than a trust described
10 in subdivision (A), 6 months after the trustee sent the
11 person a copy of the trust instrument and a notice
12 informing the person of the trust's existence, of the
13 trustee's name and address, and of the 6 month period
14 allowed for commencing a proceeding.

15 (b) Nine months after the death of the settlor of a trust
16 that was revocable at the settlor's death, the trustee may
17 proceed to distribute the trust property in accordance with the
18 trust instrument. The trustee is not subject to liability for
19 doing so unless:

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

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

26 (c) A beneficiary of a trust that was revocable at the

1 settlor's death that is determined to have been invalid is
2 liable to return any distribution received and all income and
3 appreciation associated with the distribution from the date of
4 receipt until the date of return of the distribution.

5 Section 605. Revocation of provisions in revocable trust by
6 divorce or annulment

7 (a) As used in this Section:

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

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

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

18 (4) Notwithstanding the definition of "revocable" in
19 Section 103, a provision is revocable by the settlor if the
20 settlor has the power at the time of the entry of the
21 judgment or judicial termination of marriage of the settlor
22 to revoke, modify, or amend the provision, either alone or
23 in conjunction with any other person or persons.

24 (b) Unless the trust instrument or the judgment of judicial
25 termination of marriage expressly provides otherwise, judicial

1 termination of marriage of the settlor of a trust revokes every
2 provision that is revocable by the settlor pertaining to the
3 settlor's former spouse in a trust instrument or amendment
4 executed by the settlor before the entry of the judgment of
5 judicial termination of marriage of the settlor and any such
6 trust shall be administered and construed as if the settlor's
7 former spouse had died upon entry of the judgment of judicial
8 termination of marriage.

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

15 (d) Notwithstanding Section 102, the provisions of this
16 Section may be made applicable by specific reference in the
17 trust instrument to this Section in any (1) land trust; (2)
18 voting trust; (3) security instrument such as a trust deed or
19 mortgage; (4) liquidation trust; (5) escrow; (6) instrument
20 under which a nominee, custodian for property or paying or
21 receiving agent is appointed; or (7) trust created by a deposit
22 arrangement in a bank or savings institution, commonly known as
23 "Totten Trust".

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

1 Article 7. Office of trustee.

2 Section 701. Accepting or declining trusteeship.

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

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

7 (2) if the trust instrument does not provide a method
8 or the method provided in the trust instrument is not
9 expressly made exclusive, by accepting delivery of the
10 trust property, exercising powers or performing duties as
11 trustee, or otherwise indicating acceptance of the
12 trusteeship.

13 (b) A person designated as trustee who has not yet accepted
14 the trusteeship may decline the trusteeship. A designated
15 trustee who does not accept the trusteeship within 120 days
16 after receiving notice of the designation is deemed to have
17 declined the trusteeship.

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

20 (1) act to preserve the trust property if, within 120
21 days after receiving notice of the designation, the person
22 sends a declination of the trusteeship to the settlor or,
23 if the settlor is deceased or incapacitated, to the
24 qualified beneficiaries; and

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

4 (d) A person acting under subsection (c) is not liable for
5 actions taken in good faith.

6 Section 702. Trustee's bond.

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

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

15 (c) A corporate fiduciary, as defined in Section 1-5.05 of
16 the Corporate Fiduciary Act, that is qualified to do trust
17 business in this State need not give bond, even if required by
18 the terms of the trust.

19 Section 703. Cotrustees.

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

23 (b) If a vacancy occurs in a cotrusteeship, subsection (b)
24 of Section 704 applies.

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

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

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

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

21 (g) Each trustee who is not an excluded fiduciary under
22 Section 808 shall exercise reasonable care to:

23 (1) prevent a cotrustee from committing a serious
24 breach of trust; and

25 (2) compel a cotrustee to redress a serious breach of
26 trust.

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

6 Section 704. Vacancy in trusteeship; appointment of
7 successor.

8 (a) A vacancy in a trusteeship occurs if:

9 (1) a person designated as trustee declines the
10 trusteeship;

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

13 (3) a trustee resigns;

14 (4) a trustee is disqualified or removed;

15 (5) a trustee dies;

16 (6) a guardian is appointed for an individual serving
17 as trustee; or

18 (7) an individual serving as trustee becomes
19 incapacitated.

20 (b) If one or more cotrustees remain in office, a vacancy
21 in a trusteeship need not be filled and the remaining
22 cotrustees or trustee may act for the trust. A vacancy in a
23 trusteeship must be filled if the trust has no remaining
24 trustee, or if the existing vacancy impairs the administration
25 of the trust as determined by the remaining trustees.

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

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

5 (2) by a person appointed by a majority of the
6 beneficiaries who are distributees or permissible
7 distributees of trust income; or

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

9 (d) If a trust contains a charitable interest, then the
10 appointment of a successor trustee provided under paragraph (2)
11 of subsection (c) of this Section shall not take effect until
12 30 days after written notice is delivered to the Attorney
13 General's Charitable Trust Bureau. The Attorney General may
14 waive this notice requirement.

15 Section 705. Resignation of trustee.

16 (a) A trustee may resign:

17 (1) upon notice to the settlor, if living, to the
18 beneficiaries who are distributees or permissible
19 distributees of trust income, and all cotrustees; or

20 (2) with the approval of the court.

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

24 (c) Any liability of a resigning trustee or of any sureties
25 on the trustee's bond for acts or omissions of the trustee is

1 not discharged or affected by the trustee's resignation.

2 Section 706. Removal of trustee.

3 (a) A settlor, a cotrustee, or a qualified beneficiary may
4 request the court to remove a trustee, or a trustee may be
5 removed by the court on its own initiative.

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

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

9 (2) lack of cooperation among cotrustees substantially
10 impairs the administration of the trust;

11 (3) because of unfitness, unwillingness, or persistent
12 failure of the trustee to administer the trust effectively,
13 the court determines that removal of the trustee best
14 serves the purposes of the trust and the interests of the
15 beneficiaries; or

16 (4) there has been a substantial change of
17 circumstances or removal is requested by all of the
18 qualified beneficiaries, the court finds that removal of
19 the trustee best serves the interests of all of the
20 beneficiaries and is not inconsistent with any material
21 purpose of the trust, and a suitable cotrustee or successor
22 trustee is available.

23 (c) Pending a final decision on a request to remove a
24 trustee, or in lieu of or in addition to removing a trustee,
25 the court may order such appropriate relief under subsection

1 (b) of Section 1001 as may be necessary to protect the trust
2 property or the interests of the beneficiaries.

3 Section 707. Delivery of property by former trustee.

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

9 (b) A trustee who has resigned or been removed shall
10 proceed expeditiously to deliver the trust property within the
11 trustee's possession to the cotrustee, successor trustee, or
12 other person entitled to it.

13 Section 708. Compensation of trustee.

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

17 (b) If the trust instrument specifies the trustee's
18 compensation, the trustee is entitled to be compensated as
19 specified, but the court may allow more or less compensation
20 if:

21 (1) the duties of the trustee are substantially
22 different from those contemplated when the trust was
23 created; or

24 (2) the compensation specified by the trust instrument

1 would be unreasonably low or high.

2 Section 709. Reimbursement of expenses.

3 (a) A trustee is entitled to be reimbursed out of the trust
4 property, with interest as appropriate, for:

5 (1) expenses that were properly incurred in the
6 administration and protection of the trust; and

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

10 (b) An advance by the trustee of money for the protection
11 of the trust gives rise to a right to reimbursement with
12 reasonable interest.

13 Article 8. Duties and powers of trustee.

14 Section 801. Duty to administer trust. Upon acceptance of a
15 trusteeship, the trustee shall administer the trust in good
16 faith, in accordance with its purposes and the terms of the
17 trust instrument, and in accordance with this Code.

18 Section 802. Duty of loyalty.

19 (a) Subject to the rights of persons dealing with or
20 assisting the trustee as provided in Section 1012, a sale,
21 encumbrance, or other transaction involving the investment or
22 management of trust property entered into by the trustee for

1 the trustee's own personal account or that is otherwise
2 affected by a conflict between the trustee's fiduciary and
3 personal interests is voidable by a beneficiary affected by the
4 transaction unless:

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

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

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

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

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

18 A trustee shall disgorge to the trust any profit from a
19 transaction that is voided under this subsection (a).

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

24 (1) the trustee's spouse;

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

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

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

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

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

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

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

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

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

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

13 (4) the entry of an agreement for a bank or other
14 deposit account, safe deposit box, custodian, agency, or
15 depository arrangement for all or any part of the trust
16 property, including an agreement for services provided by a
17 bank operated by or affiliated with the trustee, and the
18 payment of reasonable compensation for those services,
19 including compensation to the bank operated by or
20 affiliated with the trustee, except that nothing in this
21 paragraph shall be construed as removing any depository
22 arrangements from the requirements of the prudent investor
23 rule; or

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

26 (h) The court may appoint a special fiduciary to make a

1 decision with respect to any proposed transaction that might
2 violate this Section if entered into by the trustee.

3 Section 803. Impartiality. If a trust has 2 or more
4 beneficiaries, the trustee shall act impartially in investing,
5 managing, and distributing the trust property giving due regard
6 to the beneficiaries respective interests. The trustee must
7 treat the beneficiaries equitably in light of the purposes and
8 terms of the trust, including any manifestation of an intention
9 to favor one or more beneficiaries.

10 Section 804. Prudent administration. A trustee shall
11 administer the trust as a prudent person would, by considering
12 the purposes, terms, distribution requirements, and other
13 circumstances of the trust. In satisfying this standard, the
14 trustee shall exercise reasonable care, skill, and caution.

15 Section 805. Costs of administration. In administering a
16 trust, the trustee may incur only costs that are reasonable in
17 relation to the trust property and the purposes of the trust.

18 Section 806. (Reserved).

19 Section 807. Delegation by trustee.

20 (a) Except as provided in subsection (b), the trustee has a
21 duty not to delegate to others the performance of any acts

1 involving the exercise of judgment and discretion.

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

6 (1) selecting an agent;

7 (2) establishing the scope and terms of the delegation,
8 consistent with the purposes of the trust and the trust
9 instrument; and

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

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

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

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

22 Section 808. Directed trusts.

23 (a) In this Section:

24 (1) "Distribution trust advisor" means any one or more
25 persons given authority by the trust instrument to direct,

1 consent to, veto, or otherwise exercise all or any portion
2 of the distribution powers and discretions of the trust,
3 including, but not limited to, authority to make
4 discretionary distribution of income or principal.

5 (2) "Excluded fiduciary" means any fiduciary that by
6 the trust instrument is directed to act in accordance with
7 the exercise of specified powers by a directing party, in
8 which case the specified powers are deemed granted not to
9 the fiduciary but to the directing party and the fiduciary
10 is deemed excluded from exercising the specified powers. If
11 a trust instrument provides that a fiduciary as to one or
12 more specified matters is to act, omit action, or make
13 decisions only with the consent of a directing party, then
14 the fiduciary is an excluded fiduciary with respect to the
15 matters. Notwithstanding any provision of this Section, a
16 person does not fail to qualify as an excluded fiduciary
17 solely by reason of having effectuated, participated in, or
18 consented to a transaction, including, but not limited to,
19 any transaction described in Section 111 or 411 or Article
20 12 of this Code invoking the provisions of this Section
21 with respect to any new or existing trust.

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

25 (4) "Investment trust advisor" means any one or more
26 persons given authority by the trust instrument to direct,

1 consent to, veto, or otherwise exercise all or any portion
2 of the investment powers of the trust.

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

8 (6) "Trust protector" means any one or more persons
9 given any one or more of the powers specified in subsection
10 (d), regardless of whether the power is designated with the
11 title of trust protector by the trust instrument.

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

24 (1) direct the trustee with respect to the retention,
25 purchase, transfer, assignment, sale, or encumbrance of
26 trust property and the investment and reinvestment of

1 principal and income of the trust;

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

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

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

14 (c) A distribution trust advisor may be designated in the
15 trust instrument of a trust. The powers of a distribution trust
16 advisor may be exercised or not exercised in the sole and
17 absolute discretion of the distribution trust advisor, and are
18 binding on all other persons, including, but not limited to,
19 each beneficiary, fiduciary, excluded fiduciary, and any other
20 party having an interest in the trust. The trust instrument may
21 use the title "distribution trust advisor" or any similar name
22 or description demonstrating the intent to provide for the
23 office and function of a distribution trust advisor. Unless the
24 terms of the trust instrument provide otherwise, the
25 distribution trust advisor has authority to direct the trustee
26 with regard to all decisions relating directly or indirectly to

1 discretionary distributions to or for one or more
2 beneficiaries.

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

16 (1) modify or amend the trust instrument to achieve
17 favorable tax status or respond to changes in the Internal
18 Revenue Code, federal laws, state law, or the rulings and
19 regulations under such laws;

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

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

1 (4) remove, appoint, or remove and appoint, a trustee,
2 investment trust advisor, distribution trust advisor,
3 another directing party, investment committee member, or
4 distribution committee member, including designation of a
5 plan of succession for future holders of any such office;

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

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

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

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

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

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

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

1 waive this notice requirement.

2 (e) A directing party is a fiduciary of the trust subject
3 to the same duties and standards applicable to a trustee of a
4 trust as provided by applicable law unless the trust instrument
5 provides otherwise, but the trust instrument may not, however,
6 relieve or exonerate a directing party from the duty to act or
7 withhold acting as the directing party in good faith reasonably
8 believes is in the best interests of the trust.

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

24 (1) if a trust instrument provides that an excluded
25 fiduciary is to follow the direction of a directing party,
26 and such excluded fiduciary acts in accordance with such a

1 direction, then except in cases of willful misconduct on
2 the part of the excluded fiduciary in complying with the
3 direction of the directing party, the excluded fiduciary is
4 not liable for any loss resulting directly or indirectly
5 from following any such direction, including but not
6 limited to compliance regarding the valuation of assets for
7 which there is no readily available market value;

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

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

26 (g) By accepting an appointment to serve as a directing

1 party of a trust that is subject to the laws of this State, the
2 directing party submits to the jurisdiction of the courts of
3 this State even if investment advisory agreements or other
4 related agreements provide otherwise, and the directing party
5 may be made a party to any action or proceeding if issues
6 relate to a decision or action of the directing party.

7 (h) Each directing party shall keep the excluded fiduciary
8 and any other directing party reasonably informed regarding the
9 administration of the trust with respect to any specific duty
10 or function being performed by the directing party to the
11 extent that the duty or function would normally be performed by
12 the excluded fiduciary or to the extent that providing such
13 information to the excluded fiduciary or other directing party
14 is reasonably necessary for the excluded fiduciary or other
15 directing party to perform its duties, and the directing party
16 shall provide such information as reasonably requested by the
17 excluded fiduciary or other directing party. Neither the
18 performance nor the failure to perform of a directing party's
19 duty to inform as provided in this subsection affects
20 whatsoever the limitation on the liability of the excluded
21 fiduciary as provided in this Section.

22 (i) Other required notices.

23 (1) A directing party shall:

24 (A) within 90 days after becoming a directing
25 party, notify each qualified beneficiary of the
26 acceptance and of the directing party's name, address,

1 and telephone number, except that the notice
2 requirement of this subdivision (A) does not apply with
3 respect to a succession of a business entity by merger
4 or consolidation with another business entity or by
5 transfer between holding company affiliates if there
6 is no change in the contact information for the
7 directing party, in which case the successor entity has
8 discretion to determine what timing and manner of
9 notice is appropriate;

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

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

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

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

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

26 (1) all existing and future trusts that appoint or

1 provide for a directing party, including, but not limited
2 to, a party granted power or authority effectively
3 comparable in substance to that of a directing party as
4 provided in this Section; or

5 (2) any existing or future trust that:

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

9 (B) is modified to appoint or provide for a
10 directing party, including, but not limited to, a party
11 granted power or authority effectively comparable in
12 substance to that of a directing party, in accordance
13 with: (i) a court order; (ii) a nonjudicial settlement
14 agreement made in accordance with Section 111; or (iii)
15 an exercise of decanting power under Article 12,
16 regardless of whether the order, agreement, or second
17 trust instrument specifies that this Section governs
18 the responsibilities, actions, and liabilities of a
19 person designated as a directing party or excluded
20 fiduciary.

21 Section 809. Control and protection of trust property. A
22 trustee shall take reasonable steps to take control of and
23 protect the trust property. If a corporation is acting as
24 cotrustee with one or more individuals, the corporate trustee
25 shall have custody of the trust estate unless all the trustees

1 otherwise agree.

2 Section 810. Recordkeeping and identification of trust
3 property.

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

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

8 (c) Except as otherwise provided in subsection (d), a
9 trustee not subject to federal or state banking regulation
10 shall cause the trust property to be designated so that the
11 interest of the trust, to the extent feasible, appears in
12 records maintained by a party other than a trustee or
13 beneficiary to whom the trustee has delivered the property.

14 (d) If the trustee maintains records clearly indicating the
15 respective interests, a trustee may invest as a whole the
16 property of 2 or more separate trusts.

17 Section 811. Enforcement and defense of claims. A trustee
18 shall take reasonable steps to enforce claims of the trust and
19 to defend claims against the trust. It may be reasonable for a
20 trustee not to enforce a claim, not to defend an action, to
21 settle an action, or to suffer a default, depending upon the
22 likelihood of recovery and the cost of suit and enforcement.

23 Section 812. Powers and duties of successor; liability for

1 acts of predecessor; approval of accounts.

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

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

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

14 Section 813.1. Duty to inform and account; trusts
15 irrevocable and trustees accepting appointment after effective
16 date of Code.

17 (a) The provisions of this Section are prospective only and
18 do not apply to any trust that was irrevocable prior to the
19 effective date of this Code, or to a trustee who accepts a
20 trusteeship before the effective date of this Code. Subject to
21 Section 105, this Section supplants any common law duty of a
22 trustee to inform and account to trust beneficiaries. This
23 Section does not apply to trusts that became irrevocable prior
24 to the effective date of this Code.

25 (b) General principles.

1 (1) The trustee shall notify each qualified
2 beneficiary:

3 (A) of the trust's existence;

4 (B) of the beneficiary's right to request a
5 complete copy of the trust instrument; and

6 (C) whether the beneficiary has a right to receive
7 or request trust accountings.

8 The notice required by this paragraph (1) must be
9 given: (i) within 90 days of the trust becoming irrevocable
10 or if no trustee is then acting within 90 days of the
11 trustee's acceptance of the trusteeship; (ii) within 90
12 days of the trustee acquiring knowledge that a qualified
13 beneficiary has a representative under Article 3 who did
14 not previously receive notice; (iii) within 90 days of the
15 trustee acquiring knowledge that a qualified beneficiary
16 who previously had a representative under Article 3 no
17 longer has a representative under Article 3; and (iv)
18 within 90 days of the trustee acquiring knowledge that
19 there is a new qualified beneficiary.

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

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

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

1 (5) Notwithstanding any other provision, a trustee in
2 its discretion may provide notice, information, trust
3 accountings, or reports to any beneficiary of the trust
4 regardless of whether the communication is otherwise
5 required to be provided.

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

10 (7) Notwithstanding any other provision, a trustee is
11 deemed to have fully and completely discharged the
12 trustee's duties to inform and account to all
13 beneficiaries, under this Section, at common law, or
14 otherwise, if the trustee provides the notice required
15 under paragraph (1) to each qualified beneficiary and if
16 the trustee provides at least annually and on termination
17 of the trust a trust accounting required by paragraph (2),
18 (3), or (4) to each beneficiary entitled to a trust
19 accounting.

20 (8) For each asset or class of assets described in a
21 trust accounting for which there is no readily available
22 market value, the trustee, in the trustee's discretion, may
23 determine whether to estimate the value or use a nominal
24 carrying value for such an asset, how to estimate the value
25 of such an asset, and whether and how often to engage a
26 professional appraiser to value such an asset.

1 (c) Upon a vacancy in a trusteeship, unless a cotrustee
2 remains in office, the trust accounting required by subsection
3 (b) of this Section must be sent to the beneficiaries entitled
4 to the accounting by the former trustee. A personal
5 representative, guardian of the estate, or guardian of the
6 person may send the trust accounting to the beneficiaries
7 entitled to the accounting on behalf of a deceased or
8 incapacitated trustee.

9 (d) Other required notices.

10 (1) A trustee shall:

11 (A) within 90 days after accepting a trusteeship,
12 notify each qualified beneficiary of the acceptance
13 and of the trustee's name, address, and telephone
14 number, except that the notice requirement of this
15 subdivision (A) does not apply with respect to a
16 succession of a corporate trustee by merger or
17 consolidation with another corporate fiduciary or by
18 transfer between holding company affiliates if there
19 is no change in the contact information for the
20 trustee, in which case the successor trustee has
21 discretion to determine what timing and manner of
22 notice is appropriate;

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

26 (C) notify each qualified beneficiary of the

1 trustee's resignation.

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

8 (3) A trustee shall notify each qualified beneficiary
9 of any change in the address, telephone number, or other
10 contact information for the trustee no later than 90 days
11 after the change goes into effect.

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

17 (1) a beneficiary who is not a qualified beneficiary;

18 (2) a qualified beneficiary for providing information
19 that was previously provided to the qualified beneficiary
20 or a representative under Article 3 for the qualified
21 beneficiary; or

22 (3) a representative under Article 3 for a qualified
23 beneficiary for information that was previously provided
24 to the qualified beneficiary or a representative under
25 Article 3 for the qualified beneficiary.

26 (f) If a trustee is bound by any confidentiality

1 restrictions regarding a trust asset, then, prior to receiving
2 the information, a beneficiary eligible under this Section to
3 receive any information about that asset must agree to be bound
4 by the same confidentiality restrictions. The trustee has no
5 duty or obligation to disclose to any beneficiary any
6 information that is otherwise prohibited to be disclosed by
7 applicable law.

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

15 (h) Receipt of information, notices, or a trust accounting
16 by a beneficiary is presumed if the trustee has procedures in
17 place requiring the mailing or delivery of information,
18 notices, or trust accountings to the beneficiary. This
19 presumption applies to the mailing or delivery of information,
20 notices, or trust accountings by electronic means or the
21 provision of access to an account by electronic means for so
22 long as the beneficiary has agreed to receive electronic
23 delivery or access.

24 (i) A trustee may request approval of the trustee's current
25 or final trust accounting in a judicial proceeding at the
26 trustee's election, with all reasonable and necessary costs of

1 the proceeding payable by the trust and allocated between
2 income and principal in accordance with the Principal and
3 Income Act.

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

8 Section 813.2. Duty to inform and account; trusts
9 irrevocable and trustees accepting appointment prior to the
10 effective date of Code.

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

15 (b) Every trustee at least annually shall furnish to the
16 beneficiaries then entitled to receive or receiving the income
17 from the trust estate, or, if none, then to those beneficiaries
18 eligible to have the benefit of the income from the trust
19 estate, a current account showing the receipts, disbursements,
20 and inventory of the trust estate.

21 (c) Every trustee shall on termination of the trust furnish
22 to the beneficiaries then entitled to distribution of the trust
23 estate a final account for the period from the date of the last
24 current account to the date of distribution showing the
25 inventory of the trust estate, the receipts, disbursements and

1 distributions and shall make available to the beneficiaries
2 copies of prior accounts not previously furnished.

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

9 (e) For each asset or class of assets described in the
10 account for which there is no readily available market value,
11 the trustee, in the trustee's discretion, may determine whether
12 to estimate the value or use a nominal carrying value for such
13 an asset, how to estimate the value of such an asset, and
14 whether and how often to engage a professional appraiser to
15 value such an asset.

16 Section 814. Discretionary powers; tax savings.

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

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

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

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

11 (c) Subject to subsections (d) and (e), if a beneficiary of
12 a trust, in an individual, trustee, or other capacity, removes
13 a fiduciary and appoints a successor fiduciary who would be
14 related or subordinate to that beneficiary within the meaning
15 of Section 672(c) of the Internal Revenue Code if the
16 beneficiary were the grantor, that successor fiduciary's
17 discretionary powers are limited as follows:

18 (1) the fiduciary's discretionary power to make
19 distributions to or for the benefit of that beneficiary is
20 limited to an ascertainable standard;

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

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

1 (d) Subsection (c) does not apply if:

2 (1) the appointment of the trustee or other fiduciary
3 by the beneficiary may be made only in conjunction with
4 another person having a substantial interest in the
5 property of the trust subject to the power that is adverse
6 to the interest of the beneficiary within the meaning of
7 Section 2041(b)(1)(C)(ii) of the Internal Revenue Code; or

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

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

12 (1) a person other than a settlor who is a beneficiary
13 and trustee or other fiduciary of a trust that confers on
14 such fiduciary a power exercisable only in conjunction with
15 another person having a substantial interest in the
16 property subject to the power that is adverse to the
17 interest of that fiduciary within the meaning of Section
18 2041(b)(1)(C)(ii) of the Internal Revenue Code;

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

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

25 (4) a trust if contributions to the trust qualify for
26 the annual exclusion under Section 2503(c) of the Internal

1 Revenue Code; or

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

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

13 Section 815. General powers of trustee.

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

16 (1) powers conferred by the trust instrument; or

17 (2) except as limited by the trust instrument:

18 (A) all powers over the trust property that an
19 unmarried owner with legal capacity has over
20 individually owned property;

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

24 (C) any other powers conferred by this Code.

25 (b) The exercise of a power is subject to the fiduciary

1 duties prescribed by this Code.

2 Section 816. Specific powers of trustee. Without limiting
3 the authority conferred by Section 815, a trustee may:

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

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

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

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

13 (5) borrow money, with or without security, and
14 mortgage or pledge or otherwise encumber trust property for
15 a period within or extending beyond the duration of the
16 trust;

17 (6) with respect to an interest in a proprietorship,
18 partnership, limited liability company, business trust,
19 corporation, or other form of business or enterprise,
20 continue the business or other enterprise and take any
21 action that may be taken by shareholders, members, or
22 property owners, including merging, dissolving, pledging
23 other trust assets or guaranteeing a debt obligation of the
24 business or enterprise, or otherwise changing the form of
25 business organization or contributing additional capital;

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

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

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

10 (C) pay calls, assessments, and other sums
11 chargeable or accruing against the securities, and
12 sell or exercise stock subscription or conversion
13 rights;

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

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

18 (8) with respect to an interest in real property,
19 construct, or make ordinary or extraordinary repairs to,
20 alterations to, or improvements in, buildings or other
21 structures, demolish improvements, raze existing or erect
22 new party walls or buildings, subdivide or develop land,
23 dedicate any interest in real estate, dedicate land to
24 public use or grant public or private easements, enter into
25 contracts relating to real estate, and make or vacate plats
26 and adjust boundaries;

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

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

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

15 (12) abandon or decline to administer property of no
16 value or of insufficient value to justify its collection or
17 continued administration;

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

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

26 (B) take action to prevent, abate, or otherwise

1 remedy any actual or potential violation of any
2 environmental law affecting property held directly or
3 indirectly by the trustee, whether taken before or
4 after the assertion of a claim or the initiation of
5 governmental enforcement;

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

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

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

16 (14) pay, contest, prosecute, or abandon any claim,
17 settle a claim or charges in favor of or against the trust,
18 and release, in whole or in part, a claim belonging to the
19 trust;

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

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

25 (17) select a mode of payment under any employee
26 benefit or retirement plan, annuity, or life insurance

1 payable to the trustee, exercise rights related to the
2 employee benefit or retirement plan, annuity, or life
3 insurance payable to the trustee, including exercise the
4 right to indemnification for expenses and against
5 liabilities, and take appropriate action to collect the
6 proceeds;

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

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

14 (20) appoint a trustee to act in another jurisdiction
15 to act as sole or cotrustee with respect to any part or all
16 of trust property located in the other jurisdiction, confer
17 upon the appointed trustee any or all of the rights,
18 powers, and duties of the appointing trustee, require that
19 the appointed trustee furnish security, and remove any
20 trustee so appointed;

21 (21) distribute income and principal in one or more of
22 the following ways, without being required to see to the
23 application of any distribution, as the trustee believes to
24 be for the best interests of any beneficiary who at the
25 time of distribution is incapacitated or in the opinion of
26 the trustee is unable to manage property or business

1 affairs because of incapacity:

2 (A) directly to the beneficiary;

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

5 (C) to a custodian for the beneficiary under any
6 state's Uniform Transfers to Minors Act, Uniform Gifts
7 to Minors Act or Uniform Custodial Trust Act, and, for
8 that purpose, to create a custodianship or custodial
9 trust;

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

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

14 (F) to a trust, created prior to the time the
15 distribution becomes payable, for the sole benefit of
16 the beneficiary and those dependent upon the
17 beneficiary during his or her lifetime, to be
18 administered as a part of the trust, except that any
19 amount distributed to the trust under this
20 subparagraph (F) shall be separately accounted for by
21 the trustee of the trust and shall be indefeasibly
22 vested in the beneficiary so that if the beneficiary
23 dies prior to complete distribution of the amounts, the
24 amounts and the accretions, earnings, and income, if
25 any, shall be paid to the beneficiary's estate, except
26 that this subparagraph (F) does not apply to the extent

1 that it would cause a trust otherwise qualifying for
2 the federal estate tax marital deduction not to
3 qualify; and

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

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

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

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

21 (25) execute contracts, notes, conveyances, and other
22 instruments that are useful to achieve or facilitate the
23 exercise of the trustee's powers, regardless of whether the
24 instruments contain covenants and warranties binding upon
25 and creating a charge against the trust estate or excluding
26 personal liability;

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

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

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

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

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

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

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

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

16 (34) plant and harvest crops; breed, raise, purchase,
17 and sell livestock; lease land, equipment, or livestock for
18 cash or on shares, purchase and sell, exchange or otherwise
19 acquire or dispose of farm equipment and farm produce of
20 all kinds; make improvements, construct, repair, or
21 demolish and remove any buildings, structures, or fences,
22 engage agents, managers, and employees and delegate powers
23 to them; engage in drainage and conservation programs;
24 terrace, clear, ditch, and drain lands and install
25 irrigation systems; replace improvements and equipment;
26 fertilize and improve the soil; engage in the growing,

1 improvement, and sale of trees and other forest crops;
2 participate or decline to participate in governmental
3 agricultural or land programs; and perform such acts as the
4 trustee deems appropriate using such methods as are
5 commonly employed by other farm owners in the community in
6 which the farm property is located;

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

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

26 (37) continue a business in the partnership form and

1 participate in its management by having the trustee or one
2 or more agents of the trustee act as a partner, limited
3 partner, or employee with appropriate compensation from
4 the business; enter into new partnership agreements and
5 incorporate the business; and, with respect to activities
6 under this paragraph (37), the trustee or the agent or
7 agents of the trustee shall not be personally liable to
8 third persons with respect to actions not sounding in tort
9 unless the trustee or agent fails to identify the trust
10 estate and disclose that the trustee or agent is acting in
11 a representative capacity, except that nothing in this
12 paragraph impairs in any way the liability of the trust
13 estate with respect to activities under this paragraph (37)
14 to the extent of the assets of the trust estate.

15 Section 817. Distribution upon termination. Upon the
16 occurrence of an event terminating a trust in whole or in part,
17 or upon the exercise by a beneficiary of a right to withdraw
18 trust principal, the trustee shall proceed expeditiously to
19 make the distribution to the beneficiary. The trustee has the
20 right to require from the beneficiary a written approval of the
21 trustee's accountings provided to the beneficiary and, at the
22 trustee's election, a refunding agreement from the beneficiary
23 for liabilities that would otherwise be payable from trust
24 property to the extent of the beneficiary's share of the
25 distribution. An accounting approved under this Section is

1 binding on the beneficiary providing the approval and on the
2 beneficiary's successors, heirs, representatives, and assigns.
3 A trustee may elect to withhold a reasonable amount of a
4 distribution or require a reasonable reserve for the payment of
5 debts, expenses, and taxes payable from the trust pending the
6 receipt of a written approval of the trustee's accountings
7 provided to the beneficiary and refunding agreement from a
8 beneficiary or a judicial settlement of accounts.

9 Section 818. (Reserved).

10 Section 819. Nominee registration. The trustee may cause
11 stocks, bonds, and other real or personal property belonging to
12 the trust to be registered and held in the name of a nominee
13 without mention of the trust in any instrument or record
14 constituting or evidencing title thereto. The trustee is liable
15 for the acts of the nominee with respect to any investment so
16 registered. The records of the trustee shall show at all times
17 the ownership of the investment by the trustee, and the stocks,
18 bonds, and other similar investments shall be in the possession
19 and control of the trustee and be kept separate and apart from
20 assets that are the individual property of the trustee.

21 Section 820. Proceeds of eminent domain or partition. If a
22 trustee is appointed by a court of this State to receive money
23 under eminent domain or partition proceedings and to invest it

1 for the benefit of the person who would be entitled to the real
2 estate or its income if it had not been taken or sold, on
3 petition of any interested person describing the real estate to
4 be purchased, the price to be paid, the probable income to be
5 derived and the state of the title, the court may authorize the
6 trustee to invest all or any part of the money in other real
7 estate in this State. Title to the real estate so purchased
8 shall be taken in the name of the trustee. If the interest of
9 the beneficiary in the real estate taken or sold was a legal
10 interest, the court shall direct the trustee to convey to the
11 beneficiary a legal estate upon the same conditions and
12 limitations of title, but the conveyance by the trustee shall
13 preserve any right of entry for condition broken, possibility
14 of reverter created by the instrument of title or any reversion
15 or other vested interest that arose by operation of law at the
16 time the instrument took effect. The court shall not direct the
17 conveyance by the trustee unless there is a person or class of
18 persons in being who would have a vested interest in the real
19 estate taken or sold under the instrument of title to the real
20 estate and who would be entitled to possession of the real
21 estate if it had not been taken or sold.

22 Section 821. Lands or estates subject to future interest or
23 power of appointment; waste; appointment of trustee. If lands
24 or any estate therein are subject to any legal or equitable
25 future interest of any kind or to any power of appointment,

1 whether a trust is involved or not, and it is made to appear
2 that such lands or estate are liable to waste or depreciation
3 in value, or that the sale thereof and the safe and proper
4 investment of the proceeds will inure to the benefit and
5 advantage of the persons entitled thereto, or that it is
6 otherwise necessary for the conservation, preservation or
7 protection of the property or estate or of any present or
8 future interest therein that such lands or estate be sold,
9 mortgaged, leased, converted, exchanged, improved, managed or
10 otherwise dealt with, the court may, pending the happening of
11 the contingency, if any, and the vesting in possession of such
12 future interest, declare a trust, and appoint a trustee or
13 trustees for such lands or estate and vest in a trustee or
14 trustees title to the property, and authorize and direct the
15 sale of such property, either at a public sale or at private
16 sale, and upon such terms and conditions as the court may
17 direct, and in such case may authorize the trustee or trustees
18 to make such sale and to receive, hold and invest the proceeds
19 thereof under the direction of the court for the benefit of the
20 persons entitled or who may become entitled thereto according
21 to their respective rights and interests, authorize and direct
22 that all or any portion of the property, or the proceeds
23 thereof, so subject to such future interests or powers of
24 appointment, be leased, mortgaged, converted, exchanged,
25 improved, managed, invested, reinvested, or otherwise dealt
26 with, as the rights and interests of the parties and the

1 equities of the case may require, and to that end may confer
2 all necessary powers on the trustee or trustees. All orders of
3 every court entered pursuant to this Section subsequent to June
4 30, 1982 and prior to September 16, 1985 vesting title to
5 property in a trustee are hereby validated and such title is
6 vested in such trustee effective the day the court entered such
7 order.

8 Article 9. Illinois Uniform Prudent Investor Act; life
9 insurance; affiliated investments.

10 Section 900. Article title. This Article may be referred to
11 as the Illinois Uniform Prudent Investor Act.

12 Section 901. Prudent investor rule.

13 (a) Except as otherwise provided in subsection (b), a
14 trustee administering a trust has a duty to invest and manage
15 the trust assets to comply with the prudent investor rule set
16 forth in this Article.

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

22 Section 902. Standard of care; portfolio strategy; risk and

1 return objectives.

2 (a) A trustee has a duty to invest and manage trust assets
3 as a prudent investor would, considering the purposes, terms,
4 distribution requirements, and other circumstances of the
5 trust. This standard requires the exercise of reasonable care,
6 skill, and caution and applies not in isolation, but in the
7 context of the trust portfolio as a whole and as a part of an
8 overall investment strategy that incorporates risk and return
9 objectives reasonably suitable to the trust.

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

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

18 (1) the general economic conditions;

19 (2) the possible effect of inflation or deflation;

20 (3) the expected tax consequences of investment
21 decisions or strategies;

22 (4) the role each investment or course of action plays
23 within the overall portfolio;

24 (5) the expected total return including both income
25 yield and appreciation of capital;

26 (6) the duty to incur only reasonable and appropriate

1 costs;

2 (7) environmental and social considerations;

3 (8) governance policies of the entities in which the
4 trustee may invest;

5 (9) needs for liquidity, regularity of income, and
6 preservation or appreciation of capital; and

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

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

14 Section 903. Diversification. A trustee has a duty to
15 diversify the investments of the trust unless, under the
16 circumstances, the trustee reasonably believes it is in the
17 interests of the beneficiaries and furthers the purposes of the
18 trust not to diversify.

19 Section 904. Duties at inception of trusteeship. A trustee
20 has a duty, within a reasonable time after the acceptance of a
21 trusteeship, to review trust assets and to make and implement
22 decisions concerning the retention and disposition of original
23 pre-existing investments, in order to conform to the provisions
24 of this Article. A trustee's decision to retain or dispose of

1 an asset may properly be influenced by the asset's special
2 relationship or value to the purposes of the trust or to some
3 or all of the beneficiaries, consistent with the trustee's duty
4 of impartiality.

5 Section 905. Court action. Nothing in this Article
6 abrogates or restricts the power of an appropriate court in
7 proper cases to: (i) direct or permit the trustee to deviate
8 from the terms of the trust instrument; or (ii) to direct or
9 permit the trustee to take, or to restrain the trustee from
10 taking, any action regarding the making or retention of
11 investments.

12 Section 906. (Reserved).

13 Section 907. (Reserved).

14 Section 908. Reviewing compliance. No specific investment
15 course of action is, taken alone, prudent or imprudent. The
16 trustee may invest in every kind of property and type of
17 investment, subject to this Article. A trustee's investment
18 decisions and actions are to be judged in terms of the
19 trustee's reasonable business judgment regarding the
20 anticipated effect on the trust portfolio as a whole under the
21 facts and circumstances prevailing at the time of the decision
22 or action. This Article is a test of conduct and not of

1 resulting performance.

2 Section 909. Delegation of investment and management
3 functions. Notwithstanding any other provision of this Code,
4 prior to delegating any investment functions to an agent in
5 accordance with the provisions of subsection (b) of Section
6 807, a trustee shall conduct an inquiry into the experience,
7 performance history, professional licensing or registration,
8 if any, and financial stability of the investment agent.

9 Section 910. Language invoking standard of Article. The
10 following terms or comparable language in the investment powers
11 and related provisions of a trust instrument, unless otherwise
12 limited or modified by that instrument, shall be construed as
13 authorizing any investment or strategy permitted under this
14 Article: "investments permissible by law for investment of
15 trust funds", "legal investments", "authorized investments",
16 "using the judgment and care under the circumstances then
17 prevailing that persons of prudence, discretion, and
18 intelligence exercise in the management of their own affairs,
19 not in regard to speculation but in regard to the permanent
20 disposition of their funds, considering the probable income as
21 well as the probable safety of their capital", "prudent man
22 rule", "prudent trustee rule", "prudent person rule", and
23 "prudent investor rule".

1 Section 911. (See Section 900 for short title.)

2 Section 912. Application to existing trusts. The Sections
3 of this Article that proceed this Section apply to all existing
4 and future trusts, but only as to actions or inactions
5 occurring on or after January 1, 1992.

6 Section 913. Life insurance.

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

14 (1) to determine whether any contract of life insurance
15 in the trust, or to be acquired by the trust, is or remains
16 a proper investment, including, without limitation, with
17 respect to:

18 (A) the type of insurance contract;

19 (B) the quality of the insurance contract;

20 (C) the quality of the insurance company; or

21 (D) the investments held within the insurance
22 contract.

23 (2) to diversify the investment among different
24 policies or insurers, among available asset classes, or

1 within an insurance contract;

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

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

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

13 (b) The trustee is not liable to the beneficiaries of the
14 trust, the beneficiaries of the contract of insurance, or to
15 any other party for loss arising from the absence of these
16 duties regarding insurance contracts under this Section.

17 (c) This Section applies to an irrevocable trust created
18 after the effective date of this Code or to a revocable trust
19 that becomes irrevocable after the effective date of this Code.
20 The trustee of a trust described under this Section established
21 prior to the effective date of this Code shall notify the
22 settlor in writing that, unless the settlor provides written
23 notice to the contrary to the trustee within 90 days of the
24 trustee's notice, the provisions of this Section apply to the
25 trust. This Section does not apply if, within 90 days of the
26 trustee's notice, the settlor notifies the trustee in writing

1 that this Section does not apply. If the settlor is deceased,
2 then the trustee shall give notice to all of the legally
3 competent current beneficiaries, and this Section applies to
4 the trust unless the majority of the beneficiaries notify the
5 trustee to the contrary in writing within 90 days of the
6 trustee's notice.

7 Section 914. Investments in affiliated investments;
8 transactions with affiliates.

9 (a) As used in this Section:

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

15 (2) "Affiliated investment" means an investment for
16 which the fiduciary or an affiliate of the fiduciary acts
17 as adviser, administrator, distributor, placement agent,
18 underwriter, broker, or in any other capacity for which the
19 fiduciary or an affiliate of the fiduciary receives or has
20 received compensation from the investment.

21 (3) "Fiduciary capacity" includes an agent with
22 investment discretion to determine what securities or
23 other assets to purchase or sell on behalf of a fiduciary
24 account.

25 (b) A financial institution acting in any fiduciary

1 capacity may purchase any affiliated investment, including,
2 but not limited to, insurance, equity derivatives, or
3 securities underwritten or otherwise distributed by the
4 financial institution or by an affiliate, through or directly
5 from the financial institution or an affiliate or from a
6 syndicate or selling group that includes the financial
7 institution or an affiliate, if the purchase is otherwise
8 prudent under the applicable fiduciary investment standard.

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

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

19 (1) any purchase of an affiliated investment
20 authorized by this Section, including all compensation
21 paid or to be paid by the fiduciary account or to be
22 received by an affiliate arising from the affiliated
23 investment;

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

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

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

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

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

8 (4) order a trustee to account;

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

11 (6) suspend the trustee;

12 (7) remove the trustee as provided in Section 706;

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

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

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

20 Section 1002. Damages for breach of trust.

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

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

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

3 (b) Except as otherwise provided in this subsection, if
4 more than one trustee is liable to the beneficiaries for a
5 breach of trust, a trustee is entitled to contribution from the
6 other trustee or trustees liable for the breach. A trustee is
7 not entitled to contribution if the trustee was substantially
8 more at fault than another trustee or if the trustee committed
9 the breach of trust in bad faith or with reckless indifference
10 to the purposes of the trust or the interests of the
11 beneficiaries. A trustee who received a benefit from the breach
12 of trust is not entitled to contribution from another trustee
13 to the extent of the benefit received.

14 Section 1003. No damages in absence of breach. Except as
15 provided in Section 802(a), absent a breach of trust, a trustee
16 is not liable to a beneficiary for a loss or depreciation in
17 the value of trust property or for any benefit received by the
18 trustee by reason of the administration of the trust.

19 Section 1004. Attorney's fees and costs. In a judicial
20 proceeding involving the administration of a trust, the court,
21 as equity may require, may award costs and expenses, including
22 reasonable attorney's fees, to any party, to be paid by another
23 party or from the trust that is the subject of the controversy.

1 Section 1005. Limitation on action against trustee.

2 (a) A beneficiary may not commence a proceeding against a
3 trustee for breach of trust for any matter disclosed in writing
4 by a trust accounting, or otherwise as provided in Sections
5 813.1, 813.2, and Section 1102, after the date on which the
6 disclosure becomes binding upon the beneficiary as provided
7 below:

8 (1) With respect to a trust that becomes irrevocable
9 after the effective date of this Code and to trustees
10 accepting appointment after the effective date of this
11 Code, a matter disclosed in writing by a trust accounting
12 or otherwise pursuant to Section 813.1 and Section 1102 is
13 binding on each person who receives the information and
14 each person represented as provided in Article 3 by a
15 person who receives the information, and all of the
16 person's respective successors, representatives, heirs,
17 and assigns, unless an action against the trustee is
18 instituted within 2 years after the date the information is
19 furnished. A trust accounting or other communication
20 adequately discloses the existence of a potential claim for
21 breach of trust if it provides sufficient information so
22 that the person entitled to receive the information knows
23 of the potential claim or should have inquired into its
24 existence.

25 (2) With respect to a trust that became irrevocable
26 prior to the effective date of this Code or a trustee that

1 accepted appointment prior to the effective date of this
2 Code, a current account is binding on each beneficiary
3 receiving the account and on the beneficiary's heirs and
4 assigns unless an action against the trustee is instituted
5 by the beneficiary or the beneficiary's heirs and assigns
6 within 3 years after the date the current account is
7 furnished, and a final accounting is binding on each
8 beneficiary receiving the final accounting and all persons
9 claiming by or through the beneficiary, unless an action
10 against the trustee is instituted by the beneficiary or
11 person claiming by or through him or her within 3 years
12 after the date the final account is furnished. If the
13 account is provided to the representative of the estate of
14 the beneficiary or to a spouse, parent, adult child, or
15 guardian of the person of the beneficiary, the account is
16 binding on the beneficiary unless an action is instituted
17 against the trustee by the representative of the estate of
18 the beneficiary or by the spouse, parent, adult child, or
19 guardian of the person to whom the account is furnished
20 within 3 years after the date it is furnished.

21 (3) Notwithstanding paragraphs (1) and (2) of this
22 subsection (a), with respect to trust estates that
23 terminated and were distributed 10 years or less prior to
24 January 1, 1988, the final account furnished to the
25 beneficiaries entitled to distribution of the trust estate
26 is binding on the beneficiaries receiving the final

1 account, and all persons claiming by or through them,
2 unless an action against the trustee is instituted by the
3 beneficiary or person claiming by or through him or her
4 within 5 years after January 1, 1988 or within 10 years
5 after the date the final account was furnished, whichever
6 is longer.

7 (4) Notwithstanding paragraphs (1), (2) and (3) of this
8 subsection (a), with respect to trust estates that
9 terminated and were distributed more than 10 years before
10 January 1, 1988, the final account furnished to the
11 beneficiaries entitled to distribution of the trust estate
12 is binding on the beneficiaries receiving the final
13 account, and all persons claiming by or through them,
14 unless an action against the trustee is instituted by the
15 beneficiary or person claiming by or through him or her
16 within 2 years after January 1, 1988.

17 (b) Unless barred earlier under subsection (a), a judicial
18 proceeding by a beneficiary against a trustee for breach of
19 trust must be commenced within 5 years after the first to occur
20 of:

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

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

24 (3) the termination of the trust.

25 (c) Notwithstanding any other provision of this Section, a
26 beneficiary may bring any action against the trustee for

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

3 Section 1006. Reliance on trust instrument. A trustee who
4 acts in reasonable reliance on the express language of the
5 trust instrument is not liable to a beneficiary for a breach of
6 trust to the extent the breach resulted from the reliance.

7 Section 1007. Event affecting administration or
8 distribution. If the happening of an event, including, but not
9 limited to, marriage, divorce, performance of educational
10 requirements, or death, affects the administration or
11 distribution of a trust, a trustee who has exercised reasonable
12 care to ascertain the happening of the event is not liable for
13 a loss resulting from the trustee's lack of knowledge.

14 Section 1008. Exculpation of trustee.

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

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

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

1 (b) An exculpatory term drafted or caused to be drafted by
2 the trustee is invalid as an abuse of a fiduciary or
3 confidential relationship unless the trustee proves that the
4 exculpatory term is fair under the circumstances and that its
5 existence and contents were adequately communicated to the
6 settlor. These conditions are satisfied if the settlor was
7 represented by independent counsel.

8 Section 1009. Beneficiary's consent, release, or
9 ratification.

10 (a) A trustee is not liable to a beneficiary, or to anyone
11 claiming by or through the beneficiary, for breach of trust if
12 the beneficiary consented to the conduct constituting the
13 breach, released the trustee from liability for the breach, or
14 ratified the transaction constituting the breach, unless:

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

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

22 (b) If the beneficiary's consent, release, or ratification
23 involves a self-dealing transaction, the consent, release, or
24 ratification is binding only if the transaction was fair and
25 reasonable. The condition that a self-dealing transaction must

1 be fair and reasonable is satisfied if the beneficiary was
2 represented by independent counsel. No consideration is
3 required for the consent, release, or ratification to be valid.

4 Section 1010. Limitation on personal liability of trustee.

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

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

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

22 Section 1011. Interest as general partner.

23 (a) Except as otherwise provided in subsection (c) or
24 unless personal liability is imposed in the contract, a trustee

1 who holds an interest as a general partner in a general or
2 limited partnership is not personally liable on a contract
3 entered into by the partnership after the trust's acquisition
4 of the interest if the fiduciary capacity was disclosed in the
5 contract or in a statement previously filed pursuant to the
6 Uniform Partnership Act (1997) or Uniform Limited Partnership
7 Act (2001) or any other similar state law.

8 (b) Except as otherwise provided in subsection (c), a
9 trustee who holds an interest as a general partner is not
10 personally liable for torts committed by the partnership or for
11 obligations arising from ownership or control of the interest
12 unless the trustee is personally at fault.

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

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

22 Section 1012. Protection of person dealing with trustee.

23 (a) A person other than a beneficiary or a beneficiary's
24 representative under Article 3 acting in a representative
25 capacity who in good faith assists a trustee, or who in good

1 faith and for value deals with a trustee, without knowledge
2 that the trustee is exceeding or improperly exercising the
3 trustee's powers is protected from liability as if the trustee
4 properly exercised the power.

5 (b) A person other than a beneficiary or a beneficiary's
6 representative under Article 3 acting in a representative
7 capacity who in good faith deals with a trustee is not required
8 to inquire into the extent of the trustee's powers or the
9 propriety of their exercise.

10 (c) A person, including a beneficiary, who in good faith
11 delivers assets to a trustee need not ensure their proper
12 application.

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

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

22 Section 1013. Certification of trust.

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

1 information:

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

4 (2) the identity of the settlor;

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

7 (4) the powers of the trustee;

8 (5) the revocability or irrevocability of the trust,
9 whether the trust is amendable or unamendable, and the
10 identity of any person holding a power to revoke the trust;

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

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

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

16 (b) A certification of trust must be signed or otherwise
17 authenticated by one or more of the trustees. A third party may
18 require that the certification of trust be acknowledged.

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

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

25 (e) A recipient of a certification of trust may require the
26 trustee to furnish copies of those excerpts from the original

1 trust instrument and later amendments that designate the
2 trustee and confer upon the trustee the power to act in the
3 pending transaction.

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

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

16 (h) A person making a demand for the trust instrument in
17 addition to a certification of trust or excerpts is liable for
18 damages if the court determines that the person did not act in
19 good faith in demanding the trust instrument. A person required
20 to examine a complete copy of the trust instrument for purposes
21 of complying with applicable federal, state, or local law, a
22 person acting in a fiduciary capacity with respect to a trust,
23 and the Attorney General's Charitable Trust Bureau are deemed
24 to be acting in good faith when demanding a copy of the trust
25 instrument. This Section does not modify or limit any
26 obligation a trustee may have to furnish a copy of a trust

1 instrument to the Attorney General under the Charitable Trust
2 Act or the Solicitation for Charity Act.

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

6 (j) A certification of trust may be substantially as
7 follows, but nothing in this subsection invalidates or bars the
8 use of a certification of trust in any other or different form:

9 CERTIFICATION OF TRUST

10 Name of trust:

11 Date trust instrument was executed:

12 Tax Identification Number of trust (SSN or EIN):.....

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

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

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

16 This trust states that of cotrustee(s) are
17 required to exercise the powers of the trustee.

18 The cotrustees authorized to sign or otherwise
19 authenticate on behalf of the trust are:.....

20 There are no cotrustees authorized to sign or otherwise
21 authenticate on behalf of the trust.

22 Name(s) of successor trustee(s):

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

25 Title to the trust property shall be taken as follows (for
26 example, "John Doe and Jane Doe, cotrustees of the Doe Family

1 Living Trust, dated January 4, 1999"):

2 This is an irrevocable trust.

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

5 This is an unamendable trust.

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

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

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

16 Trustee Signature:

17 Printed Name:

18 Trustee Signature:

19 Printed Name:

20 [OPTIONAL:

21 State of)

1 County of

2 This instrument was signed and acknowledged before me on
3, (date) by (name/s of person/s):.....

4 (Signature of Notary Public):

5

6 (SEAL)]

7 Section 1014. Reliance on Secretary of Financial and
8 Professional Regulation. No trustee or other person is liable
9 under this Code for any act done or omitted in good faith in
10 conformity with any rule, interpretation, or opinion issued by
11 the Secretary of Financial and Professional Regulation,
12 notwithstanding that after the act or omission has occurred,
13 the rule, opinion, or interpretation upon which reliance is
14 placed is amended, rescinded, or determined by judicial or
15 other authority to be invalid for any reason.

16 Article 11. Total return trusts.

17 Section 1101. Total return trust defined; trustee duty to
18 inform.

19 (a) In this Article, "total return trust" means a trust
20 converted in accordance with this Article that the trustee
21 shall manage and invest seeking a total return without regard

1 to whether the return is from income or appreciation of
2 principal.

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

9 Section 1102. Conversion by trustee. A trustee may convert
10 a trust to a total return trust as described in this Article if
11 all of the following apply:

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

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

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

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

7 Section 1104. Conversion or reconversion by court.

8 (a) The trustee may for any reason elect to petition the
9 court to order conversion to a total return trust, including
10 without limitation the reason that conversion under Section
11 1102 is unavailable because a beneficiary timely objects to the
12 conversion to a total return trust.

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

18 (c) The trustee may petition the court prospectively to
19 reconvert from a total return trust or adjust the distribution
20 percentage if the trustee determines that the reconversion or
21 adjustment will enable the trustee to better carry out the
22 purposes of the trust. A beneficiary may request the trustee to
23 petition the court prospectively to reconvert from a total
24 return trust or adjust the distribution percentage. If the

1 trustee declines or fails to act within 6 months after
2 receiving a written request to do so, the beneficiary may
3 petition the court to order the reconversion or adjustment.

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

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

26 (f) The court may order any of the following actions in a

1 proceeding brought by a trustee or a beneficiary under this
2 Section:

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

4 (2) average the valuation of the trust's net assets
5 over a period other than 3 years;

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

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

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

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

17 Section 1105. Post conversion. While a trust is a total
18 return trust, all of the following apply to the trust:

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

22 (2) the term "income" in the trust instrument means an
23 annual amount (the "distribution amount") equal to a
24 percentage (the "distribution percentage") of the net fair
25 market value of the trust's assets, whether the assets are

1 considered income or principal under the Principal and
2 Income Act, averaged over the lesser of:

3 (A) the 3 preceding years; or

4 (B) the period during which the trust has been in
5 existence;

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

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

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

1 Section 1106. Administration.

2 (a) As used in this Section, "excluded asset" means an
3 asset for which there is no readily available market value and
4 that the trustee determines in accordance with subsection (d)
5 shall be excluded from the net fair market value of the trust's
6 assets for purposes of determining the distribution amount
7 under paragraph (2) of Section 1105.

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

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

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

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

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

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

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

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

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

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

4 (8) which trust assets are excluded assets; and

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

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

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

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

6 Section 1107. Allocations.

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

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

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

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

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

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

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

23 (6) then from other trust principal.

24 Section 1108. Restrictions. Conversion to a total return

1 trust does not affect any provision in the trust instrument:

2 (1) directing or authorizing the trustee to distribute
3 principal;

4 (2) directing or authorizing the trustee to distribute
5 a fixed annuity or a fixed fraction of the value of trust
6 assets;

7 (3) authorizing a beneficiary to withdraw a portion or
8 all of the principal; or

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

13 Section 1109. Tax limitations.

14 (a) If a particular trustee is a beneficiary of the trust
15 and conversion or failure to convert would enhance or diminish
16 the beneficial interest of the trustee, or if possession or
17 exercise of the conversion power by a particular trustee would
18 alone cause any individual to be treated as owner of a part of
19 the trust for income tax purposes or cause a part of the trust
20 to be included in the gross estate of any individual for estate
21 tax purposes, then the particular trustee may not participate
22 as a trustee in the exercise of the conversion power except
23 that the particular trustee may petition the court under
24 subsection (a) of Section 1104 to order conversion in
25 accordance with this Article.

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

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

12 Section 1111. Remedies. A trustee who reasonably and in
13 good faith takes any action under this Article is not liable to
14 any interested person. If a trustee reasonably and in good
15 faith takes any action under this Article and an interested
16 person opposes the action, the person's exclusive remedy is to
17 obtain an order of the court directing the trustee to convert
18 the trust to a total return trust, to reconvert from a total
19 return trust, to change the distribution percentage, or to
20 order any administrative procedures the court determines
21 necessary or helpful for the proper functioning of the trust.
22 An action by a trustee under this Article is presumed taken or
23 omitted reasonably and in good faith unless it is determined by
24 the court to have been an abuse of discretion.

1 Section 1112. Application. This Article is available to
2 trusts in existence on or after August 22, 2002. This Article
3 shall be construed as pertaining to the administration of a
4 trust and shall be available to any trust that is administered
5 in Illinois or that is governed by Illinois law with respect to
6 the meaning and effect of its terms unless one of the following
7 apply:

8 (1) The trust is a trust described in Section
9 642(c)(5), 664(d), 2702(a)(3), or 2702(b) of the Internal
10 Revenue Code.

11 (2) The trust instrument expressly prohibits use of
12 this Article by specific reference to this Article or a
13 prior corresponding law. A provision in the trust
14 instrument in the form: "Neither the provisions of Article
15 11 of the Illinois Trust Code nor any corresponding
16 provision of future law may be used in the administration
17 of this trust" or a similar provision demonstrating that
18 intent is sufficient to preclude the use of this Article.

19 Section 1113. Application to express trusts.

20 (a) In this Section:

21 (1) "Unitrust" means a trust the terms of which require
22 distribution of a unitrust amount, without regard to
23 whether the trust has been converted to a total return
24 trust in accordance with this Article or whether the trust

1 is established by express terms of the trust instrument.

2 (2) "Unitrust amount" means an amount equal to a
3 percentage of a trust's assets that may or must be
4 distributed to one or more beneficiaries annually in
5 accordance with the terms of the trust. The unitrust amount
6 may be determined by reference to the net fair market value
7 of the trust's assets as of a particular date or as an
8 average determined on a multiple year basis.

9 (b) A unitrust changes the definition of income by
10 substituting the unitrust amount for net trust accounting
11 income as the method of determining current return and shall be
12 given effect notwithstanding any contrary provision of the
13 Principal and Income Act. By way of example and not limitation,
14 a unitrust amount determined by a percentage of not less than
15 3% nor greater than 5% is conclusively presumed a reasonable
16 current return that fairly apportions the total return of a
17 unitrust.

18 (c) Subsection (b) of Section 1107 applies to a unitrust
19 except to the extent its trust instrument expressly provides
20 otherwise.

21 (d) This Section does not apply to a charitable remainder
22 unitrust as defined by Section 664(d) of the Internal Revenue
23 Code.

24 Article 12. Trust decanting.

1 Section 1201. Article title. This Article may be referred
2 to as the Trust Decanting Law.

3 Section 1202. Definitions. In this Article:

4 (1) "Appointive property" means the property or property
5 interest subject to a power of appointment.

6 (2) "Authorized fiduciary" means:

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

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

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

14 (3) "Court" means the court in this State having
15 jurisdiction in matters relating to trusts.

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

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

23 (6) "First trust" means a trust over which an authorized
24 fiduciary may exercise the decanting power.

25 (7) "First-trust instrument" means the trust instrument

1 for a first trust.

2 (8) "Reasonably definite standard" means a clearly
3 measurable standard under which a holder of a power of
4 distribution is legally accountable within the meaning of
5 Section 674(b)(5)(A) of the Internal Revenue Code, as amended,
6 and any applicable regulations.

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

10 (10) "Second trust" means:

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

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

15 (11) "Second-trust instrument" means the trust instrument
16 for a second trust.

17 Section 1203. Scope.

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

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

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

1 (d) This Article does not limit the power of a trustee,
2 powerholder, or other person to distribute or appoint property
3 in further trust or to modify a trust under the trust
4 instrument, law of this State other than this Article, common
5 law, a court order, or a nonjudicial settlement agreement.

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

10 Section 1204. Fiduciary duty.

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

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

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

22 Section 1205. Application; governing law. This Article
23 applies to a trust created before, on, or after the effective
24 date of this Code that:

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

4 (2) provides by its trust instrument that it is
5 governed by the law of this State or is governed by the law
6 of this State for the purpose of:

7 (A) administration, including administration of a
8 trust whose governing law for purposes of
9 administration has been changed to the law of this
10 State;

11 (B) construction of terms of the trust; or

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

14 Section 1206. Reasonable reliance. A trustee or other
15 person that reasonably relies on the validity of a distribution
16 of part or all of the property of a trust to another trust, or a
17 modification of a trust, under this Article, law of this State
18 other than this Article or the law of another jurisdiction is
19 not liable to any person for any action or failure to act as a
20 result of the reliance.

21 Section 1207. Notice.

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

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

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

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

10 (2) each qualified beneficiary of the first trust;

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

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

15 (5) each other fiduciary of the first trust;

16 (6) each fiduciary of the second trust; and

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

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

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

26 (1) specify the manner in which the authorized

1 fiduciary intends to exercise the decanting power;

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

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

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

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

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

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

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

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

22 (i) If the first trust contains a charitable interest and
23 the Attorney General objects to the proposed exercise of the
24 decanting power in writing delivered to the authorized
25 fiduciary before the end of the notice period, the authorized
26 fiduciary may proceed with the proposed exercise of the

1 decanting power only with either court approval or the
2 subsequent written consent of the Attorney General.

3 Section 1208. (Reserved).

4 Section 1209. Court involvement.

5 (a) On application of an authorized fiduciary, a person
6 entitled to notice under Section 1207(c), a beneficiary, or
7 with respect to a charitable interest the Attorney General or
8 any other person that has standing to enforce the charitable
9 interest, the court may:

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

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

18 (3) approve an exercise of the decanting power;

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

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

24 (B) the proposed or attempted exercise would be or

1 was an abuse of the fiduciary's discretion or a breach
2 of fiduciary duty;

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

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

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

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

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

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

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

24 Section 1211. Decanting power under expanded distributive

1 discretion.

2 (a) In this Section:

3 (1) "Noncontingent" right means a right that is not
4 subject to the exercise of discretion or the occurrence of
5 a specified event that is not certain to occur. The term
6 does not include a right held by a beneficiary if any
7 person has discretion to distribute property subject to the
8 right of any person other than the beneficiary or the
9 beneficiary's estate.

10 (2) "Presumptive remainder beneficiary" means a
11 qualified beneficiary other than a current beneficiary.

12 (3) "Successor beneficiary" means a beneficiary that
13 on the date the beneficiary's qualification is determined
14 is not a qualified beneficiary. The term does not include a
15 person that is a beneficiary only because the person holds
16 a nongeneral power of appointment.

17 (4) "Vested interest" means:

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

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

25 (C) a current and noncontingent right, annually or
26 more frequently, to withdraw income, a specified

1 dollar amount, or a percentage of value of some or all
2 of the trust property;

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

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

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

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

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

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

25 (3) reduce or eliminate a vested interest.

26 (d) Subject to subsection (c)(3) and Section 1214, in an

1 exercise of the decanting power under this Section, a second
2 trust may be a trust created or administered under the law of
3 any jurisdiction and may:

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

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

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

13 (4) create or modify a power of appointment if the
14 powerholder is a presumptive remainder beneficiary or
15 successor beneficiary of the first trust, but the exercise
16 of the power may take effect only after the powerholder
17 becomes, or would have become if then living, a current
18 beneficiary.

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

24 (f) If an authorized fiduciary has expanded distributive
25 discretion to distribute part but not all of the principal of a
26 first trust, the fiduciary may exercise the decanting power

1 under this Section over that part of the principal over which
2 the authorized fiduciary has expanded distributive discretion.

3 Section 1212. Decanting power under limited distributive
4 discretion.

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

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

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

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

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

25 (2) the beneficiary is incapacitated or in the opinion

1 of the trustee is unable to manage property or business
2 affairs, and the distribution is made as permitted under
3 this Code; or

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

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

12 Section 1213. Trust for beneficiary with disability.

13 (a) In this Section:

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

20 (2) "Best interests" of a beneficiary with a disability
21 include, without limitation, consideration of the
22 financial impact to the family of the beneficiary who has a
23 disability.

24 (3) "Governmental benefits" means financial aid or
25 services from a state, federal, or other public agency.

1 (4) "Special-needs fiduciary" means, with respect to a
2 trust that has a beneficiary with a disability:

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

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

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

17 (5) "Special-needs trust" means a trust the trustee
18 believes would not be considered a resource for purposes of
19 determining whether the beneficiary with a disability is
20 eligible for governmental benefits.

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

26 (1) a second trust is a special-needs trust that

1 benefits the beneficiary with a disability; and

2 (2) the special-needs fiduciary determines that
3 exercise of the decanting power will further the purposes
4 of the first trust or the best interests of the beneficiary
5 with a disability.

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

8 (1) If the first trust was created by the beneficiary
9 with a disability, or to the extent the first trust was
10 funded by the beneficiary with a disability, then
11 notwithstanding paragraph (2) of subsection (c) of Section
12 1211, the interest in the second trust of a beneficiary
13 with a disability may:

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

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

20 (2) Paragraph (3) of subsection (c) of Section 1211
21 does not apply to the interests of the beneficiary with a
22 disability.

23 (3) Except as affected by any change to the interests
24 of the beneficiary with a disability, the second trusts, in
25 the aggregate, must grant each other beneficiary of the
26 first trust beneficial interests in the second trusts that

1 are substantially similar to the beneficiary's beneficial
2 interests in the first trust.

3 Section 1214. Protection of charitable interests.

4 (a) In this Section:

5 (1) "Determinable charitable interest" means a
6 charitable interest that is a right to a mandatory
7 distribution currently, periodically, on the occurrence of
8 a specified event, or after the passage of a specified time
9 and that is unconditional or that will in all events be
10 held for charitable purposes.

11 (2) "Unconditional" means not subject to the
12 occurrence of a specified event that is not certain to
13 occur, other than a requirement in a trust instrument that
14 a charitable organization be in existence or qualify under
15 a particular provision of the Internal Revenue Code on the
16 date of the distribution if the charitable organization
17 meets the requirement on the date of determination.

18 (b) If a first trust contains a determinable charitable
19 interest, the Attorney General has the rights of a qualified
20 beneficiary and may represent and bind the charitable interest.

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

23 (1) diminish the charitable interest;

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

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

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

5 (d) If there are 2 or more second trusts, the second trusts
6 shall be treated as one trust for purposes of determining
7 whether the exercise of the decanting power diminishes the
8 charitable interest or diminishes the interest of an identified
9 charitable organization for purposes of subsection (c).

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

14 (1) the Attorney General, after receiving notice under
15 Section 1207, fails to object in a signed record delivered
16 to the authorized fiduciary within the notice period;

17 (2) the Attorney General consents in a signed record to
18 the second trusts being administered under the law of
19 another jurisdiction; or

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

22 (f) This Article does not limit the powers and duties of
23 the Attorney General under Illinois law.

24 Section 1215. Trust limitation on decanting.

25 (a) An authorized fiduciary may not exercise the decanting

1 power to the extent the first-trust instrument expressly
2 prohibits exercise of:

3 (1) the decanting power; or

4 (2) a power granted by state law to the fiduciary to
5 distribute part or all of the principal of the trust to
6 another trust or to modify the trust.

7 (b) Exercise of the decanting power is subject to any
8 restriction in the first-trust instrument that expressly
9 applies to exercise of:

10 (1) the decanting power; or

11 (2) a power granted by state law to a fiduciary to
12 distribute part or all of the principal of the trust to
13 another trust or to modify the trust.

14 (c) A general prohibition of the amendment or revocation of
15 a first trust, a spendthrift clause, or a clause restraining
16 the voluntary or involuntary transfer of a beneficiary's
17 interest does not preclude exercise of the decanting power.

18 (d) Subject to subsections (a) and (b), an authorized
19 fiduciary may exercise the decanting power under this Article
20 even if the first-trust instrument permits the authorized
21 fiduciary or another person to modify the first-trust
22 instrument or to distribute part or all of the principal of the
23 first trust to another trust.

24 (e) If a first-trust instrument contains an express
25 prohibition described in subsection (a) or an express
26 restriction described in subsection (b), that provision must be

1 included in the second-trust instrument.

2 Section 1216. Change in compensation.

3 (a) If a first-trust instrument specifies an authorized
4 fiduciary's compensation, the fiduciary may not exercise the
5 decanting power to increase the fiduciary's compensation
6 beyond the specified compensation unless:

7 (1) all qualified beneficiaries of the second trust
8 consent to the increase in a signed record; or

9 (2) the increase is approved by the court.

10 (b) If a first-trust instrument does not specify an
11 authorized fiduciary's compensation, the fiduciary may not
12 exercise the decanting power to increase the fiduciary's
13 compensation above the compensation permitted by Section 708
14 unless:

15 (1) all qualified beneficiaries of the second trust
16 consent to the increase in a signed record; or

17 (2) the increase is approved by the court.

18 (c) A change in an authorized fiduciary's compensation that
19 is incidental to other changes made by the exercise of the
20 decanting power is not an increase in the fiduciary's
21 compensation for purposes of subsections (a) and (b).

22 Section 1217. Relief from liability and indemnification.

23 (a) Except as otherwise provided in this Section, a
24 second-trust instrument may not relieve an authorized

1 fiduciary from liability for breach of trust to a greater
2 extent than the first-trust instrument.

3 (b) A second-trust instrument may provide for
4 indemnification of an authorized fiduciary of the first trust
5 or another person acting in a fiduciary capacity under the
6 first trust for any liability or claim that would have been
7 payable from the first trust if the decanting power had not
8 been exercised.

9 (c) A second-trust instrument may not reduce fiduciary
10 liability in the aggregate.

11 (d) Subject to subsection (c), a second-trust instrument
12 may divide and reallocate fiduciary powers among fiduciaries,
13 including one or more trustees, distribution advisors,
14 investment advisors, trust protectors, or other persons, and
15 relieve a fiduciary from liability for an act or failure to act
16 of another fiduciary as permitted by law of this State other
17 than this Article.

18 Section 1218. Removal or replacement of authorized
19 fiduciary. An authorized fiduciary may not exercise the
20 decanting power to modify a provision in the first-trust
21 instrument granting another person power to remove or replace
22 the fiduciary unless:

23 (1) the person holding the power consents to the
24 modification in a signed record and the modification
25 applies only to the person;

1 (2) the person holding the power and the qualified
2 beneficiaries of the second trust consent to the
3 modification in a signed record and the modification grants
4 a substantially similar power to another person; or

5 (3) the court approves the modification and the
6 modification grants a substantially similar power to
7 another person.

8 Section 1219. Tax-related limitations.

9 (a) In this Section:

10 (1) "Grantor trust" means a trust as to which a settlor
11 of a first trust is considered the owner under Sections 671
12 through 677 of the Internal Revenue Code or Section 679 of
13 the Internal Revenue Code.

14 (2) "Nongrantor trust" means a trust that is not a
15 grantor trust.

16 (3) "Qualified benefits property" means property
17 subject to the minimum distribution requirements of
18 Section 401(a)(9) of the Internal Revenue Code, and any
19 applicable regulations, or to any similar requirements
20 that refer to Section 401(a)(9) of the Internal Revenue
21 Code or the regulations.

22 (b) An exercise of the decanting power is subject to the
23 following limitations:

24 (1) If a first trust contains property that qualified,
25 or would have qualified but for provisions of this Article

1 other than this Section, for a marital deduction for
2 purposes of the gift or estate tax under the Internal
3 Revenue Code or a state gift, estate, or inheritance tax,
4 the second-trust instrument must not include or omit any
5 term that, if included in or omitted from the trust
6 instrument for the trust to which the property was
7 transferred, would have prevented the transfer from
8 qualifying for the deduction, or would have reduced the
9 amount of the deduction, under the same provisions of the
10 Internal Revenue Code or state law under which the transfer
11 qualified.

12 (2) If the first trust contains property that
13 qualified, or would have qualified but for provisions of
14 this Article other than this Section, for a charitable
15 deduction for purposes of the income, gift, or estate tax
16 under the Internal Revenue Code or a state income, gift,
17 estate, or inheritance tax, the second-trust instrument
18 must not include or omit any term that, if included in or
19 omitted from the trust instrument for the trust to which
20 the property was transferred, would have prevented the
21 transfer from qualifying for the deduction, or would have
22 reduced the amount of the deduction, under the same
23 provisions of the Internal Revenue Code or state law under
24 which the transfer qualified.

25 (3) If the first trust contains property that
26 qualified, or would have qualified but for provisions of

1 this Article other than this Section, for the exclusion
2 from the gift tax described in Section 2503(b) of the
3 Internal Revenue Code, the second-trust instrument must
4 not include or omit a term that, if included in or omitted
5 from the trust instrument for the trust to which the
6 property was transferred, would have prevented the
7 transfer from qualifying under the same provision of
8 Section 2503 of the Internal Revenue Code. If the first
9 trust contains property that qualified, or would have
10 qualified but for provisions of this Article other than
11 this Section, for the exclusion from the gift tax described
12 in Section 2503(b) of the Internal Revenue Code, by
13 application of Section 2503(c) of the Internal Revenue
14 Code, the second-trust instrument must not include or omit
15 a term that, if included or omitted from the trust
16 instrument for the trust to which the property was
17 transferred, would have prevented the transfer from
18 qualifying under Section 2503(c) of the Internal Revenue
19 Code.

20 (4) If the property of the first trust includes shares
21 of stock in an S corporation, as defined in Section 1361 of
22 the Internal Revenue Code and the first trust is, or but
23 for provisions of this Article other than this Section
24 would be, a permitted shareholder under any provision of
25 Section 1361 of the Internal Revenue Code, an authorized
26 fiduciary may exercise the power with respect to part or

1 all of the S-corporation stock only if any second trust
2 receiving the stock is a permitted shareholder under
3 Section 1361(c)(2) of the Internal Revenue Code. If the
4 property of the first trust includes shares of stock in an
5 S corporation and the first trust is, or but for provisions
6 of this Article other than this Section, would be, a
7 qualified subchapter-S trust within the meaning of Section
8 1361(d) of the Internal Revenue Code, the second-trust
9 instrument must not include or omit a term that prevents
10 the second trust from qualifying as a qualified
11 subchapter-S trust.

12 (5) If the first trust contains property that
13 qualified, or would have qualified but for provisions of
14 this Article other than this Section, for a zero inclusion
15 ratio for purposes of the generation-skipping transfer tax
16 under Section 2642(c) of the Internal Revenue Code the
17 second-trust instrument must not include or omit a term
18 that, if included in or omitted from the first-trust
19 instrument, would have prevented the transfer to the first
20 trust from qualifying for a zero inclusion ratio under
21 Section 2642(a) of the Internal Revenue Code.

22 (6) If the first trust is directly or indirectly the
23 beneficiary of qualified benefits property, the
24 second-trust instrument may not include or omit any term
25 that, if included in or omitted from the first-trust
26 instrument, would have increased the minimum distributions

1 required with respect to the qualified benefits property
2 under Section 401(a)(9) of the Internal Revenue Code and
3 any applicable regulations, or any similar requirements
4 that refer to Section 401(a)(9) of the Internal Revenue
5 Code or the regulations. If an attempted exercise of the
6 decanting power violates the preceding sentence, the
7 trustee is deemed to have held the qualified benefits
8 property and any reinvested distributions of the property
9 as a separate share from the date of the exercise of the
10 power and Section 1222 applies to the separate share.

11 (7) If the first trust qualifies as a grantor trust
12 because of the application of Section 672(f)(2)(A) of the
13 Internal Revenue Code the second trust may not include or
14 omit a term that, if included in or omitted from the
15 first-trust instrument, would have prevented the first
16 trust from qualifying under Section 672(f)(2)(A) of the
17 Internal Revenue Code.

18 (8) In this paragraph (8), "tax benefit" means a
19 federal or state tax deduction, exemption, exclusion, or
20 other benefit not otherwise listed in this Section, except
21 for a benefit arising from being a grantor trust. Subject
22 to paragraph (9) of this subsection (b), a second-trust
23 instrument may not include or omit a term that, if included
24 in or omitted from the first-trust instrument, would have
25 prevented qualification for a tax benefit if:

26 (A) the first-trust instrument expressly indicates

1 an intent to qualify for the benefit or the first-trust
2 instrument clearly is designed to enable the first
3 trust to qualify for the benefit; and

4 (B) the transfer of property held by the first
5 trust or the first trust qualified, or but for
6 provisions of this Article other than this Section,
7 would have qualified for the tax benefit.

8 (9) Subject to paragraph (4) of this subsection (b):

9 (A) except as otherwise provided in paragraph (7)
10 of this subsection (b), the second trust may be a
11 nongrantor trust, even if the first trust is a grantor
12 trust; and

13 (B) except as otherwise provided in paragraph (10)
14 of this subsection (b), the second trust may be a
15 grantor trust, even if the first trust is a nongrantor
16 trust.

17 (10) An authorized fiduciary may not exercise the
18 decanting power if a settlor objects in a signed record
19 delivered to the fiduciary within the notice period and:

20 (A) the first trust and second trusts are both
21 grantor trusts, in whole or in part, the first trust
22 grants the settlor or another person the power to cause
23 the second trust to cease to be a grantor trust, and
24 the second trust does not grant an equivalent power to
25 the settlor or other person; or

26 (B) the first trust is a nongrantor trust and the

1 second trust is a grantor trust, in whole or in part,
2 with respect to the settlor, unless:

3 (i) the settlor has the power at all times to
4 cause the second trust to cease to be a grantor
5 trust; or

6 (ii) the first-trust instrument contains a
7 provision granting the settlor or another person a
8 power that would cause the first trust to cease to
9 be a grantor trust and the second-trust instrument
10 contains the same provision.

11 Section 1220. Duration of second trust.

12 (a) Subject to subsection (b), a second trust may have a
13 duration that is the same as or different from the duration of
14 the first trust.

15 (b) To the extent that property of a second trust is
16 attributable to property of the first trust, the second trust
17 is subject to any rules governing maximum perpetuity,
18 accumulation, or suspension of the power of alienation
19 applicable to property of the first trust.

20 Section 1221. Need to distribute not required. An
21 authorized fiduciary may exercise the decanting power whether
22 or not under the first trust's discretionary distribution
23 standard the fiduciary would have made or could have been
24 compelled to make a discretionary distribution of principal at

1 the time of the exercise.

2 Section 1222. Savings provision.

3 (a) If exercise of the decanting power would be effective
4 under this Article except that the second-trust instrument in
5 part does not comply with this Article, the exercise of the
6 power is effective and the following rules apply to the
7 principal of the first trust subject to the exercise of the
8 power:

9 (1) A provision in the second-trust instrument that is
10 not permitted under this Article is void to the extent
11 necessary to comply with this Article.

12 (2) A provision required by this Article to be in the
13 second-trust instrument that is not contained in the
14 instrument is deemed to be included in the instrument to
15 the extent necessary to comply with this Article.

16 (b) If a trustee or other fiduciary of a second trust
17 discovers that subsection (a) applies to a prior exercise of
18 the decanting power, the fiduciary shall take such appropriate
19 corrective action as is consistent with the fiduciary's duties.

20 Section 1223. Trust for care of animal.

21 (a) In this Section:

22 (1) "Animal trust" means a trust or an interest in a
23 trust created to provide for the care of one or more
24 designated domestic or pet animals.

1 (2) "Protector" means a person described in paragraph
2 (3) of subsection (b) of Section 408.

3 (b) The decanting power may be exercised over an animal
4 trust that has a protector to the extent the trust could be
5 decanted under this Article as if each animal that benefits
6 from the trust were an individual, if the protector consents in
7 a signed record to the exercise of the decanting power.

8 (c) A protector for an animal has the rights under this
9 Article of a qualified beneficiary.

10 (d) Notwithstanding any other provision of this Article, if
11 a first trust is an animal trust, in an exercise of the
12 decanting power, the second trust must provide that trust
13 property may be applied only to its intended purpose for the
14 period the first trust benefitted the animal.

15 Section 1224. (Reserved).

16 Section 1225. Settlor.

17 (a) For purposes of the laws of this State other than this
18 Article and subject to subsection (b), a settlor of a first
19 trust is deemed to be the settlor of the second trust with
20 respect to the portion of the principal of the first trust
21 subject to the exercise of the decanting power.

22 (b) In determining settlor intent with respect to a second
23 trust, the intent of a settlor of the first trust, the intent
24 of a settlor of the second trust, and the intent of the

1 authorized fiduciary may be considered.

2 Section 1226. Later-discovered property.

3 (a) Except as otherwise provided in subsection (c), if
4 exercise of the decanting power was intended to distribute all
5 the principal of the first trust to one or more second trusts,
6 later-discovered property otherwise belonging to the first
7 trust and property paid to or acquired by the first trust after
8 the exercise of the power is part of the trust estate of the
9 second trust.

10 (b) Except as otherwise provided in subsection (c), if
11 exercise of the decanting power was intended to distribute less
12 than all the principal of the first trust to one or more second
13 trusts, later-discovered property belonging to the first trust
14 or property paid to or acquired by the first trust after
15 exercise of the decanting power remains part of the trust
16 estate of the first trust.

17 (c) An authorized fiduciary may provide in an exercise of
18 the decanting power or by the terms of a second trust for
19 disposition of later-discovered property belonging to the
20 first trust or property paid to or acquired by the first trust
21 after exercise of the decanting power.

22 Section 1227. Obligations. A debt, liability, or other
23 obligation enforceable against property of a first trust is
24 enforceable to the same extent against that property when held

1 by the second trust after exercise of the decanting power.

2 Article 13. Uniform Powers of Appointment Act.

3 Section 1301. Article title. This Article may be referred
4 to as the Uniform Powers of Appointment Act.

5 Section 1302. Definitions. In this Article:

6 (1) "Appointee" means a person to which a powerholder makes
7 an appointment of appointive property.

8 (2) "Appointive property" means the property or property
9 interest subject to a power of appointment.

10 (3) "Blanket-exercise clause" means a clause in an
11 instrument that exercises a power of appointment and is not a
12 specific-exercise clause. The term includes a clause that:

13 (A) expressly uses the words "any power" in exercising
14 any power of appointment the powerholder has;

15 (B) expressly uses the words "any property" in
16 appointing any property over which the powerholder has a
17 power of appointment; or

18 (C) disposes of all property subject to disposition by
19 the powerholder.

20 (4) "Exclusionary power of appointment" means a power of
21 appointment exercisable in favor of any one or more of the
22 permissible appointees to the exclusion of the other
23 permissible appointees.

1 (5) "Gift-in-default clause" means a clause identifying a
2 taker in default of appointment.

3 (6) "Impermissible appointee" means a person that is not a
4 permissible appointee.

5 (7) "Instrument" means a writing.

6 (8) "Permissible appointee" means a person in whose favor a
7 powerholder may exercise a power of appointment.

8 (9) "Powerholder" means a person in which a donor creates a
9 power of appointment.

10 (10) "Specific-exercise clause" means a clause in an
11 instrument that specifically refers to and exercises a
12 particular power of appointment.

13 (11) "Taker in default of appointment" means a person that
14 takes part or all of the appointive property to the extent the
15 powerholder does not effectively exercise the power of
16 appointment.

17 Section 1303. Governing law. Unless the terms of the
18 instrument creating a power of appointment manifest a contrary
19 intent:

20 (1) the creation, revocation, or amendment of the power is
21 governed by the law of the donor's domicile at the relevant
22 time; and

23 (2) the exercise, release, or disclaimer of the power, or
24 the revocation or amendment of the exercise, release, or
25 disclaimer of the power, is governed by the law of the

1 powerholder's domicile at the relevant time.

2 Section 1304. Common law and principles of equity. The
3 common law and principles of equity supplement this Article,
4 except to the extent modified by this Article or law of this
5 State other than this Article.

6 Section 1305. Creation of power of appointment.

7 (a) A power of appointment is created only if:

8 (1) the instrument creating the power:

9 (A) is valid under applicable law; and

10 (B) except as otherwise provided in subsection
11 (b), transfers the appointive property; and

12 (2) the terms of the instrument creating the power
13 manifest the donor's intent to create, in a powerholder, a
14 power of appointment over the appointive property
15 exercisable in favor of a permissible appointee.

16 (b) Subdivision (a) (1) (B) of this Section does not apply to
17 the creation of a power of appointment by the exercise of a
18 power of appointment.

19 (c) A power of appointment may not be created in a deceased
20 individual.

21 (d) Subject to an applicable rule against perpetuities, a
22 power of appointment may be created in an unborn or
23 unascertained powerholder.

1 Section 1306. Nontransferability. A powerholder may not
2 transfer a power of appointment. If the powerholder dies
3 without exercising or releasing the power, the power lapses.

4 Section 1307. Presumption of unlimited authority. Subject
5 to Section 1309, and unless the terms of the instrument
6 creating a power of appointment manifest a contrary intent, the
7 power is:

8 (1) presently exercisable;

9 (2) exclusionary; and

10 (3) except as otherwise provided in Section 1308,
11 general.

12 Section 1308. Exception to presumption of unlimited
13 authority. Unless the terms of the instrument creating a power
14 of appointment manifest a contrary intent, the power is
15 nongeneral if:

16 (1) the power is exercisable only at the powerholder's
17 death; and

18 (2) the permissible appointees of the power are a
19 defined and limited class that does not include the
20 powerholder's estate, the powerholder's creditors, or the
21 creditors of the powerholder's estate.

22 Section 1309. Rules of classification.

23 (a) In this Section, "adverse party" means a person with a

1 substantial beneficial interest in property that would be
2 affected adversely by a powerholder's exercise or nonexercise
3 of a power of appointment in favor of the powerholder, the
4 powerholder's estate, a creditor of the powerholder, or a
5 creditor of the powerholder's estate.

6 (b) If a powerholder may exercise a power of appointment
7 only with the consent or joinder of an adverse party, the power
8 is nongeneral.

9 (c) If the permissible appointees of a power of appointment
10 are not defined and limited, the power is exclusionary.

11 Section 1310. Power to revoke or amend. A donor may revoke
12 or amend a power of appointment only to the extent that:

13 (1) the instrument creating the power is revocable by
14 the donor; or

15 (2) the donor reserves a power of revocation or
16 amendment in the instrument creating the power of
17 appointment.

18 Section 1311. Requisites for exercise of power of
19 appointment. A power of appointment is exercised only:

20 (1) if the instrument exercising the power is valid
21 under applicable law;

22 (2) if the terms of the instrument exercising the
23 power:

24 (A) manifest the powerholder's intent to exercise

1 the power; and

2 (B) subject to Section 1314, satisfy the
3 requirements of exercise, if any, imposed by the donor;
4 and

5 (3) to the extent the appointment is a permissible
6 exercise of the power.

7 Section 1312. Intent to exercise: determining intent from
8 residuary clause.

9 (a) In this Section:

10 (1) "Residuary clause" does not include a residuary
11 clause containing a blanket-exercise clause or a
12 specific-exercise clause.

13 (2) "Will" includes a codicil and a testamentary
14 instrument that revises another will.

15 (b) A residuary clause in a powerholder's will, or a
16 comparable clause in the powerholder's revocable trust,
17 manifests the powerholder's intent to exercise a power of
18 appointment only if:

19 (1) the terms of the instrument containing the
20 residuary clause do not manifest a contrary intent;

21 (2) the power is a general power exercisable in favor
22 of the powerholder's estate;

23 (3) there is no gift-in-default clause or it is
24 ineffective; and

25 (4) the powerholder did not release the power.

1 Section 1313. Intent to exercise: after-acquired power.
2 Unless the terms of the instrument exercising a power of
3 appointment manifest a contrary intent:

4 (1) except as otherwise provided in paragraph (2), a
5 blanket-exercise clause extends to a power acquired by the
6 powerholder after executing the instrument containing the
7 clause; and

8 (2) if the powerholder is also the donor of the power,
9 the clause does not extend to the power unless there is no
10 gift-in-default clause or it is ineffective.

11 Section 1314. Substantial compliance with donor-imposed
12 formal requirement. A powerholder's substantial compliance
13 with a formal requirement of an appointment imposed by the
14 donor, including a requirement that the instrument exercising
15 the power of appointment make reference or specific reference
16 to the power, is sufficient if:

17 (1) the powerholder knows of and intends to exercise
18 the power; and

19 (2) the powerholder's manner of attempted exercise of
20 the power does not impair a material purpose of the donor
21 in imposing the requirement.

22 Section 1315. Permissible appointment.

23 (a) A powerholder of a general power of appointment that

1 permits appointment to the powerholder or the powerholder's
2 estate may make any appointment, including an appointment in
3 trust or creating a new power of appointment, that the
4 powerholder could make in disposing of the powerholder's own
5 property.

6 (b) A powerholder of a general power of appointment that
7 permits appointment only to the creditors of the powerholder or
8 of the powerholder's estate is restricted to appointing to
9 those creditors.

10 (c) Unless the terms of the instrument creating a power of
11 appointment manifest a contrary intent, the powerholder of a
12 nongeneral power may:

13 (1) make an appointment in any form, with any
14 conditions and limitations, including an appointment in
15 trust to any trustee, in favor of a permissible appointee;

16 (2) create a general or nongeneral power in a
17 permissible appointee that may be exercisable in favor of
18 persons other than permissible appointees of the original
19 nongeneral power; or

20 (3) create a nongeneral power in any person to appoint
21 to one or more of the permissible appointees of the
22 original nongeneral power.

23 Section 1316. Appointment to deceased appointee. Subject
24 to Section 4-11 of the Probate Act of 1975, an appointment to a
25 deceased appointee is ineffective.

1 Section 1317. Impermissible appointment.

2 (a) Except as otherwise provided in Section 1316, an
3 exercise of a power of appointment in favor of an impermissible
4 appointee is ineffective.

5 (b) An exercise of a power of appointment in favor of a
6 permissible appointee is ineffective to the extent the
7 appointment is a fraud on the power.

8 Section 1318. Selective allocation doctrine. If a
9 powerholder exercises a power of appointment in a disposition
10 that also disposes of property the powerholder owns, the owned
11 property and the appointive property must be allocated in the
12 permissible manner that best carries out the powerholder's
13 intent.

14 Section 1319. Capture doctrine: disposition of
15 ineffectively appointed property under general power. To the
16 extent a powerholder of a general power of appointment, other
17 than a power to revoke, amend, or withdraw property from a
18 trust, makes an ineffective appointment:

19 (1) the gift-in-default clause controls the
20 disposition of the ineffectively appointed property; or

21 (2) if there is no gift-in-default clause or to the
22 extent the clause is ineffective, the ineffectively
23 appointed property:

- 1 (A) passes to:
- 2 (i) the powerholder if the powerholder is a
- 3 permissible appointee and living; or
- 4 (ii) if the powerholder is an impermissible
- 5 appointee or not living, the powerholder's estate
- 6 if the estate is a permissible appointee; or
- 7 (B) if there is no taker under subparagraph (A),
- 8 passes under a reversionary interest to the donor or
- 9 the donor's transferee or successor in interest.

10 Section 1320. Disposition of unappointed property under

11 released or unexercised general power. To the extent a

12 powerholder releases or fails to exercise a general power of

13 appointment other than a power to revoke, amend, or withdraw

14 property from a trust:

- 15 (1) the gift-in-default clause controls the
- 16 disposition of the unappointed property; or
- 17 (2) if there is no gift-in-default clause or to the
- 18 extent the clause is ineffective:
- 19 (A) except as otherwise provided in subparagraph
- 20 (B), the unappointed property passes to:
- 21 (i) the powerholder if the powerholder is a
- 22 permissible appointee and living; or
- 23 (ii) if the powerholder is an impermissible
- 24 appointee or not living, the powerholder's estate
- 25 if the estate is a permissible appointee; or

1 (B) to the extent the powerholder released the
2 power, or if there is no taker under subparagraph (A),
3 the unappointed property passes under a reversionary
4 interest to the donor or the donor's transferee or
5 successor in interest.

6 Section 1321. Disposition of unappointed property under
7 released or unexercised nongeneral power. To the extent a
8 powerholder releases, ineffectively exercises, or fails to
9 exercise a nongeneral power of appointment:

10 (1) the gift-in-default clause controls the disposition of
11 the unappointed property; or

12 (2) if there is no gift-in-default clause or to the extent
13 the clause is ineffective, the unappointed property:

14 (A) passes to the permissible appointees if:

15 (i) the permissible appointees are defined and
16 limited; and

17 (ii) the terms of the instrument creating the power
18 do not manifest a contrary intent; or

19 (B) if there is no taker under subparagraph (A), passes
20 under a reversionary interest to the donor or the donor's
21 transferee or successor in interest.

22 Section 1322. Disposition of unappointed property if
23 partial appointment to taker in default. Unless the terms of
24 the instrument creating or exercising a power of appointment

1 manifest a contrary intent, if the powerholder makes a valid
2 partial appointment to a taker in default of appointment, the
3 taker in default of appointment may share fully in unappointed
4 property.

5 Section 1323. Appointment to taker in default. If a
6 powerholder of a general power makes an appointment to a taker
7 in default of appointment and the appointee would have taken
8 the property under a gift-in-default clause had the property
9 not been appointed, the power of appointment is deemed not to
10 have been exercised, and the appointee takes under the
11 gift-in-default clause.

12 Section 1324. Powerholder's authority to revoke or amend
13 exercise. A powerholder may revoke or amend an exercise of a
14 power of appointment only to the extent that:

15 (1) the powerholder reserves a power of revocation or
16 amendment in the instrument exercising the power of
17 appointment and, if the power is nongeneral, the terms of
18 the instrument creating the power of appointment do not
19 prohibit the reservation; or

20 (2) the terms of the instrument creating the power of
21 appointment provide that the exercise is revocable or
22 amendable.

23 Section 1325. Disposition of trust property subject to

1 power. In disposing of trust property subject to a power of
2 appointment exercisable by an instrument other than a will, a
3 trustee acting in good faith shall have no liability to any
4 appointee or taker in default of appointment for relying upon
5 an instrument believed to be genuine purporting to exercise a
6 power of appointment or for assuming that there is no
7 instrument exercising the power of appointment in the absence
8 of actual knowledge thereof within 3 months of the last date on
9 which the power of appointment may be exercised.

10 Section 1326. Disclaimer. As provided by Section 2-7 of the
11 Probate Act of 1975:

12 (1) A powerholder may disclaim all or part of a power
13 of appointment.

14 (2) A permissible appointee, appointee, or taker in
15 default of appointment may disclaim all or part of an
16 interest in appointive property.

17 Section 1327. Authority to release. A powerholder may
18 release a power of appointment, in whole or in part, except to
19 the extent the terms of the instrument creating the power
20 prevent the release.

21 Section 1328. Method of release. A powerholder of a
22 releasable power of appointment may release the power in whole
23 or in part:

1 (1) by substantial compliance with a method provided in
2 the terms of the instrument creating the power; or

3 (2) if the terms of the instrument creating the power
4 do not provide a method or the method provided in the terms
5 of the instrument is not expressly made exclusive, by an
6 instrument manifesting the powerholder's intent by clear
7 and convincing evidence.

8 Section 1329. Revocation or amendment of release. A
9 powerholder may revoke or amend a release of a power of
10 appointment only to the extent that:

11 (1) the instrument of release is revocable by the
12 powerholder; or

13 (2) the powerholder reserves a power of revocation or
14 amendment in the instrument of release.

15 Section 1330. Power to contract: presently exercisable
16 power of appointment. A powerholder of a presently exercisable
17 power of appointment may contract:

18 (1) not to exercise the power; or

19 (2) to exercise the power if the contract when made
20 does not confer a benefit on an impermissible appointee.

21 Section 1331. Power to contract: power of appointment not
22 presently exercisable. A powerholder of a power of appointment
23 that is not presently exercisable may contract to exercise or

1 not to exercise the power only if the powerholder:

2 (1) is also the donor of the power; and

3 (2) has reserved the power in a revocable trust.

4 Section 1332. Remedy for breach of contract to appoint or
5 not to appoint. The remedy for a powerholder's breach of a
6 contract to appoint or not to appoint is limited to damages
7 payable out of the appointive property or, if appropriate,
8 specific performance of the contract.

9 Section 1333. Creditor claim: general power created by
10 powerholder.

11 (a) In this Section, "power of appointment created by the
12 powerholder" includes a power of appointment created in a
13 transfer by another person to the extent the powerholder
14 contributed value to the transfer.

15 (b) Appointive property subject to a general power of
16 appointment created by the powerholder is subject to a claim of
17 a creditor of the powerholder or of the powerholder's estate to
18 the extent provided in the Uniform Fraudulent Transfer Act.

19 (c) Subject to subsection (b), appointive property subject
20 to a general power of appointment created by the powerholder is
21 not subject to a claim of a creditor of the powerholder or the
22 powerholder's estate to the extent the powerholder irrevocably
23 appointed the property in favor of a person other than the
24 powerholder or the powerholder's estate.

1 (d) Subject to subsections (b) and (c), and notwithstanding
2 the presence of a spendthrift provision or whether the claim
3 arose before or after the creation of the power of appointment,
4 appointive property subject to a general power of appointment
5 created by the powerholder is subject to a claim of a creditor
6 of:

7 (1) the powerholder, to the same extent as if the
8 powerholder owned the appointive property, if the power is
9 presently exercisable; and

10 (2) the powerholder's estate, to the extent the estate
11 is insufficient to satisfy the claim and subject to the
12 right of a decedent to direct the source from which
13 liabilities are paid, if the power is exercisable at the
14 powerholder's death.

15 Section 1334. Creditor claim: general power not created by
16 powerholder.

17 (a) Except as otherwise provided in subsection (b),
18 appointive property subject to a general power of appointment
19 created by a person other than the powerholder is subject to a
20 claim of a creditor of:

21 (1) the powerholder, to the extent the powerholder's
22 property is insufficient, if the power is presently
23 exercisable; and

24 (2) the powerholder's estate if the power is exercised
25 at the powerholder's death, to the extent the estate is

1 insufficient, subject to the right of the deceased
2 powerholder to direct the source from which liabilities are
3 paid.

4 (b) Subject to subsection (c) of Section 1336, a power of
5 appointment created by a person other than the powerholder that
6 is subject to an ascertainable standard relating to an
7 individual's health, education, support, or maintenance within
8 the meaning of Section 2041(b)(1)(A) of the Internal Revenue
9 Code or Section 2514(c)(1) of the Internal Revenue Code, as
10 amended, is treated for purposes of this Article as a
11 nongeneral power.

12 Section 1335. Power to withdraw.

13 (a) For purposes of Sections 1333 through 1336, and except
14 as otherwise provided in subsection (b), a power to withdraw
15 property from a trust is treated, during the time the power may
16 be exercised, as a presently exercisable general power of
17 appointment to the extent of the property subject to the power
18 to withdraw.

19 (b) A power to withdraw property from a trust ceases to be
20 treated as a presently exercisable general power of appointment
21 upon its lapse, release, or waiver.

22 Section 1336. Creditor claim: nongeneral power.

23 (a) Except as otherwise provided in subsections (b) and
24 (c), appointive property subject to a nongeneral power of

1 appointment is exempt from a claim of a creditor of the
2 powerholder or the powerholder's estate.

3 (b) Appointive property subject to a nongeneral power of
4 appointment is subject to a claim of a creditor of the
5 powerholder or the powerholder's estate to the extent that the
6 powerholder owned the property and, reserving the nongeneral
7 power, transferred the property in violation of the Uniform
8 Fraudulent Transfer Act.

9 (c) If the initial gift in default of appointment is to the
10 powerholder or the powerholder's estate, a nongeneral power of
11 appointment is treated for purposes of this Section as a
12 general power.

13 Section 1337. Uniformity of application and construction.
14 In applying and construing this Article, consideration must be
15 given to the need to promote uniformity of the law with respect
16 to its subject matter among states that enact it.

17 Section 1338. Application to existing relationships.

18 (a) Except as otherwise provided in this Article, on and
19 after the effective date of this Code:

20 (1) this Article applies to a power of appointment
21 created before, on, or after its effective date;

22 (2) this Article applies to a judicial proceeding
23 concerning a power of appointment commenced on or after its
24 effective date;

1 (3) this Article applies to a judicial proceeding
2 concerning a power of appointment commenced before its
3 effective date unless the court finds that application of a
4 particular provision of this Article would substantially
5 interfere with the effective conduct of the judicial
6 proceeding or prejudice a right of a party, in which case
7 the particular provision of this Article does not apply and
8 the superseded law applies;

9 (4) a rule of construction or presumption provided in
10 this Article applies to an instrument executed before the
11 effective date of the Article unless there is a clear
12 indication of a contrary intent in the terms of the
13 instrument; and

14 (5) an act done before the effective date of this Code
15 is not affected by this Article.

16 (b) If a right is acquired, extinguished, or barred on the
17 expiration of a prescribed period that commenced under law of
18 this State other than this Article before the effective date of
19 this Code, the law continues to apply to the right.

20 (c) No trustee is liable to any person in whose favor a
21 power of appointment may have been exercised for any
22 distribution of property made to persons entitled to take in
23 default of the effective exercise of the power of appointment
24 to the extent that the distribution shall have been completed
25 prior to the effective date of this Code.

1 Article 14. Perpetuities.

2 Section 1401. Article title. Except for Section 1407, this
3 Article may be referred to as the Act Concerning Perpetuities.

4 Section 1402. Purpose. This Article modifies the common law
5 rule of property known as the rule against perpetuities, that,
6 except as modified by statutes in force at the effective date
7 of this Article and by this Article, shall remain in full force
8 and effect.

9 Section 1403. Definitions and terms. As used in this
10 Article unless the context otherwise requires:

11 (a) Any reference in this Article to income to be "paid" or
12 to income "payments" or to "receiving" income includes income
13 payable or distributable to or applicable for the benefit of a
14 beneficiary.

15 (b) "Instrument" means any writing pursuant to which any
16 legal or equitable interest in property or in the income
17 therefrom is affected, disposed of, or created.

18 (c) "Qualified perpetual trust" means any trust created by
19 any written instrument executed on or after January 1, 1998,
20 including an amendment to an instrument in existence prior to
21 that date and the exercise of a power of appointment granted by
22 an instrument executed or amended on or after that date:

23 (1) to which, by the specific terms governing the

1 trust, the rule against perpetuities does not apply; and

2 (2) the power of the trustee (or other person to whom
3 the power is properly granted or delegated) to sell
4 property of which is not limited by the trust instrument or
5 any provision of law for any period of time beyond the
6 period of the rule against perpetuities.

7 Section 1404. Application of rule against perpetuities.

8 (a) The rule against perpetuities does not apply:

9 (1) to any disposition of property or interest therein
10 that, at the effective date of this Code, does not violate,
11 or is exempted by statute from the operation of, the common
12 law rule against perpetuities;

13 (2) to powers of a trustee to sell, lease or mortgage
14 property or to powers that relate to the administration or
15 management of trust assets, including, without limitation,
16 discretionary powers of a trustee to determine what
17 receipts constitute principal and what receipts constitute
18 income and powers to appoint a successor trustee;

19 (3) to mandatory powers of a trustee to distribute
20 income, or to discretionary powers of a trustee to
21 distribute principal prior to termination of a trust, to a
22 beneficiary having an interest in the principal that is
23 irrevocably vested in quality and quantity;

24 (4) to discretionary powers of a trustee to allocate
25 income and principal among beneficiaries, but no exercise

1 of any such power after the expiration of the period of the
2 rule against perpetuities is valid;

3 (5) to leases to commence in the future or upon the
4 happening of a future event, but no such lease is valid
5 unless the term of the lease actually commences in
6 possession within 40 years from the date of execution of
7 the lease;

8 (6) to commitments (A) by a lessor to enter into a
9 lease with a subtenant or with the holder of a leasehold
10 mortgage or (B) by a lessee or sublessee to enter into a
11 lease with the holder of a mortgage;

12 (7) to options in gross or to preemptive rights in the
13 nature of a right of first refusal, but no option in gross
14 shall be valid for more than 40 years from the date of its
15 creation; or

16 (8) to qualified perpetual trusts as defined in Section
17 1403.

18 (b) The period of the rule against perpetuities shall not
19 commence to run in connection with any disposition of property
20 or interest therein, and no instrument shall be regarded as
21 becoming effective for purposes of the rule against
22 perpetuities, and no interest or power shall be deemed to be
23 created for purposes of the rule against perpetuities as long
24 as, by the terms of the instrument, the maker of the instrument
25 has the power to revoke the instrument or to transfer or direct
26 to be transferred to himself the entire legal and equitable

1 ownership of the property or interest therein.

2 (c) In determining whether an interest violates the rule
3 against perpetuities:

4 (1) it is presumed:

5 (A) that the interest was intended to be valid;

6 (B) in the case of an interest conditioned upon the
7 probate of a will, the appointment of an executor,
8 administrator or trustee, the completion of the
9 administration of an estate, the payment of debts, the
10 sale or distribution of property, the determination of
11 federal or state tax liabilities or the happening of
12 any administrative contingency, that the contingency
13 must occur, if at all, within the period of the rule
14 against perpetuities; and

15 (C) if the instrument creates an interest in the
16 "widow", "widower", or "spouse" of another person,
17 that the maker of the instrument intended to refer to a
18 person who was living at the date that the period of
19 the rule against perpetuities commences to run;

20 (2) if any interest, but for this subsection, would be
21 invalid because it is made to depend upon any person
22 attaining or failing to attain an age in excess of 21
23 years, the age specified shall be reduced to 21 years as to
24 every person to whom the age contingency applies;

25 (3) notwithstanding the provisions of paragraphs (1)
26 and (2) of this subsection (c), if the validity of any

1 interest depends upon the possibility of the birth or
2 adoption of a child, the following apply:

3 (A) no person shall be deemed capable of having a
4 child until he has attained the age of 13 years;

5 (B) any person who has attained the age of 65 years
6 shall be deemed incapable of having a child;

7 (C) evidence is admissible as to the incapacity of
8 having a child by a living person who has not attained
9 the age of 65 years; and

10 (D) the possibility of having a child or more
11 remote descendant by adoption shall be disregarded.

12 (d) Paragraphs (2), (3), and (6) of subsection (a) and
13 subsection (b) of this Section are declaratory of existing law.

14 Section 1405. Trusts.

15 (a) Subject to the provisions of subsections (e) and (f) of
16 this Section, a trust containing any limitation that, but for
17 this subsection, would violate the rule against perpetuities as
18 modified by Section 1404 shall terminate at the expiration of a
19 period of:

20 (1) 21 years after the death of the last to die of all
21 of the beneficiaries of the instrument who were living at
22 the date when the period of the rule against perpetuities
23 commenced to run; or

24 (2) 21 years after that date if no beneficiary of the
25 instrument was then living, unless events occur that cause

1 an earlier termination in accordance with the terms of the
2 instrument and then the principal shall be distributed as
3 provided by the instrument.

4 (b) Subject to the provisions of subsections (c), (d) and
5 (e) of this Section, when a trust terminates because of the
6 application of subsection (a) of this Section, the trustee
7 shall distribute the principal to those persons who would be
8 the heirs at law of the maker of the instrument if he or she
9 died at the expiration of the period specified in subsection
10 (a) of this Section and in the proportions then specified by
11 statute, unless the trust was created by the exercise of a
12 power of appointment and then the principal shall be
13 distributed to the person who would have received it if the
14 power had not been exercised.

15 (c) Before any distribution of principal is made pursuant
16 to subsection (b) of this Section, the trustee shall
17 distribute, out of principal, to each living beneficiary who,
18 but for termination of the trust because of the application of
19 subsection (a) of this Section, would have been entitled to be
20 paid income after the expiration of the period specified in
21 subsection (a) of this Section, an amount equal to the present
22 value (determined as provided in subsection (d) of this Section
23 of the income that the beneficiary would have been entitled to
24 be paid after the expiration of that period.

25 (d) In determining the present value of income for purposes
26 of any distribution to a beneficiary pursuant to subsection (c)

1 of this Section:

2 (1) when income payments would have been subject in
3 whole or in part to any discretionary power, it shall be
4 assumed:

5 (A) that the income that would have been paid to an
6 individual income beneficiary would have been the
7 maximum amount of income that could have been paid to
8 him or her in the exercise of the power;

9 (B) if the income would or might have been payable
10 to more than one beneficiary, that (except as
11 hereinafter provided) each beneficiary would have
12 received an equal share of the income, unless the
13 instrument specifies less than an equal share as the
14 maximum amount or proportion of income that would have
15 been paid to any beneficiary in the exercise of the
16 power, in which event the maximum specified shall
17 control; and

18 (C) if the income would or might have been payable
19 to the descendants of the maker of the instrument or of
20 another person, that, unless the instrument provides
21 otherwise, the descendants would have received the
22 income per stirpes;

23 (2) (A) present value shall be computed on an actuarial
24 basis and there shall be assumed a return of 5%, at simple
25 interest, on the value of the principal from which the
26 beneficiary would have been entitled to receive income; and

1 (B) if the interest in income was to be for the life of
2 the beneficiary or for the life of another, the computation
3 shall be made on the expectancy set forth in the most
4 recently published American Experience Tables of Mortality
5 and no other evidence of duration or expectancy shall be
6 considered;

7 (3) if the trustee cannot determine the present value
8 of any income interest in accordance with the provisions of
9 the instrument and the foregoing rules concerning income
10 payments, the present value of the interest shall be deemed
11 to be zero.

12 (e) This Section applies only when a trust would violate
13 the rule against perpetuities as modified by Section 1404 and
14 does not apply to any trust that would have been valid apart
15 from this Article.

16 (f) This Section does not apply when a trust violates the
17 rule against perpetuities because the trust estate may not vest
18 in the trustee within the period of the rule.

19 Section 1406. Applicability. Sections 1401 through 1405
20 apply only to instruments, including instruments that exercise
21 a power of appointment, that become effective after September
22 22, 1969.

23 Section 1407. Vesting of any limitation of property.

24 (a) This Section may be referred to as the Perpetuities

1 Vesting Law.

2 (b) The vesting of any limitation of property, whether
3 created in the exercise of a power of appointment or in any
4 other manner, shall not be regarded as deferred for purposes of
5 the rule against perpetuities merely because the limitation is
6 made to the estate of a person or to a personal representative,
7 or to a trustee under a will, or to take effect on the probate
8 of a will.

9 (c) This Section applies only to limitations created after
10 July 1, 1952.

11 Article 15. Miscellaneous provisions.

12 Section 1501. Uniformity of application and construction.
13 In applying and construing this Code, consideration must be
14 given to the need to promote uniformity of the law with respect
15 to its subject matter among states that enact comparable
16 provisions of the Uniform Trust Code.

17 Section 1502. Severability. If any provision of this Code
18 or its application to any person or circumstances is held
19 invalid, the invalidity does not affect other provisions or
20 applications of this Code which can be given effect without the
21 invalid provision or application, and to this end the
22 provisions of this Code are severable.

1 Section 1503. Rights retained by Attorney General. Nothing
2 in this Code is intended to derogate any right the Attorney
3 General has under the common law of this State to represent a
4 charitable interest in a trust. Nothing in this Code relieves a
5 trustee of the duty to file documents under, and otherwise
6 comply with, the Charitable Trust Act or the Solicitation for
7 Charity Act.

8 Section 1504. (See Section 9999 for effective date.)

9 (755 ILCS 5/4-2 rep.)

10 Section 1505. The Probate Act of 1975 is amended by
11 repealing Section 4-2.

12 (760 ILCS 5/Act rep.)

13 Section 1505.1. The Trusts and Trustees Act is repealed.

14 (760 ILCS 35/Act rep.)

15 Section 1505.2. The Trusts and Dissolutions of Marriage Act
16 is repealed.

17 (765 ILCS 305/Act rep.)

18 Section 1505.3. The Statute Concerning Perpetuities is
19 repealed.

20 (765 ILCS 310/Act rep.)

1 Section 1505.4. The Perpetuities Vesting Act is repealed.

2 (765 ILCS 315/Act rep.)

3 Section 1505.5. The Trust Accumulation Act is repealed.

4 (765 ILCS 320/Act rep.)

5 Section 1505.6. The Power of Appointment Exercise Act is
6 repealed.

7 (765 ILCS 325/Act rep.)

8 Section 1505.7. The Termination of Powers Act is repealed.

9 Section 1506. Application to existing relationships.
10 Except as otherwise provided in this Code, on the effective
11 date of this Code:

12 (1) This Code applies to all trusts created before, on,
13 or after its effective date.

14 (2) This Code applies to all judicial proceedings
15 concerning trusts commenced on or after its effective date.
16 As used in this Section, "judicial proceedings" includes
17 any proceeding before a court or administrative tribunal of
18 this State and any arbitration or mediation proceedings.

19 (3) this Code applies to all nonjudicial matters
20 concerning trusts commenced before, on, or after its
21 effective date. As used in this Section, "nonjudicial
22 matters" includes, but is not limited to, nonjudicial

1 settlement agreements entered into under Section 111 and
2 the grant of any consent, release, ratification, or
3 indemnification.

4 (4) This Code applies to judicial proceedings
5 concerning trusts commenced before its effective date
6 unless the court finds that application of a particular
7 provision of this Code would substantially interfere with
8 the effective conduct of the judicial proceedings or
9 prejudice the rights of the parties, in which case the
10 particular provision of this Code does not apply and the
11 superseded law applies.

12 (5) Any rule of construction or presumption provided in
13 this Code applies to trust instruments executed before the
14 effective date of this Code unless there is a clear
15 indication of a contrary intent in the trust instrument.

16 (6) An act done before the effective date of this Code
17 is not affected by this Code.

18 (7) If a right is acquired, extinguished, or barred
19 upon the expiration of a prescribed period that has
20 commenced to run under any other statute before the
21 effective date of this Code, that statute continues to
22 apply to the right even if it has been repealed or
23 superseded.

24 (8) This Code shall be construed as pertaining to
25 administration of a trust and applies to any trust that is
26 administered in Illinois under Illinois law or that is

1 governed by Illinois law with respect to the meaning and
2 effect of its terms, except to the extent the trust
3 instrument expressly prohibits use of this Code by specific
4 reference to this Code.

5 Article 16. Amendatory provisions.

6 Section 1601. The Public Use Trust Act is amended by
7 changing Section 2 as follows:

8 (30 ILCS 160/2) (from Ch. 127, par. 4002)

9 Sec. 2. (a) The Department of Agriculture, the Department
10 of Natural Resources, and the Historic Preservation Agency have
11 the power to enter into a trust agreement with a person or
12 group of persons under which the State agency may receive or
13 collect money or other property from the person or group of
14 persons and may expend such money or property solely for a
15 public purpose within the powers and duties of that State
16 agency and stated in the trust agreement. The State agency
17 shall be the trustee under any such trust agreement.

18 (b) Money or property received under a trust agreement
19 shall not be deposited in the State treasury and is not subject
20 to appropriation by the General Assembly, but shall be held and
21 invested by the trustee separate and apart from the State
22 treasury. The trustee shall invest money or property received
23 under a trust agreement as provided for trustees under the

1 Illinois Trust Code ~~Trusts and Trustees Act~~ or as otherwise
2 provided in the trust agreement.

3 (c) The trustee shall maintain detailed records of all
4 receipts and disbursements in the same manner as required for
5 trustees under the Illinois Trust Code ~~Trusts and Trustees Act~~.
6 The trustee shall provide an annual accounting of all receipts,
7 disbursements, and inventory to all donors to the trust and the
8 Auditor General. The annual accounting shall be made available
9 to any member of the public upon request.

10 (Source: P.A. 89-445, eff. 2-7-96.)

11 Section 1602. The Township Code is amended by changing
12 Section 135-20 as follows:

13 (60 ILCS 1/135-20)

14 Sec. 135-20. Powers of board of managers. The board of
15 managers shall control and manage the cemeteries jointly
16 acquired by the townships or road districts. The board of
17 managers may receive in trust from the proprietors or owners of
18 any lot in the cemeteries, or any person, corporation,
19 association, or society interested in the maintenance of those
20 cemeteries, any gift or legacy of money or real, personal, or
21 mixed property that is donated or bequeathed to the board of
22 managers for the use and maintenance of the lot or cemeteries.
23 The board of managers may convert the property into money, may
24 invest the money in securities in which trust funds may be

1 invested under the Illinois Trust Code ~~Trusts and Trustees Act~~,
2 and may apply the income perpetually for the care of the lot or
3 the care and maintenance of the cemeteries as specified in the
4 gift or legacy or as provided by the board of managers if the
5 gift or legacy does not specify the manner in which the income
6 is to be expended.

7 (Source: P.A. 83-1362; 88-62.)

8 Section 1603. The Corporate Fiduciary Act is amended by
9 changing Sections 1-6, 6-10, and 9-5 as follows:

10 (205 ILCS 620/1-6) (from Ch. 17, par. 1551-6)

11 Sec. 1-6. General Corporate Powers. A corporate fiduciary
12 shall have the powers:

13 (a) if it is a State bank, those powers granted under
14 Sections 3 and 5 of the Illinois Banking Act; and

15 (b) if it is a State savings and loan association,
16 those powers granted under Sections 1-6 through 1-8 of the
17 Illinois Savings and Loan Act of 1985; and

18 (c) if it is a State savings bank, those powers granted
19 under the Savings Bank Act; and

20 (d) if it is a corporation organized under the Business
21 Corporation Act of 1983, as now or hereafter amended, or a
22 limited liability company organized under the Limited
23 Liability Company Act, those powers granted in Article 8
24 ~~Sections 4.01 through 4.24~~ of the Illinois Trust Code

1 ~~Trusts and Trustees Act~~, as now or hereafter amended, to
2 the extent the exercise of such powers by the corporate
3 fiduciary are not contrary to the instrument containing the
4 appointment of the corporate fiduciary, the court order
5 appointing the corporate fiduciary or any other statute
6 specifically limiting the power of the corporate fiduciary
7 under the circumstances; and

8 (e) subject to Article XLIV of the Illinois Insurance
9 Code, to act as the agent for any fire, life, or other
10 insurance company authorized by the State of Illinois, by
11 soliciting and selling insurance and collecting premiums
12 on policies issued by such company; and may receive for
13 services so rendered such fees or commissions as may be
14 agreed upon between the said corporate fiduciary and the
15 insurance company for which it may act as agent; provided,
16 however, that no such corporate fiduciary shall in any case
17 assume or guarantee the payment of any premium on insurance
18 policies issued through its agency by its principal; and
19 provided further, that the corporate fiduciary shall not
20 guarantee the truth of any statement made by an assured in
21 filing his application for insurance.

22 The Commissioner may specify powers of corporate
23 fiduciaries generally or of a particular corporate fiduciary
24 and by rule or order limit or restrict such powers of corporate
25 fiduciaries or a particular corporate fiduciary if he finds the
26 exercise of such power by corporate fiduciaries generally or of

1 the corporate fiduciary in particular may tend to be an unsafe
2 or unsound practice, or if such power is otherwise not in the
3 interest of beneficiaries of any fiduciary appointment.

4 (Source: P.A. 90-41, eff. 10-1-97; 90-424, eff. 1-1-98; 90-655,
5 eff. 7-30-98; 91-97, eff. 7-9-99.)

6 (205 ILCS 620/6-10) (from Ch. 17, par. 1556-10)

7 Sec. 6-10. The receiver for a corporate fiduciary, under
8 the direction of the Commissioner, shall have the power and
9 authority and is charged with the duties and responsibilities
10 as follows:

11 (1) To take possession of, and for the purpose of the
12 receivership, the title to the books, records and assets of
13 every description of the corporate fiduciary.

14 (2) To proceed to collect all debts, dues and claims
15 belonging to the corporate fiduciary.

16 (3) To file with the Commissioner a copy of each report
17 which he makes to the court, together with such other reports
18 and records as the Commissioner may require.

19 (4) The receiver shall have authority to sue and defend in
20 the receiver's own name and with respect to the affairs,
21 assets, claims, debts and chooses in action of the corporate
22 fiduciary.

23 (5) The receiver shall have authority, and it shall be the
24 receiver's duty, to surrender to the customers of such
25 corporate fiduciary, when requested in writing directed to the

1 receiver by such customers, the assets, private papers and
2 valuables left with the corporate fiduciary for safekeeping,
3 under a custodial or agency agreement, upon satisfactory proof
4 of ownership.

5 (6) As soon as can reasonably be done, the receiver shall
6 resign on behalf of the corporate fiduciary, all trusteeships,
7 guardianships, and all appointments as executor and
8 administrator, or as custodian under the Illinois Uniform
9 Transfers to Minors Act, as now or hereafter amended, or as
10 fiduciary under custodial or agency agreements or under the
11 terms of any other written agreement or court order whereunder
12 the corporate fiduciary is holding property in a fiduciary
13 capacity for the benefit of another person, making in each
14 case, from the records and documents available to the receiver,
15 a proper accounting, in the manner and scope as determined by
16 the Commissioner to be practical and advisable under the
17 circumstances, on behalf of the corporate fiduciary. The
18 receiver, prior to resigning, shall cause a successor trustee
19 or fiduciary to be appointed pursuant to the terms set forth in
20 the governing instrument or pursuant to the provisions of the
21 Illinois Trust Code ~~Trusts and Trustees Act~~, as now or
22 hereafter amended, if applicable, then the receiver shall make
23 application to the court having jurisdiction over the
24 liquidation or winding up of the corporate fiduciary, for the
25 appointment of a successor. The receiver, if a corporate
26 fiduciary, shall not be disqualified from acting as successor

1 trustee or fiduciary if appointed under the terms of the
2 governing instrument, by court order or by the customer of the
3 corporate fiduciary whose affairs are being liquidated or wound
4 up and, in such case, no guardian ad litem need be appointed to
5 review the accounting of the receiver unless the beneficiaries
6 or customers of the corporate fiduciary so request in writing.

7 (7) The receiver shall have authority to redeem or take
8 down collateral hypothecated by the corporate fiduciary to
9 secure its notes and other evidence of indebtedness whenever
10 the Commissioner deems it to be in the best interest of the
11 creditors of the corporate fiduciary and directs the receiver
12 so to do.

13 (8) Whenever the receiver shall find it necessary in the
14 receiver's opinion to use and employ money of the corporate
15 fiduciary, in order to protect fully and benefit the corporate
16 fiduciary, by the purchase or redemption of any property, real
17 or personal, in which the corporate fiduciary may have any
18 rights by reason of any bond, mortgage, assignment, or other
19 claim thereto, the receiver may certify the facts together with
20 the receiver's opinions as to the value of the property
21 involved, and the value of the equity the corporate fiduciary
22 may have in the property to the Commissioner, together with a
23 request for the right and authority to use and employ so much
24 of the money of the corporate fiduciary as may be necessary to
25 purchase the property, or to redeem the same from a sale if
26 there was a sale, and if such request is granted, the receiver

1 may use so much of the money of the corporate fiduciary as the
2 Commissioner may have authorized to purchase said property at
3 such sale.

4 (9) The receiver shall deposit daily all monies collected
5 by the receiver in any State or national bank selected by the
6 Commissioner, who may require (and the bank so selected may
7 furnish) of such depository satisfactory securities or
8 satisfactory surety bond for the safekeeping and prompt payment
9 of the money so deposited. The deposits shall be made in the
10 name of the Commissioner in trust for the receiver and be
11 subject to withdrawal upon the receiver's order or upon the
12 order of such persons as the Commissioner may designate. Such
13 monies may be deposited without interest, unless otherwise
14 agreed. However, if any interest was paid by such depository,
15 it shall accrue to the benefit of the particular trust or
16 fiduciary account to which the deposit belongs. Except as
17 otherwise directed by the Commissioner, notwithstanding any
18 other provision of this paragraph, the receiver's investment
19 and other powers shall be those under the governing instrument
20 or under the Illinois Trust Code ~~Trusts and Trustees Act, as~~
21 ~~now or hereafter amended~~, and shall include the power to pay
22 out income and principal in accordance with the terms of the
23 governing instrument.

24 (10) The receiver shall do such things and take such steps
25 from time to time under the direction and approval of the
26 Commissioner as may reasonably appear to be necessary to

1 conserve the corporate fiduciary's assets and secure the best
2 interests of the creditors of the corporate fiduciary.

3 (11) The receiver shall record any judgment of dissolution
4 entered in a dissolution proceeding and thereupon turn over to
5 the Commissioner a certified copy thereof, together with all
6 books of accounts and ledgers of such corporate fiduciary for
7 preservation, as distinguished from the books of accounts and
8 ledgers of the corporate fiduciary relating to the assets of
9 the beneficiaries of such fiduciary relations, all of which
10 books of accounts and ledgers shall be turned over by the
11 receiver to the successor trustee or fiduciary.

12 (12) The receiver may cause all assets of the beneficiaries
13 of such fiduciary relations to be registered in the name of the
14 receiver or in the name of the receiver's nominee.

15 (13) The receiver shall have a reasonable period of time in
16 which to review all of the trust accounts, executorships,
17 administrations, guardianships, or other fiduciary
18 relationships, in order to ascertain that the investments by
19 the corporate fiduciary of the assets of such trust accounts,
20 executorships, administrations, guardianships, or other
21 fiduciary relationships comply with the terms of the governing
22 instrument, the prudent person rule governing the investment of
23 such funds, or any other law regulating the investment of such
24 funds.

25 (14) For its services in administering the trusts and other
26 fiduciary accounts of the corporate fiduciary during the period

1 of winding up the affairs of the corporate fiduciary, the
2 receiver shall be entitled to be reimbursed for all costs and
3 expenses incurred by the receiver and shall also be entitled to
4 receive out of the assets of the individual fiduciary accounts
5 being administered by the receiver during the period of winding
6 up the affairs of the corporate fiduciary and prior to the
7 appointment of a successor trustee or fiduciary, the usual and
8 customary fees charged by the receiver in the administration of
9 its own fiduciary accounts or reasonable fees approved by the
10 Commissioner.

11 (15) The receiver, during its administration of the trusts
12 and other fiduciary accounts of the corporate fiduciary during
13 the winding up of the affairs of the corporate fiduciary, shall
14 have all of the powers which are vested in trustees under the
15 terms and provisions of the Illinois Trust Code ~~Trusts and~~
16 ~~Trustees Act, as now or hereafter amended.~~

17 (16) Upon the appointment of a successor trustee or
18 fiduciary, the receiver shall deliver to such successor trustee
19 or fiduciary all of the assets belonging to the individual
20 trust or fiduciary account as to which the successor trustee or
21 fiduciary succeeds, and the receiver shall thereupon be
22 relieved of any further duties or obligations with respect
23 thereto.

24 (Source: P.A. 90-655, eff. 7-30-98.)

1 Sec. 9-5. Applicability of other Acts by reference.
2 Corporate fiduciaries subject to the provisions of this Act
3 shall continue to be subject to the provisions of other Acts
4 which govern actions of trustees including, but not limited to:

5 (a) "An Act to provide for the appointment of successor
6 trustees in land trust agreements", approved August 13, 1965,
7 as amended.

8 (b) "An Act to require disclosure, under certification of
9 perjury, of all beneficial interests in real property held in a
10 land trust, in certain cases", approved September 21, 1973, as
11 amended.

12 (c) "An Act in relation to land trusts and the power and
13 authority of trustees of land trusts to deal with trust
14 property", approved August 6, 1982, as amended.

15 (d) "An Act concerning the powers of corporations
16 authorized to accept and execute trusts, to register and hold
17 securities of fiduciary accounts in bulk and to deposit same
18 with a depository", approved September 1, 1972, as amended.

19 (e) the "Common Trust Fund Act", approved July 29, 1943, as
20 amended.

21 (f) the Illinois Trust Code ~~"Trusts and Trustees Act",~~
22 ~~approved September 10, 1973, as amended.~~

23 (g) "An Act concerning liability for participation in
24 breaches of fiduciary obligations", approved July 7, 1931, as
25 amended.

26 (Source: P.A. 85-858.)

1 Section 1604. The Community-Integrated Living Arrangements
2 Licensure and Certification Act is amended by changing Section
3 3 as follows:

4 (210 ILCS 135/3) (from Ch. 91 1/2, par. 1703)

5 Sec. 3. As used in this Act, unless the context requires
6 otherwise:

7 (a) "Applicant" means a person, group of persons,
8 association, partnership or corporation that applies for a
9 license as a community mental health or developmental services
10 agency under this Act.

11 (b) "Community mental health or developmental services
12 agency" or "agency" means a public or private agency,
13 association, partnership, corporation or organization which,
14 pursuant to this Act, certifies community-integrated living
15 arrangements for persons with mental illness or persons with a
16 developmental disability.

17 (c) "Department" means the Department of Human Services (as
18 successor to the Department of Mental Health and Developmental
19 Disabilities).

20 (d) "Community-integrated living arrangement" means a
21 living arrangement certified by a community mental health or
22 developmental services agency under this Act where 8 or fewer
23 recipients with mental illness or recipients with a
24 developmental disability who reside under the supervision of

1 the agency. Examples of community integrated living
2 arrangements include but are not limited to the following:

3 (1) "Adult foster care", a living arrangement for
4 recipients in residences of families unrelated to them, for
5 the purpose of providing family care for the recipients on
6 a full-time basis;

7 (2) "Assisted residential care", an independent living
8 arrangement where recipients are intermittently supervised
9 by off-site staff;

10 (3) "Crisis residential care", a non-medical living
11 arrangement where recipients in need of non-medical,
12 crisis services are supervised by on-site staff 24 hours a
13 day;

14 (4) "Home individual programs", living arrangements
15 for 2 unrelated adults outside the family home;

16 (5) "Supported residential care", a living arrangement
17 where recipients are supervised by on-site staff and such
18 supervision is provided less than 24 hours a day;

19 (6) "Community residential alternatives", as defined
20 in the Community Residential Alternatives Licensing Act;
21 and

22 (7) "Special needs trust-supported residential care",
23 a living arrangement where recipients are supervised by
24 on-site staff and that supervision is provided 24 hours per
25 day or less, as dictated by the needs of the recipients,
26 and determined by service providers. As used in this item

1 (7), "special needs trust" means a trust for the benefit of
2 a beneficiary with a disability as described in Section
3 1213 15.1 of the Illinois Trust Code ~~Trusts and Trustees~~
4 ~~Act~~.

5 (e) "Recipient" means a person who has received, is
6 receiving, or is in need of treatment or habilitation as those
7 terms are defined in the Mental Health and Developmental
8 Disabilities Code.

9 (f) "Unrelated" means that persons residing together in
10 programs or placements certified by a community mental health
11 or developmental services agency under this Act do not have any
12 of the following relationships by blood, marriage or adoption:
13 parent, son, daughter, brother, sister, grandparent, uncle,
14 aunt, nephew, niece, great grandparent, great uncle, great
15 aunt, stepbrother, stepsister, stepson, stepdaughter,
16 stepparent or first cousin.

17 (Source: P.A. 99-143, eff. 7-27-15.)

18 Section 1605. The Title Insurance Act is amended by
19 changing Section 21.1 as follows:

20 (215 ILCS 155/21.1)

21 Sec. 21.1. Receiver and involuntary liquidation.

22 (a) The Secretary's proceedings under this Section shall be
23 the exclusive remedy and the only proceedings commenced in any
24 court for the dissolution of, the winding up of the affairs of,

1 or the appointment of a receiver for a title insurance company.

2 (b) If the Secretary, with respect to a title insurance
3 company, finds that (i) its capital is impaired or it is
4 otherwise in an unsound condition, (ii) its business is being
5 conducted in an unlawful, fraudulent, or unsafe manner, (iii)
6 it is unable to continue operations, or (iv) its examination
7 has been obstructed or impeded, the Secretary may give notice
8 to the board of directors of the title insurance company of his
9 or her finding or findings. If the Secretary's findings are not
10 corrected to his or her satisfaction within 60 days after the
11 company receives the notice, the Secretary shall take
12 possession and control of the title insurance company, its
13 assets, and assets held by it for any person for the purpose of
14 examination, reorganization, or liquidation through
15 receivership.

16 If, in addition to making a finding as provided in this
17 subsection (b), the Secretary is of the opinion and finds that
18 an emergency that may result in serious losses to any person
19 exists, the Secretary may, in his or her discretion, without
20 having given the notice provided for in this subsection, and
21 whether or not proceedings under subsection (a) of this Section
22 have been instituted or are then pending, take possession and
23 control of the title insurance company and its assets for the
24 purpose of examination, reorganization, or liquidation through
25 receivership.

26 (c) The Secretary may take possession and control of a

1 title insurance company, its assets, and assets held by it for
2 any person by posting upon the premises of each office located
3 in the State of Illinois at which it transacts its business as
4 a title insurance company a notice reciting that the Secretary
5 is assuming possession pursuant to this Act and the time when
6 the possession shall be deemed to commence.

7 (d) Promptly after taking possession and control of a title
8 insurance company the Secretary, represented by the Attorney
9 General, shall file a copy of the notice posted upon the
10 premises in the Circuit Court of either Cook County or Sangamon
11 County, which cause shall be entered as a court action upon the
12 dockets of the court under the name and style of "In the matter
13 of the possession and control by the Secretary of the
14 Department of Financial and Professional Regulation of (insert
15 the name of the title insurance company)". If the Secretary
16 determines (which determination may be made at the time of, or
17 at any time subsequent to, taking possession and control of a
18 title insurance company) that no practical possibility exists
19 to reorganize the title insurance company after reasonable
20 efforts have been made, the Secretary, represented by the
21 Attorney General, shall also file a complaint, if it has not
22 already been done, for the appointment of a receiver or other
23 proceeding as is appropriate under the circumstances. The court
24 where the cause is docketed shall be vested with the exclusive
25 jurisdiction to hear and determine all issues and matters
26 pertaining to or connected with the Secretary's possession and

1 control of the title insurance company as provided in this Act,
2 and any further issues and matters pertaining to or connected
3 with the Secretary's possession and control as may be submitted
4 to the court for its adjudication.

5 The Secretary, upon taking possession and control of a
6 title insurance company, may, and if not previously done shall,
7 immediately upon filing a complaint for dissolution make an
8 examination of the affairs of the title insurance company or
9 appoint a suitable person to make the examination as the
10 Secretary's agent. The examination shall be conducted in
11 accordance with and pursuant to the authority granted under
12 Section 12 of this Act. The person conducting the examination
13 shall have and may exercise on behalf of the Secretary all of
14 the powers and authority granted to the Secretary under Section
15 12. A copy of the report shall be filed in any dissolution
16 proceeding filed by the Secretary. The reasonable fees and
17 necessary expenses of the examining person, as approved by the
18 Secretary or as recommended by the Secretary and approved by
19 the court if a dissolution proceeding has been filed, shall be
20 borne by the subject title insurance company and shall have the
21 same priority for payment as the reasonable and necessary
22 expenses of the Secretary in conducting an examination. The
23 person appointed to make the examination shall make a proper
24 accounting, in the manner and scope as determined by the
25 Secretary to be practical and advisable under the
26 circumstances, on behalf of the title insurance company and no

1 guardian ad litem need be appointed to review the accounting.

2 (e) The Secretary, upon taking possession and control of a
3 title insurance company and its assets, shall be vested with
4 the full powers of management and control including, but not
5 limited to, the following:

6 (1) the power to continue or to discontinue the
7 business;

8 (2) the power to stop or to limit the payment of its
9 obligations;

10 (3) the power to collect and to use its assets and to
11 give valid receipts and acquittances therefor;

12 (4) the power to transfer title and liquidate any bond
13 or deposit made under Section 4 of this Act;

14 (5) the power to employ and to pay any necessary
15 assistants;

16 (6) the power to execute any instrument in the name of
17 the title insurance company;

18 (7) the power to commence, defend, and conduct in the
19 title insurance company's name any action or proceeding in
20 which it may be a party;

21 (8) the power, upon the order of the court, to sell and
22 convey the title insurance company's assets, in whole or in
23 part, and to sell or compound bad or doubtful debts upon
24 such terms and conditions as may be fixed in that order;

25 (9) the power, upon the order of the court, to make and
26 to carry out agreements with other title insurance

1 companies, financial institutions, or with the United
2 States or any agency of the United States for the payment
3 or assumption of the title insurance company's
4 liabilities, in whole or in part, and to transfer assets
5 and to make guaranties, in whole or in part, in connection
6 therewith;

7 (10) the power, upon the order of the court, to borrow
8 money in the name of the title insurance company and to
9 pledge its assets as security for the loan;

10 (11) the power to terminate his or her possession and
11 control by restoring the title insurance company to its
12 board of directors;

13 (12) the power to appoint a receiver which may be the
14 Secretary of the Department of Financial and Professional
15 Regulation, another title insurance company, or another
16 suitable person and to order liquidation of the title
17 insurance company as provided in this Act; and

18 (13) the power, upon the order of the court and without
19 the appointment of a receiver, to determine that the title
20 insurance company has been closed for the purpose of
21 liquidation without adequate provision being made for
22 payment of its obligations, and thereupon the title
23 insurance company shall be deemed to have been closed on
24 account of inability to meet its obligations to its
25 insureds or escrow depositors.

26 (f) Upon taking possession, the Secretary shall make an

1 examination of the condition of the title insurance company, an
2 inventory of the assets and, unless the time shall be extended
3 by order of the court or unless the Secretary shall have
4 otherwise settled the affairs of the title insurance company
5 pursuant to the provisions of this Act, within 90 days after
6 the time of taking possession and control of the title
7 insurance company, the Secretary shall either terminate his or
8 her possession and control by restoring the title insurance
9 company to its board of directors or appoint a receiver, which
10 may be the Secretary of the Department of Financial and
11 Professional Regulation, another title insurance company, or
12 another suitable person and order the liquidation of the title
13 insurance company as provided in this Act. All necessary and
14 reasonable expenses of the Secretary's possession and control
15 shall be a priority claim and shall be borne by the title
16 insurance company and may be paid by the Secretary from the
17 title insurance company's own assets as distinguished from
18 assets held for any other person.

19 (g) If the Secretary takes possession and control of a
20 title insurance company and its assets, any period of
21 limitation fixed by a statute or agreement that would otherwise
22 expire on a claim or right of action of the title insurance
23 company, on its own behalf or on behalf of its insureds or
24 escrow depositors, or upon which an appeal must be taken or a
25 pleading or other document filed by the title insurance company
26 in any pending action or proceeding, shall be tolled until 6

1 months after the commencement of the possession, and no
2 judgment, lien, levy, attachment, or other similar legal
3 process may be enforced upon or satisfied, in whole or in part,
4 from any asset of the title insurance company or from any asset
5 of an insured or escrow depositor while it is in the possession
6 of the Secretary.

7 (h) If the Secretary appoints a receiver to take possession
8 and control of the assets of insureds or escrow depositors for
9 the purpose of holding those assets as fiduciary for the
10 benefit of the insureds or escrow depositors pending the
11 winding up of the affairs of the title insurance company being
12 liquidated and the appointment of a successor escrowee for
13 those assets, any period of limitation fixed by statute, rule
14 of court, or agreement that would otherwise expire on a claim
15 or right of action in favor of or against the insureds or
16 escrow depositors of those assets or upon which an appeal must
17 be taken or a pleading or other document filed by a title
18 insurance company on behalf of an insured or escrow depositor
19 in any pending action or proceeding shall be tolled for a
20 period of 6 months after the appointment of a receiver, and no
21 judgment, lien, levy, attachment, or other similar legal
22 process shall be enforced upon or satisfied, in whole or in
23 part, from any asset of the insured or escrow depositor while
24 it is in the possession of the receiver.

25 (i) If the Secretary determines at any time that no
26 reasonable possibility exists for the title insurance company

1 to be operated by its board of directors in accordance with the
2 provisions of this Act after reasonable efforts have been made
3 and that it should be liquidated through receivership, he or
4 she shall appoint a receiver. The Secretary may require of the
5 receiver such bond and security as the Secretary deems proper.
6 The Secretary, represented by the Attorney General, shall file
7 a complaint for the dissolution or winding up of the affairs of
8 the title insurance company in a court of the county in which
9 the principal office of the title insurance company is located
10 and shall cause notice to be given in a newspaper of general
11 circulation once each week for 4 consecutive weeks so that
12 persons who may have claims against the title insurance company
13 may present them to the receiver and make legal proof thereof
14 and notifying those persons and all to whom it may concern of
15 the filing of a complaint for the dissolution or winding up of
16 the affairs of the title insurance company and stating the name
17 and location of the court. All persons who may have claims
18 against the assets of the title insurance company, as
19 distinguished from the assets of insureds and escrow depositors
20 held by the title insurance company, and the receiver to whom
21 those persons have presented their claims may present the
22 claims to the clerk of the court, and the allowance or
23 disallowance of the claims by the court in connection with the
24 proceedings shall be deemed an adjudication in a court of
25 competent jurisdiction. Within a reasonable time after
26 completion of publication, the receiver shall file with the

1 court a correct list of all creditors of the title insurance
2 company as shown by its books, who have not presented their
3 claims and the amount of their respective claims after allowing
4 adjusted credit, deductions, and set-offs as shown by the books
5 of the title insurance company. The claims so filed shall be
6 deemed proven unless objections are filed thereto by a party or
7 parties interested therein within the time fixed by the court.

8 (j) The receiver for a title insurance company has the
9 power and authority and is charged with the duties and
10 responsibilities as follows:

11 (1) To take possession of and, for the purpose of the
12 receivership, title to the books, records, and assets of
13 every description of the title insurance company.

14 (2) To proceed to collect all debts, dues, and claims
15 belonging to the title insurance company.

16 (3) To sell and compound all bad and doubtful debts on
17 such terms as the court shall direct.

18 (4) To sell the real and personal property of the title
19 insurance company, as distinguished from the real and
20 personal property of the insureds or escrow depositors, on
21 such terms as the court shall direct.

22 (5) To file with the Secretary a copy of each report
23 that he or she makes to the court, together with such other
24 reports and records as the Secretary may require.

25 (6) To sue and defend in his or her own name and with
26 respect to the affairs, assets, claims, debts, and choses

1 in action of the title insurance company.

2 (7) To surrender to the insureds and escrow depositors
3 of the title insurance company, when requested in writing
4 directed to the receiver by them, the escrowed funds (on a
5 pro rata basis), and escrowed documents in the receiver's
6 possession upon satisfactory proof of ownership and
7 determination by the receiver of available escrow funds.

8 (8) To redeem or take down collateral hypothecated by
9 the title insurance company to secure its notes and other
10 evidence of indebtedness whenever the court deems it to be
11 in the best interest of the creditors of the title
12 insurance company and directs the receiver so to do.

13 (k) Whenever the receiver finds it necessary in his or her
14 opinion to use and employ money of the title insurance company
15 in order to protect fully and benefit the title insurance
16 company by the purchase or redemption of property, real or
17 personal, in which the title insurance company may have any
18 rights by reason of any bond, mortgage, assignment, or other
19 claim thereto, the receiver may certify the facts together with
20 the receiver's opinions as to the value of the property
21 involved and the value of the equity the title insurance
22 company may have in the property to the court, together with a
23 request for the right and authority to use and employ so much
24 of the money of the title insurance company as may be necessary
25 to purchase the property, or to redeem the property from a sale
26 if there was a sale, and if the request is granted, the

1 receiver may use so much of the money of the title insurance
2 company as the court may have authorized to purchase the
3 property at the sale.

4 The receiver shall deposit daily all moneys collected by
5 him or her in any State or national bank approved by the court.
6 The deposits shall be made in the name of the Secretary, in
7 trust for the receiver, and be subject to withdrawal upon the
8 receiver's order or upon the order of those persons the
9 Secretary may designate. The moneys may be deposited without
10 interest, unless otherwise agreed. The receiver shall do the
11 things and take the steps from time to time under the direction
12 and approval of the court that may reasonably appear to be
13 necessary to conserve the title insurance company's assets and
14 secure the best interests of the creditors, insureds, and
15 escrow depositors of the title insurance company. The receiver
16 shall record any judgment of dissolution entered in a
17 dissolution proceeding and thereupon turn over to the Secretary
18 a certified copy of the judgment.

19 The receiver may cause all assets of the insureds and
20 escrow depositors of the title insurance company to be
21 registered in the name of the receiver or in the name of the
22 receiver's nominee.

23 For its services in administering the escrows held by the
24 title insurance company during the period of winding up the
25 affairs of the title insurance company, the receiver is
26 entitled to be reimbursed for all costs and expenses incurred

1 by the receiver and shall also be entitled to receive out of
2 the assets of the individual escrows being administered by the
3 receiver during the period of winding up the affairs of the
4 title insurance company and prior to the appointment of a
5 successor escrowee the usual and customary fees charged by an
6 escrowee for escrows or reasonable fees approved by the court.

7 The receiver, during its administration of the escrows of
8 the title insurance company during the winding up of the
9 affairs of the title insurance company, shall have all of the
10 powers that are vested in trustees under the terms and
11 provisions of the Illinois Trust Code ~~Trusts and Trustees Act~~.

12 Upon the appointment of a successor escrowee, the receiver
13 shall deliver to the successor escrowee all of the assets
14 belonging to each individual escrow to which the successor
15 escrowee succeeds, and the receiver shall thereupon be relieved
16 of any further duties or obligations with respect thereto.

17 (1) The receiver shall, upon approval by the court, pay all
18 claims against the assets of the title insurance company
19 allowed by the court pursuant to subsection (i) of this
20 Section, as well as claims against the assets of insureds and
21 escrow depositors of the title insurance company in accordance
22 with the following priority:

23 (1) All necessary and reasonable expenses of the
24 Secretary's possession and control and of its receivership
25 shall be paid from the assets of the title insurance
26 company.

1 (2) All usual and customary fees charged for services
2 in administering escrows shall be paid from the assets of
3 the individual escrows being administered. If the assets of
4 the individual escrows being administered are
5 insufficient, the fees shall be paid from the assets of the
6 title insurance company.

7 (3) Secured claims, including claims for taxes and
8 debts due the federal or any state or local government,
9 that are secured by liens perfected prior to the date of
10 filing of the complaint for dissolution, shall be paid from
11 the assets of the title insurance company.

12 (4) Claims by policyholders, beneficiaries, insureds,
13 and escrow depositors of the title insurance company shall
14 be paid from the assets of the insureds and escrow
15 depositors. If there are insufficient assets of the
16 insureds and escrow depositors, claims shall be paid from
17 the assets of the title insurance company.

18 (5) Any other claims due the federal government shall
19 be paid from the assets of the title insurance company.

20 (6) Claims for wages or salaries, excluding vacation,
21 severance, and sick leave pay earned by employees for
22 services rendered within 90 days prior to the date of
23 filing of the complaint for dissolution, shall be paid from
24 the assets of the title insurance company.

25 (7) All other claims of general creditors not falling
26 within any priority under this subsection (1) including

1 claims for taxes and debts due any state or local
2 government which are not secured claims and claims for
3 attorney's fees incurred by the title insurance company in
4 contesting the dissolution shall be paid from the assets of
5 the title insurance company.

6 (8) Proprietary claims asserted by an owner, member, or
7 stockholder of the title insurance company in receivership
8 shall be paid from the assets of the title insurance
9 company.

10 The receiver shall pay all claims of equal priority
11 according to the schedule set out in this subsection, and shall
12 not pay claims of lower priority until all higher priority
13 claims are satisfied. If insufficient assets are available to
14 meet all claims of equal priority, those assets shall be
15 distributed pro rata among those claims. All unclaimed assets
16 of the title insurance company shall be deposited with the
17 receiver to be paid out by him or her when such claims are
18 submitted and allowed by the court.

19 (m) At the termination of the receiver's administration,
20 the receiver shall petition the court for the entry of a
21 judgment of dissolution. After a hearing upon the notice as the
22 court may prescribe, the court may enter a judgment of
23 dissolution whereupon the title insurance company's corporate
24 existence shall be terminated and the receivership concluded.

25 (n) The receiver shall serve at the pleasure of the
26 Secretary and upon the death, inability to act, resignation, or

1 removal by the Secretary of a receiver, the Secretary may
2 appoint a successor, and upon the appointment, all rights and
3 duties of the predecessor shall at once devolve upon the
4 appointee.

5 (o) Whenever the Secretary shall have taken possession and
6 control of a title insurance company or a title insurance agent
7 and its assets for the purpose of examination, reorganization
8 or liquidation through receivership, or whenever the Secretary
9 shall have appointed a receiver for a title insurance company
10 or title insurance agent and filed a complaint for the
11 dissolution or winding up of its affairs, and the title
12 insurance company or title insurance agent denies the grounds
13 for such actions, it may at any time within 10 days apply to
14 the Circuit Court of Cook or Sangamon County to enjoin further
15 proceedings in the premises; and the Court shall cite the
16 Secretary to show cause why further proceedings should not be
17 enjoined, and if the Court shall find that grounds do not
18 exist, the Court shall make an order enjoining the Secretary or
19 any receiver acting under his direction from all further
20 proceedings on account of the alleged grounds.

21 (Source: P.A. 94-893, eff. 6-20-06.)

22 Section 1606. The Illinois Funeral or Burial Funds Act is
23 amended by changing Sections 4a and 5 as follows:

24 (225 ILCS 45/4a)

1 Sec. 4a. Investment of funds.

2 (a) A trustee has a duty to invest and manage the trust
3 assets pursuant to the Illinois Uniform Prudent Investor Act
4 ~~Rule~~ under Article 9 of the Illinois Trust Code ~~Trusts and~~
5 ~~Trustees Act.~~

6 (b) The trust shall be a single-purpose trust fund. In the
7 event of the seller's bankruptcy, insolvency or assignment for
8 the benefit of creditors, or an adverse judgment, the trust
9 funds shall not be available to any creditor as assets of the
10 seller or to pay any expenses of any bankruptcy or similar
11 proceeding, but shall be distributed to the purchasers or
12 managed for their benefit by the trustee holding the funds.
13 Except in an action by the Comptroller to revoke a license
14 issued pursuant to this Act and for creation of a receivership
15 as provided in this Act, the trust shall not be subject to
16 judgment, execution, garnishment, attachment, or other seizure
17 by process in bankruptcy or otherwise, nor to sale, pledge,
18 mortgage, or other alienation, and shall not be assignable
19 except as approved by the Comptroller. The changes made by
20 Public Act 91-7 are intended to clarify existing law regarding
21 the inability of licensees to pledge the trust.

22 (c) Because it is not known at the time of deposit or at
23 the time that income is earned on the trust account to whom the
24 principal and the accumulated earnings will be distributed for
25 the purpose of determining the Illinois income tax due on these
26 trust funds, the principal and any accrued earnings or losses

1 related to each individual account shall be held in suspense
2 until the final determination is made as to whom the account
3 shall be paid. The beneficiary's estate shall not be
4 responsible for any funeral and burial purchases listed in a
5 pre-need contract if the pre-need contract is entered into on a
6 guaranteed price basis.

7 If a pre-need contract is not a guaranteed price contract,
8 then to the extent the proceeds of a non-guaranteed price
9 pre-need contract cover the funeral and burial expenses for the
10 beneficiary, no claim may be made against the estate of the
11 beneficiary. A claim may be made against the beneficiary's
12 estate if the charges for the funeral services and merchandise
13 at the time of use exceed the amount of the amount in trust
14 plus the percentage of the sale proceeds initially retained by
15 the seller or the face value of the life insurance policy or
16 tax-deferred annuity.

17 (Source: P.A. 96-879, eff. 2-2-10.)

18 (225 ILCS 45/5) (from Ch. 111 1/2, par. 73.105)

19 Sec. 5. This Act shall not be construed to prohibit the
20 trustee and trustee's depository from being reimbursed and
21 receiving from such funds their reasonable compensation and
22 expenses in the custody and administration of such funds
23 pursuant to the Illinois Trust Code ~~Trusts and Trustees Act~~.

24 (Source: P.A. 96-879, eff. 2-2-10.)

1 Section 1607. The Mental Health and Developmental
2 Disabilities Code is amended by changing Sections 3-605, 5-105,
3 and 3-819 as follows:

4 (405 ILCS 5/3-605) (from Ch. 91 1/2, par. 3-605)

5 Sec. 3-605. (a) In counties with a population of 3,000,000
6 or more, upon receipt of a petition and certificate prepared
7 pursuant to this Article, the county sheriff of the county in
8 which a respondent is found shall take a respondent into
9 custody and transport him to a mental health facility, or may
10 make arrangements with another public or private entity
11 including a licensed ambulance service to transport the
12 respondent to the mental health facility. In the event it is
13 determined by such facility that the respondent is in need of
14 commitment or treatment at another mental health facility, the
15 county sheriff shall transport the respondent to the
16 appropriate mental health facility, or the county sheriff may
17 make arrangements with another public or private entity
18 including a licensed ambulance service to transport the
19 respondent to the mental health facility.

20 (b) The county sheriff may delegate his duties under
21 subsection (a) to another law enforcement body within that
22 county if that law enforcement body agrees.

23 (b-5) In counties with a population under 3,000,000, upon
24 receipt of a petition and certificate prepared pursuant to this
25 Article, the Department shall make arrangements to

1 appropriately transport the respondent to a mental health
2 facility. In the event it is determined by the facility that
3 the respondent is in need of commitment or treatment at another
4 mental health facility, the Department shall make arrangements
5 to appropriately transport the respondent to another mental
6 health facility. The making of such arrangements and agreements
7 with public or private entities is independent of the
8 Department's role as a provider of mental health services and
9 does not indicate that the respondent is admitted to any
10 Department facility. In making such arrangements and
11 agreements with other public or private entities, the
12 Department shall include provisions to ensure (i) the provision
13 of trained personnel and the use of an appropriate vehicle for
14 the safe transport of the respondent and (ii) that the
15 respondent's insurance carrier as well as other programs, both
16 public and private, that provide payment for such
17 transportation services are fully utilized to the maximum
18 extent possible.

19 The Department may not make arrangements with an existing
20 hospital or grant-in-aid or fee-for-service community provider
21 for transportation services under this Section unless the
22 hospital or provider has voluntarily submitted a proposal for
23 its transportation services. This requirement does not
24 eliminate or reduce any responsibility on the part of a
25 hospital or community provider to ensure transportation that
26 may arise independently through other State or federal law or

1 regulation.

2 (c) The transporting authority acting in good faith and
3 without negligence in connection with the transportation of
4 respondents shall incur no liability, civil or criminal, by
5 reason of such transportation.

6 (d) The respondent and the estate of that respondent are
7 liable for the payment of transportation costs for transporting
8 the respondent to a mental health facility. If the respondent
9 is a beneficiary of a trust described in Section 1213 ~~15.1~~ of
10 the Illinois Trust Code ~~Trusts and Trustees Act~~, the trust
11 shall not be considered a part of the respondent's estate and
12 shall not be subject to payment for transportation costs for
13 transporting the respondent to a mental health facility under
14 this Section except to the extent permitted under Section 1213
15 ~~15.1~~ of the Illinois Trust Code ~~Trusts and Trustees Act~~. If the
16 respondent is unable to pay or if the estate of the respondent
17 is insufficient, the responsible relatives are severally
18 liable for the payment of those sums or for the balance due in
19 case less than the amount owing has been paid. If the
20 respondent is covered by insurance, the insurance carrier shall
21 be liable for payment to the extent authorized by the
22 respondent's insurance policy.

23 (Source: P.A. 93-770, eff. 1-1-05.)

24 (405 ILCS 5/3-819) (from Ch. 91 1/2, par. 3-819)

25 Sec. 3-819. (a) In counties with a population of 3,000,000

1 or more, when a recipient is hospitalized upon court order, the
2 order may authorize a relative or friend of the recipient to
3 transport the recipient to the facility if such person is able
4 to do so safely and humanely. When the Department indicates
5 that it has transportation to the facility available, the order
6 may authorize the Department to transport the recipient there.
7 The court may order the sheriff of the county in which such
8 proceedings are held to transport the recipient to the
9 facility. When a recipient is hospitalized upon court order,
10 and the recipient has been transported to a mental health
11 facility, other than a state-operated mental health facility,
12 and it is determined by the facility that the recipient is in
13 need of commitment or treatment at another mental health
14 facility, the court shall determine whether a relative or
15 friend of the recipient or the Department is authorized to
16 transport the recipient between facilities, or whether the
17 county sheriff is responsible for transporting the recipient
18 between facilities. The sheriff may make arrangements with
19 another public or private entity including a licensed ambulance
20 service to transport the recipient to the facility. The
21 transporting entity acting in good faith and without negligence
22 in connection with the transportation of recipients shall incur
23 no liability, civil or criminal, by reason of such
24 transportation.

25 (a-5) In counties with a population under 3,000,000, when a
26 recipient is hospitalized upon court order, the order may

1 authorize a relative or friend of the recipient to transport
2 the recipient to the facility if the person is able to do so
3 safely and humanely. The court may order the Department to
4 transport the recipient to the facility. When a recipient is
5 hospitalized upon court order, and the recipient has been
6 transported to a mental health facility other than a
7 State-operated mental health facility, and it is determined by
8 the facility that the recipient is in need of commitment or
9 treatment at another mental health facility, the court shall
10 determine whether a relative or friend of the recipient is
11 authorized to transport the recipient between facilities, or
12 whether the Department is responsible for transporting the
13 recipient between facilities. If the court determines that the
14 Department is responsible for the transportation, the
15 Department shall make arrangements either directly or through
16 agreements with another public or private entity, including a
17 licensed ambulance service, to appropriately transport the
18 recipient to the facility. The making of such arrangements and
19 agreements with public or private entities is independent of
20 the Department's role as a provider of mental health services
21 and does not indicate that the recipient is admitted to any
22 Department facility. In making such arrangements and
23 agreements with other public or private entities, the
24 Department shall include provisions to ensure (i) the provision
25 of trained personnel and the use of an appropriate vehicle for
26 the safe transport of the recipient and (ii) that the

1 recipient's insurance carrier as well as other programs, both
2 public and private, that provide payment for such
3 transportation services are fully utilized to the maximum
4 extent possible.

5 The Department may not make arrangements with an existing
6 hospital or grant-in-aid or fee-for-service community provider
7 for transportation services under this Section unless the
8 hospital or provider has voluntarily submitted a proposal for
9 its transportation services. This requirement does not
10 eliminate or reduce any responsibility on the part of a
11 hospital or community provider to ensure transportation that
12 may arise independently through other State or federal law or
13 regulation.

14 A transporting entity acting in good faith and without
15 negligence in connection with the transportation of a recipient
16 incurs no liability, civil or criminal, by reason of that
17 transportation.

18 (b) The transporting entity may bill the recipient, the
19 estate of the recipient, legally responsible relatives, or
20 insurance carrier for the cost of providing transportation of
21 the recipient to a mental health facility. The recipient and
22 the estate of the recipient are liable for the payment of
23 transportation costs for transporting the recipient to a mental
24 health facility. If the recipient is a beneficiary of a trust
25 described in Section 1213 15.1 of the Illinois Trust Code
26 ~~Trusts and Trustees Act~~, the trust shall not be considered a

1 part of the recipient's estate and shall not be subject to
2 payment for transportation costs for transporting the
3 recipient to a mental health facility under this section,
4 except to the extent permitted under Section 1213 ~~15.1~~ of the
5 Illinois Trust Code ~~Trusts and Trustees Act~~. If the recipient
6 is unable to pay or if the estate of the recipient is
7 insufficient, the responsible relatives are severally liable
8 for the payment of those sums or for the balance due in case
9 less than the amount owing has been paid. If the recipient is
10 covered by insurance, the insurance carrier shall be liable for
11 payment to the extent authorized by the recipient's insurance
12 policy.

13 (c) Upon the delivery of a recipient to a facility, in
14 accordance with the procedure set forth in this Article, the
15 facility director of the facility shall sign a receipt
16 acknowledging custody of the recipient and for any personal
17 property belonging to him, which receipt shall be filed with
18 the clerk of the court entering the hospitalization order.

19 (Source: P.A. 93-770, eff. 1-1-05.)

20 (405 ILCS 5/5-105) (from Ch. 91 1/2, par. 5-105)

21 Sec. 5-105. Each recipient of services provided directly or
22 funded by the Department and the estate of that recipient is
23 liable for the payment of sums representing charges for
24 services to the recipient at a rate to be determined by the
25 Department in accordance with this Act. If a recipient is a

1 beneficiary of a trust described in Section 1213 ~~15.1~~ of the
2 Illinois Trust Code ~~Trusts and Trustees Act~~, the trust shall
3 not be considered a part of the recipient's estate and shall
4 not be subject to payment for services to the recipient under
5 this Section except to the extent permitted under Section 1213
6 ~~15.1~~ of the Illinois Trust Code ~~Trusts and Trustees Act~~. If the
7 recipient is unable to pay or if the estate of the recipient is
8 insufficient, the responsible relatives are severally liable
9 for the payment of those sums or for the balance due in case
10 less than the amount prescribed under this Act has been paid.
11 If the recipient is under the age of 18, the recipient and
12 responsible relative shall be liable for medical costs on a
13 case-by-case basis for services for the diagnosis and treatment
14 of conditions other than that child's disabling condition. The
15 liability shall be the lesser of the cost of medical care or
16 the amount of responsible relative liability established by the
17 Department under Section 5-116. Any person 18 through 21 years
18 of age who is receiving services under the Education for All
19 Handicapped Children Act of 1975 (Public Law 94-142) or that
20 person's responsible relative shall only be liable for medical
21 costs on a case-by-case basis for services for the diagnosis
22 and treatment of conditions other than the person's disabling
23 condition. The liability shall be the lesser of the cost of
24 medical care or the amount of responsible relative liability
25 established by the Department under Section 5-116. In the case
26 of any person who has received residential services from the

1 Department, whether directly from the Department or through a
2 public or private agency or entity funded by the Department,
3 the liability shall be the same regardless of the source of
4 services. The maximum services charges for each recipient
5 assessed against responsible relatives collectively may not
6 exceed financial liability determined from income in
7 accordance with Section 5-116. Where the recipient is placed in
8 a nursing home or other facility outside the Department, the
9 Department may pay the actual cost of services in that facility
10 and may collect reimbursement for the entire amount paid from
11 the recipient or an amount not to exceed those amounts
12 determined under Section 5-116 from responsible relatives
13 according to their proportionate ability to contribute to those
14 charges. The liability of each responsible relative for payment
15 of services charges ceases when payments on the basis of
16 financial ability have been made for a total of 12 years for
17 any recipient, and any portion of that 12 year period during
18 which a responsible relative has been determined by the
19 Department to be financially unable to pay any services charges
20 must be included in fixing the total period of liability. No
21 child is liable under this Act for services to a parent. No
22 spouse is liable under this Act for the services to the other
23 spouse who wilfully failed to contribute to the spouse's
24 support for a period of 5 years immediately preceding his or
25 her admission. Any spouse claiming exemption because of wilful
26 failure to support during any such 5 year period must furnish

1 the Department with clear and convincing evidence
2 substantiating the claim. No parent is liable under this Act
3 for the services charges incurred by a child after the child
4 reaches the age of majority. Nothing in this Section shall
5 preclude the Department from applying federal benefits that are
6 specifically provided for the care and treatment of a person
7 with a disability toward the cost of care provided by a State
8 facility or private agency.

9 (Source: P.A. 99-143, eff. 7-27-15.)

10 Section 1608. The Illinois Marriage and Dissolution of
11 Marriage Act is amended by changing Section 513.5 as follows:

12 (750 ILCS 5/513.5)

13 Sec. 513.5. Support for a non-minor child with a
14 disability.

15 (a) The court may award sums of money out of the property
16 and income of either or both parties or the estate of a
17 deceased parent, as equity may require, for the support of a
18 child of the parties who has attained majority when the child
19 is mentally or physically disabled and not otherwise
20 emancipated. The sums awarded may be paid to one of the
21 parents, to a trust created by the parties for the benefit of
22 the non-minor child with a disability, or irrevocably to a
23 special needs trust, established by the parties and for the
24 sole benefit of the non-minor child with a disability, pursuant

1 to subdivisions (d)(4)(A) or (d)(4)(C) of 42 U.S.C. 1396p,
2 Section 1213 ~~15.1~~ of the Illinois Trust Code ~~Trusts and~~
3 ~~Trustees Act~~, and applicable provisions of the Social Security
4 Administration Program Operating Manual System. An application
5 for support for a non-minor disabled child may be made before
6 or after the child has attained majority. Unless an application
7 for educational expenses is made for a mentally or physically
8 disabled child under Section 513, the disability that is the
9 basis for the application for support must have arisen while
10 the child was eligible for support under Section 505 or 513 of
11 this Act.

12 (b) In making awards under this Section, or pursuant to a
13 petition or motion to decrease, modify, or terminate any such
14 award, the court shall consider all relevant factors that
15 appear reasonable and necessary, including:

16 (1) the present and future financial resources of both
17 parties to meet their needs, including, but not limited to,
18 savings for retirement;

19 (2) the standard of living the child would have enjoyed
20 had the marriage not been dissolved. The court may consider
21 factors that are just and equitable;

22 (3) the financial resources of the child; and

23 (4) any financial or other resource provided to or for
24 the child including, but not limited to, any Supplemental
25 Security Income, any home-based support provided pursuant
26 to the Home-Based Support Services Law for Mentally

1 Disabled Adults, and any other State, federal, or local
2 benefit available to the non-minor disabled child.

3 (c) As used in this Section:

4 A "disabled" individual means an individual who has a
5 physical or mental impairment that substantially limits a major
6 life activity, has a record of such an impairment, or is
7 regarded as having such an impairment.

8 "Disability" means a mental or physical impairment that
9 substantially limits a major life activity.

10 (Source: P.A. 99-90, eff. 1-1-16.)

11 Section 1609. The Probate Act of 1975 is amended by
12 changing Sections 2-7 and 28-8 as follows:

13 (755 ILCS 5/2-7) (from Ch. 110 1/2, par. 2-7)

14 Sec. 2-7. Disclaimer. (a) Right to Disclaim Interest in
15 Property. A person to whom any property or interest therein
16 passes, by whatever means, may disclaim the property or
17 interest in whole or in part by delivering or filing a written
18 disclaimer as hereinafter provided. A disclaimer may be of a
19 fractional share or undivided interest, a specifically
20 identifiable asset, portion or amount, any limited interest or
21 estate or any property or interest derived through right of
22 survivorship. A powerholder, as that term is defined in Section
23 103 of the Illinois Trust Code, ~~power (as defined in "An Act~~
24 ~~Concerning Termination of Powers"~~, approved May 25, 1943, as

1 ~~amended)~~ with respect to property shall be deemed to be a
2 holder of an interest in such property.

3 The representative of a decedent or ward may disclaim on
4 behalf of the decedent or ward with leave of court. The court
5 may approve the disclaimer by a representative of a decedent if
6 it finds that the disclaimer benefits the estate as a whole and
7 those interested in the estate generally even if the disclaimer
8 alters the distribution of the property, part or interest
9 disclaimed. The court may approve the disclaimer by a
10 representative of a ward if it finds that it benefits those
11 interested in the estate generally and is not materially
12 detrimental to the interests of the ward. A disclaimer by a
13 representative of a decedent or ward may be made without leave
14 of court if a will or other instrument signed by the decedent
15 or ward designating the representative specifically authorizes
16 the representative to disclaim without court approval.

17 The right to disclaim granted by this Section exists
18 irrespective of any limitation on the interest of the
19 disclaimant in the nature of a spendthrift provision or similar
20 restriction.

21 (b) Form of Disclaimer. The disclaimer shall (1) describe
22 the property or part or interest disclaimed, (2) be signed by
23 the disclaimant or his representative and (3) declare the
24 disclaimer and the extent thereof.

25 (c) Delivery of Disclaimer. The disclaimer shall be
26 delivered to the transferor or donor or his representative, or

1 to the trustee or other person who has legal title to the
2 property, part or interest disclaimed, or, if none of the
3 foregoing is readily determinable, shall be either delivered to
4 a person having possession of the property, part or interest or
5 who is entitled thereto by reason of the disclaimer, or filed
6 or recorded as hereinafter provided. In the case of an interest
7 passing by reason of the death of any person, an executed
8 counterpart of the disclaimer may be filed with the clerk of
9 the circuit court in the county in which the estate of the
10 decedent is administered, or, if administration has not been
11 commenced, in which it could be commenced. If an interest in
12 real property is disclaimed, an executed counterpart of the
13 disclaimer may be recorded in the office of the recorder in the
14 county in which the real estate lies, or, if the title to the
15 real estate is registered under "An Act concerning land
16 titles", approved May 1, 1897, as amended, may be filed in the
17 office of the registrar of titles of such county.

18 (d) Effect of Disclaimer. Unless expressly provided
19 otherwise in an instrument transferring the property or
20 creating the interest disclaimed, the property, part or
21 interest disclaimed shall descend or be distributed (1) if a
22 present interest (a) in the case of a transfer by reason of the
23 death of any person, as if the disclaimant had predeceased the
24 decedent; (b) in the case of a transfer by revocable instrument
25 or contract, as if the disclaimant had predeceased the date the
26 maker no longer has the power to transfer to himself or another

1 the entire legal and equitable ownership of the property or
2 interest; or (c) in the case of any other inter vivos transfer,
3 as if the disclaimant had predeceased the date of the transfer;
4 and (2) if a future interest, as if the disclaimant had
5 predeceased the event which determines that the taker of the
6 property or interest has become finally ascertained and his
7 interest has become indefeasibly fixed both in quality and
8 quantity; and in each case the disclaimer shall relate back to
9 such date for all purposes.

10 A disclaimer of property or an interest in property shall
11 not preclude any disclaimant from receiving the same property
12 in another capacity or from receiving other interests in the
13 property to which the disclaimer relates.

14 Unless expressly provided otherwise in an instrument
15 transferring the property or creating the interest disclaimed,
16 a future interest limited to take effect at or after the
17 termination of the estate or interest disclaimed shall
18 accelerate and take effect in possession and enjoyment to the
19 same extent as if the disclaimant had died before the date to
20 which the disclaimer relates back.

21 A disclaimer made pursuant to this Section shall be
22 irrevocable and shall be binding upon the disclaimant and all
23 persons claiming by, through or under the disclaimant.

24 (e) Waiver and Bar. The right to disclaim property or a
25 part thereof or an interest therein shall be barred by (1) a
26 judicial sale of the property, part or interest before the

1 disclaimer is effected; (2) an assignment, conveyance,
2 encumbrance, pledge, sale or other transfer of the property,
3 part or interest, or a contract therefor, by the disclaimant or
4 his representative; (3) a written waiver of the right to
5 disclaim; or (4) an acceptance of the property, part or
6 interest by the disclaimant or his representative. Any person
7 may presume, in the absence of actual knowledge to the
8 contrary, that a disclaimer delivered or filed as provided in
9 this Section is a valid disclaimer which is not barred by the
10 preceding provisions of this paragraph.

11 A written waiver of the right to disclaim may be made by
12 any person or his representative and an executed counterpart of
13 a waiver of the right to disclaim may be recorded or filed, all
14 in the same manner as provided in this Section with respect to
15 a disclaimer.

16 In every case, acceptance must be affirmatively proved in
17 order to constitute a bar to a disclaimer. An acceptance of
18 property or an interest in property shall include the taking of
19 possession, the acceptance of delivery or the receipt of
20 benefits of the property or interest; except that (1) in the
21 case of an interest in joint tenancy with right of survivorship
22 such acceptance shall extend only to the fractional share of
23 such property or interest determined by dividing the number one
24 by the number of joint tenants, and (2) in the case of a ward,
25 such acceptance shall extend only to property actually received
26 by or on behalf of the ward or his representative during his

1 minority or incapacity. The mere lapse of time or creation of
2 an interest, in joint tenancy with right of survivorship or
3 otherwise, with or without knowledge of the interest on the
4 part of the disclaimant, shall not constitute acceptance for
5 purposes of this Section.

6 This Section does not abridge the right of any person to
7 assign, convey, release, renounce or disclaim any property or
8 interest therein arising under any other statute or which arose
9 under prior law.

10 Any interest in real or personal property which exists on
11 or after the effective date of this Section may be disclaimed
12 after that date in the manner provided herein, but no interest
13 which has arisen prior to that date in any person other than
14 the disclaimant shall be destroyed or diminished by any action
15 of the disclaimant taken pursuant to this Section.

16 (Source: P.A. 83-1362.)

17 (755 ILCS 5/28-8) (from Ch. 110 1/2, par. 28-8)

18 Sec. 28-8. Administrative powers. An independent
19 representative acting reasonably for the best interests of the
20 estate has the powers granted in the will and the following
21 powers, all exercisable without court order, except to the
22 extent that the following powers are inconsistent with the
23 will:

24 (a) To lease, sell at public or private sale, for cash or
25 on credit, mortgage or pledge the personal estate of the

1 decedent and to distribute in kind any personal estate the sale
2 of which is not necessary;

3 (b) To borrow money with or without security;

4 (c) To mortgage or pledge agricultural commodities as
5 provided in Section 19-3;

6 (d) To continue the decedent's unincorporated business
7 without personal liability except for malfeasance or
8 misfeasance for losses incurred; and obligations incurred or
9 contracts entered into by the independent representative with
10 respect to the business are entitled to priority of payment out
11 of the assets of the business but, without approval of the
12 court first obtained, do not involve the estate beyond those
13 assets;

14 (e) To settle, compound or compromise any claim or interest
15 of the decedent in any property or exchange any such claim or
16 interest for other claims or property; and to settle compound
17 or compromise and pay all claims against the estate as provided
18 in Sections 18-11 and 18-13, but claims of the independent
19 representative or his attorney shall be subject to Section
20 18-8;

21 (f) To perform any contract of the decedent;

22 (g) To employ agents, accountants and counsel, including
23 legal and investment counsel; to delegate to them the
24 performance of any act of administration, whether or not
25 discretionary; and to pay them reasonable compensation;

26 (h) To hold stocks, bonds and other personal property in

1 the name of a nominee as provided in Section 19-12;

2 (i) To take possession, administer and grant possession of
3 the decedent's real estate, which term in this subsection
4 includes oil, gas, coal and other mineral interests therein; to
5 pay taxes on decedent's real estate whether or not in
6 possession of the representative; to lease the decedent's real
7 estate upon such terms and for such length of time as he deems
8 advisable; to sell at public or private sale, for cash or on
9 credit, or mortgage any real estate or interest therein to
10 which the decedent had claim or title, but real estate
11 specifically bequeathed shall not be leased, sold or mortgaged
12 without the written consent of the legatee; and to confirm the
13 title of any heir or legatee to real estate by recording and
14 delivering to the heir or legatee an instrument releasing the
15 estate's interest; and

16 (j) To retain property properly acquired, without regard to
17 its suitability for original purchase; and to invest money of
18 the estate (1) in any one or more of the investments described
19 in Section 21-1 or (2) if the independent representative
20 determines that the estate is solvent and all interested
21 persons other than creditors approve, in any investments
22 authorized for trustees under the prudent investor ~~man~~ rule
23 stated in Article 9 Section 5 of the Illinois Trust Code
24 ~~"Trusts and Trustees Act", as now or hereafter amended.~~

25 (Source: P.A. 81-213.)

1 Section 1610. The Illinois Power of Attorney Act is amended
2 by changing Section 3-4 as follows:

3 (755 ILCS 45/3-4) (from Ch. 110 1/2, par. 803-4)

4 Sec. 3-4. Explanation of powers granted in the statutory
5 short form power of attorney for property. This Section defines
6 each category of powers listed in the statutory short form
7 power of attorney for property and the effect of granting
8 powers to an agent, and is incorporated by reference into the
9 statutory short form. Incorporation by reference does not
10 require physical attachment of a copy of this Section 3-4 to
11 the statutory short form power of attorney for property. When
12 the title of any of the following categories is retained (not
13 struck out) in a statutory property power form, the effect will
14 be to grant the agent all of the principal's rights, powers and
15 discretions with respect to the types of property and
16 transactions covered by the retained category, subject to any
17 limitations on the granted powers that appear on the face of
18 the form. The agent will have authority to exercise each
19 granted power for and in the name of the principal with respect
20 to all of the principal's interests in every type of property
21 or transaction covered by the granted power at the time of
22 exercise, whether the principal's interests are direct or
23 indirect, whole or fractional, legal, equitable or
24 contractual, as a joint tenant or tenant in common or held in
25 any other form; but the agent will not have power under any of

1 the statutory categories (a) through (o) to make gifts of the
2 principal's property, to exercise powers to appoint to others
3 or to change any beneficiary whom the principal has designated
4 to take the principal's interests at death under any will,
5 trust, joint tenancy, beneficiary form or contractual
6 arrangement. The agent will be under no duty to exercise
7 granted powers or to assume control of or responsibility for
8 the principal's property or affairs; but when granted powers
9 are exercised, the agent will be required to act in good faith
10 for the benefit of the principal using due care, competence,
11 and diligence in accordance with the terms of the statutory
12 property power and will be liable for negligent exercise. The
13 agent may act in person or through others reasonably employed
14 by the agent for that purpose and will have authority to sign
15 and deliver all instruments, negotiate and enter into all
16 agreements and do all other acts reasonably necessary to
17 implement the exercise of the powers granted to the agent.

18 (a) Real estate transactions. The agent is authorized to:
19 buy, sell, exchange, rent and lease real estate (which term
20 includes, without limitation, real estate subject to a land
21 trust and all beneficial interests in and powers of direction
22 under any land trust); collect all rent, sale proceeds and
23 earnings from real estate; convey, assign and accept title to
24 real estate; grant easements, create conditions and release
25 rights of homestead with respect to real estate; create land
26 trusts and exercise all powers under land trusts; hold,

1 possess, maintain, repair, improve, subdivide, manage, operate
2 and insure real estate; pay, contest, protest and compromise
3 real estate taxes and assessments; and, in general, exercise
4 all powers with respect to real estate which the principal
5 could if present and under no disability.

6 (b) Financial institution transactions. The agent is
7 authorized to: open, close, continue and control all accounts
8 and deposits in any type of financial institution (which term
9 includes, without limitation, banks, trust companies, savings
10 and building and loan associations, credit unions and brokerage
11 firms); deposit in and withdraw from and write checks on any
12 financial institution account or deposit; and, in general,
13 exercise all powers with respect to financial institution
14 transactions which the principal could if present and under no
15 disability. This authorization shall also apply to any Totten
16 Trust, Payable on Death Account, or comparable trust account
17 arrangement where the terms of such trust are contained
18 entirely on the financial institution's signature card,
19 insofar as an agent shall be permitted to withdraw income or
20 principal from such account, unless this authorization is
21 expressly limited or withheld under paragraph 2 of the form
22 prescribed under Section 3-3. This authorization shall not
23 apply to accounts titled in the name of any trust subject to
24 the provisions of the Illinois Trust Code ~~Trusts and Trustees~~
25 ~~Act~~, for which specific reference to the trust and a specific
26 grant of authority to the agent to withdraw income or principal

1 from such trust is required pursuant to Section 2-9 of the
2 Illinois Power of Attorney Act and subsection (n) of this
3 Section.

4 (c) Stock and bond transactions. The agent is authorized
5 to: buy and sell all types of securities (which term includes,
6 without limitation, stocks, bonds, mutual funds and all other
7 types of investment securities and financial instruments);
8 collect, hold and safekeep all dividends, interest, earnings,
9 proceeds of sale, distributions, shares, certificates and
10 other evidences of ownership paid or distributed with respect
11 to securities; exercise all voting rights with respect to
12 securities in person or by proxy, enter into voting trusts and
13 consent to limitations on the right to vote; and, in general,
14 exercise all powers with respect to securities which the
15 principal could if present and under no disability.

16 (d) Tangible personal property transactions. The agent is
17 authorized to: buy and sell, lease, exchange, collect, possess
18 and take title to all tangible personal property; move, store,
19 ship, restore, maintain, repair, improve, manage, preserve,
20 insure and safekeep tangible personal property; and, in
21 general, exercise all powers with respect to tangible personal
22 property which the principal could if present and under no
23 disability.

24 (e) Safe deposit box transactions. The agent is authorized
25 to: open, continue and have access to all safe deposit boxes;
26 sign, renew, release or terminate any safe deposit contract;

1 drill or surrender any safe deposit box; and, in general,
2 exercise all powers with respect to safe deposit matters which
3 the principal could if present and under no disability.

4 (f) Insurance and annuity transactions. The agent is
5 authorized to: procure, acquire, continue, renew, terminate or
6 otherwise deal with any type of insurance or annuity contract
7 (which terms include, without limitation, life, accident,
8 health, disability, automobile casualty, property or liability
9 insurance); pay premiums or assessments on or surrender and
10 collect all distributions, proceeds or benefits payable under
11 any insurance or annuity contract; and, in general, exercise
12 all powers with respect to insurance and annuity contracts
13 which the principal could if present and under no disability.

14 (g) Retirement plan transactions. The agent is authorized
15 to: contribute to, withdraw from and deposit funds in any type
16 of retirement plan (which term includes, without limitation,
17 any tax qualified or nonqualified pension, profit sharing,
18 stock bonus, employee savings and other retirement plan,
19 individual retirement account, deferred compensation plan and
20 any other type of employee benefit plan); select and change
21 payment options for the principal under any retirement plan;
22 make rollover contributions from any retirement plan to other
23 retirement plans or individual retirement accounts; exercise
24 all investment powers available under any type of self-directed
25 retirement plan; and, in general, exercise all powers with
26 respect to retirement plans and retirement plan account

1 balances which the principal could if present and under no
2 disability.

3 (h) Social Security, unemployment and military service
4 benefits. The agent is authorized to: prepare, sign and file
5 any claim or application for Social Security, unemployment or
6 military service benefits; sue for, settle or abandon any
7 claims to any benefit or assistance under any federal, state,
8 local or foreign statute or regulation; control, deposit to any
9 account, collect, receipt for, and take title to and hold all
10 benefits under any Social Security, unemployment, military
11 service or other state, federal, local or foreign statute or
12 regulation; and, in general, exercise all powers with respect
13 to Social Security, unemployment, military service and
14 governmental benefits which the principal could if present and
15 under no disability.

16 (i) Tax matters. The agent is authorized to: sign, verify
17 and file all the principal's federal, state and local income,
18 gift, estate, property and other tax returns, including joint
19 returns and declarations of estimated tax; pay all taxes;
20 claim, sue for and receive all tax refunds; examine and copy
21 all the principal's tax returns and records; represent the
22 principal before any federal, state or local revenue agency or
23 taxing body and sign and deliver all tax powers of attorney on
24 behalf of the principal that may be necessary for such
25 purposes; waive rights and sign all documents on behalf of the
26 principal as required to settle, pay and determine all tax

1 liabilities; and, in general, exercise all powers with respect
2 to tax matters which the principal could if present and under
3 no disability.

4 (j) Claims and litigation. The agent is authorized to:
5 institute, prosecute, defend, abandon, compromise, arbitrate,
6 settle and dispose of any claim in favor of or against the
7 principal or any property interests of the principal; collect
8 and receipt for any claim or settlement proceeds and waive or
9 release all rights of the principal; employ attorneys and
10 others and enter into contingency agreements and other
11 contracts as necessary in connection with litigation; and, in
12 general, exercise all powers with respect to claims and
13 litigation which the principal could if present and under no
14 disability. The statutory short form power of attorney for
15 property does not authorize the agent to appear in court or any
16 tribunal as an attorney-at-law for the principal or otherwise
17 to engage in the practice of law without being a licensed
18 attorney who is authorized to practice law in Illinois under
19 applicable Illinois Supreme Court Rules.

20 (k) Commodity and option transactions. The agent is
21 authorized to: buy, sell, exchange, assign, convey, settle and
22 exercise commodities futures contracts and call and put options
23 on stocks and stock indices traded on a regulated options
24 exchange and collect and receipt for all proceeds of any such
25 transactions; establish or continue option accounts for the
26 principal with any securities or futures broker; and, in

1 general, exercise all powers with respect to commodities and
2 options which the principal could if present and under no
3 disability.

4 (l) Business operations. The agent is authorized to:
5 organize or continue and conduct any business (which term
6 includes, without limitation, any farming, manufacturing,
7 service, mining, retailing or other type of business operation)
8 in any form, whether as a proprietorship, joint venture,
9 partnership, corporation, trust or other legal entity;
10 operate, buy, sell, expand, contract, terminate or liquidate
11 any business; direct, control, supervise, manage or
12 participate in the operation of any business and engage,
13 compensate and discharge business managers, employees, agents,
14 attorneys, accountants and consultants; and, in general,
15 exercise all powers with respect to business interests and
16 operations which the principal could if present and under no
17 disability.

18 (m) Borrowing transactions. The agent is authorized to:
19 borrow money; mortgage or pledge any real estate or tangible or
20 intangible personal property as security for such purposes;
21 sign, renew, extend, pay and satisfy any notes or other forms
22 of obligation; and, in general, exercise all powers with
23 respect to secured and unsecured borrowing which the principal
24 could if present and under no disability.

25 (n) Estate transactions. The agent is authorized to:
26 accept, receipt for, exercise, release, reject, renounce,

1 assign, disclaim, demand, sue for, claim and recover any
2 legacy, bequest, devise, gift or other property interest or
3 payment due or payable to or for the principal; assert any
4 interest in and exercise any power over any trust, estate or
5 property subject to fiduciary control; establish a revocable
6 trust solely for the benefit of the principal that terminates
7 at the death of the principal and is then distributable to the
8 legal representative of the estate of the principal; and, in
9 general, exercise all powers with respect to estates and trusts
10 which the principal could if present and under no disability;
11 provided, however, that the agent may not make or change a will
12 and may not revoke or amend a trust revocable or amendable by
13 the principal or require the trustee of any trust for the
14 benefit of the principal to pay income or principal to the
15 agent unless specific authority to that end is given, and
16 specific reference to the trust is made, in the statutory
17 property power form.

18 (o) All other property transactions. The agent is
19 authorized to: exercise all possible authority of the principal
20 with respect to all possible types of property and interests in
21 property, except to the extent limited in subsections (a)
22 through (n) of this Section 3-4 and to the extent that the
23 principal otherwise limits the generality of this category (o)
24 by striking out one or more of categories (a) through (n) or by
25 specifying other limitations in the statutory property power
26 form.

1 (Source: P.A. 96-1195, eff. 7-1-11.)

2 Section 1611. The Common Trust Fund Act is amended by
3 changing Section 3 as follows:

4 (760 ILCS 45/3) (from Ch. 17, par. 2103)

5 Sec. 3. Establishment of common trust fund. Any bank or
6 trust company may, at and during such time as it is qualified
7 to act as a fiduciary in this State, establish, maintain, and
8 administer one or more common trust funds for the purpose of
9 furnishing investments to itself as a fiduciary, or to itself
10 and another or others as co-fiduciaries. An investment in a
11 common trust fund does not constitute an investment in the
12 various securities composing the common trust fund, but is an
13 investment in the fund as an entity. A bank or trust company,
14 in its capacity as a fiduciary or co-fiduciary, whether that
15 fiduciary capacity arose before or is created after this Act
16 takes effect, may invest funds that it holds for investment in
17 that capacity in interests in one or more common trust funds,
18 subject to the following limitations:

19 (1) In the case of a fiduciary other than an
20 administrator, the investment may be made in a common trust
21 fund if such an investment is not expressly prohibited by
22 the instrument, judgment, or order creating the fiduciary
23 relationship, or by an amendment thereof, and if, under the
24 instrument, judgment, or order creating the fiduciary

1 relationship, or an amendment thereof, the funds so held
2 for investment might properly be invested in an investment
3 with the overall investment characteristics of the common
4 trust fund, considered as an entity, and if, in the case of
5 co-fiduciaries, the bank or trust company procures the
6 consent of its co-fiduciary or co-fiduciaries to the
7 investment in those interests. If the instrument creating
8 the fiduciary relationship gives to the bank or trust
9 company the exclusive right to select investments, the
10 consent of the co-fiduciary shall not be required. Any
11 person acting as co-fiduciary with any such bank or trust
12 company is hereby authorized to consent to the investment
13 in those interests.

14 (2) In the case of an administrator, the investment may
15 be made upon approval by the court.

16 (3) A bank or trust company in establishing,
17 maintaining and administering one or more common trust
18 funds for the purpose of furnishing investments to itself
19 as fiduciary shall have a duty to invest and manage such
20 common trust fund assets as follows:

21 (A) The bank or trust company has a duty to invest
22 and manage common trust fund assets as a prudent
23 investor would considering the purposes, terms,
24 distribution requirements, and other circumstances of
25 the common trust fund. This standard requires the
26 exercise of reasonable care, skill, and caution and is

1 to be applied to investments not in isolation, but in
2 the context of the common trust fund portfolio as a
3 whole and as a part of an overall investment strategy
4 that should incorporate risk and return objectives
5 reasonably suitable to the common trust fund.

6 (B) No specific investment or course of action is,
7 taken alone, prudent or imprudent. The bank or trust
8 company may invest in every kind of property and type
9 of investment, subject to this Section. The bank or
10 trust company's investment decisions and actions are
11 to be judged in terms of the bank or trust company's
12 reasonable business judgment regarding the anticipated
13 effect on the common trust fund portfolio as a whole
14 under the facts and circumstances prevailing at the
15 time of the decision or action. The standard set forth
16 in this paragraph (3) is a test of conduct and not of
17 resulting performance.

18 (C) The circumstances that the bank or trust
19 company may consider in making investment decisions
20 include, without limitation, the general economic
21 conditions, the possible effect of inflation, the role
22 each investment or course of action plays within the
23 overall portfolio, and the expected total return.

24 (D) The bank or trust company may invest and
25 reinvest common trust fund assets in interests in any
26 open-end or closed-end management type investment

1 company or investment trust (hereafter referred to as a
2 "mutual fund") registered under the Investment Company
3 Act of 1940 or may retain, sell, or exchange those
4 interests, provided that the portfolio of the mutual
5 fund, as an entity, is appropriate under the provisions
6 of this Act. The bank or trust company is not
7 prohibited from investing, reinvesting, retaining, or
8 exchanging as common fund assets any interests in any
9 mutual fund for which the bank or trust company or an
10 affiliate acts as advisor or manager solely on the
11 basis that the bank or trust company (or its affiliate)
12 provides services to the mutual fund and receives
13 reasonable remuneration for those services. A bank or
14 trust company or its affiliate is not required to
15 reduce or waive its compensation for services provided
16 in connection with the administration, investment, and
17 management of the common trust fund or a participant in
18 the common trust fund because the bank or trust company
19 invests, reinvests, or retains common trust fund
20 assets in a mutual fund, if the total compensation paid
21 by a participant to the bank or trust company and its
22 affiliates, directly or indirectly, including any
23 common trust fund fees, mutual fund fees, advisory
24 fees, and management fees, is reasonable. However, a
25 bank or trust company may receive fees equal to the
26 amount of those fees that would be paid to any other

1 party under Securities and Exchange Commission Rule
2 12b-1.

3 (4) A bank or trust company may not delegate the
4 investment functions of a common trust fund established or
5 operating under Section 584 of the Internal Revenue Code
6 pursuant to Section 807 5.1 of the Illinois Trust Code
7 ~~Trusts and Trustees Act~~ except as authorized by the Bureau
8 of the Comptroller of the Currency of the U. S. Department
9 of the Treasury. A bank or trust company may hire one or
10 more agents to give the trustee advice with respect to
11 investments of a common trust fund and pay reasonable and
12 appropriate compensation to the agent provided that the
13 final investment decisions and the exclusive management of
14 the common trust fund remain with the bank or trust
15 company.

16 (5) On or after the effective date of this amendatory
17 Act of 1991, this Section applies to all existing and
18 future common trust funds, but only as to actions or
19 inactions occurring after that effective date.

20 (Source: P.A. 89-344, eff. 8-17-95.)

21 Section 1612. The Religious Corporation Act is amended by
22 changing Section 46j as follows:

23 (805 ILCS 110/46j) (from Ch. 32, par. 185)

24 Sec. 46j. Any church, congregation, society or

1 corporation, heretofore or hereafter formed for religious
2 purposes or for the purpose of religious worship under any of
3 the provisions of this Act or under any law of this State
4 incorporating or for the incorporation of religious
5 corporations or societies, may receive land by gift, legacy or
6 purchase and make, erect, and build thereon such houses,
7 buildings, or other improvements as may be necessary for the
8 convenience, comfort and welfare of such church, congregation,
9 society or corporation, and may lay out and maintain thereon a
10 cemetery or cemeteries, or a burying ground or grounds and may
11 maintain and build thereon schools, orphan asylums, or such
12 other improvements or buildings as may be necessary for the
13 educational, eleemosynary, cemetery and religious purposes of
14 such congregation, church, society or corporation; but no such
15 property shall be used except in the manner expressed in the
16 gift, grant or legacy. However, this limitation on the
17 disposition of real property does not apply to the extent that
18 a restriction imposed by a donor on the use of an institutional
19 fund may be released by the governing board of an institution
20 under the Uniform Prudent Management of Institutional Funds
21 Act. Or if no use or trust is so expressed, no such property
22 shall be used except for the benefit of the congregation,
23 corporation, church or society, for which it was intended, or
24 for such religious, educational or eleemosynary purpose as may
25 be approved by such congregation, church, society or
26 corporation or the ecclesiastical body having jurisdiction or

1 patronage of or charge over such congregation, corporation,
2 church or society.

3 Any corporation, heretofore or hereafter formed for
4 religious purposes under any of the provisions of this Act or
5 under any other law of this State incorporating or for the
6 incorporation of religious corporations or societies, which
7 now or hereafter owns, operates, maintains or controls a
8 cemetery or cemeteries, or a burial ground or grounds, is
9 hereby authorized and empowered to accept by gift, grant,
10 contribution, payment, or legacy, or pursuant to contract, any
11 sum of money, funds, securities or property of any kind, or the
12 income or avails thereof, and to hold the same in trust in
13 perpetuity for the care of such cemetery or cemeteries, burial
14 ground or grounds, or for the care of any lot, grave or crypt
15 therein; or for the special care of any lot, grave or crypt or
16 of any family mausoleum or memorial, marker, or monument in
17 such cemetery or cemeteries, burial ground or grounds. No gift,
18 grant, legacy, payment or other contribution shall be invalid
19 by reason of any indefiniteness or uncertainty as to the
20 beneficiary designated in the instrument creating the gift,
21 grant, legacy, payment or other contribution. If any gift,
22 grant, legacy, payment or other contribution consists of
23 non-income producing property, such corporation is authorized
24 and empowered to sell such property and to invest the funds
25 obtained in accordance with the provisions of the Uniform
26 Prudent Management of Institutional Funds Act, or the

1 provisions of the next succeeding paragraph.

2 The trust funds authorized by this Section shall be held
3 intact and, unless otherwise restricted by the terms of the
4 gift, grant, legacy, contribution, payment, contract or other
5 payment shall be invested, from time to time reinvested, and
6 kept invested by such corporation in such investments as are
7 authorized by the Uniform Prudent Management of Institutional
8 Funds Act, and according to such standards as are prescribed,
9 for trustees under that Act and the Illinois Trust Code ~~"Trusts
10 and Trustees Act", approved September 10, 1973, as amended,~~ and
11 the net income only from such investments shall be allocated
12 and used for the purposes set forth in the paragraph
13 immediately preceding; but the trust funds authorized by this
14 Section may be commingled and may also be commingled with any
15 other trust funds received by such corporation for the care of
16 the cemetery or cemeteries, or burial ground or grounds, or for
17 the care or special care of any lot, grave, crypt, private
18 mausoleum, memorial, marker, or monument whether received by
19 gift, grant, legacy, contribution, payment, contract or other
20 conveyance heretofore or hereafter made to such corporation.

21 The trust funds authorized by this Section, and the income
22 therefrom, shall be exempt from taxation and exempt from the
23 operation of the laws against perpetuities and accumulations.

24 (Source: P.A. 96-29, eff. 6-30-09.)

25 Section 1613. The Illinois Pre-Need Cemetery Sales Act is

1 amended by changing Section 16 as follows:

2 (815 ILCS 390/16) (from Ch. 21, par. 216)

3 Sec. 16. Trust funds; disbursements.

4 (a) A trustee shall make no disbursements from the trust
5 fund except as provided in this Act.

6 (b) A trustee has a duty to invest and manage the trust
7 assets pursuant to the Illinois Uniform Prudent Investor Act
8 ~~Rule~~ under Article 9 of the Illinois Trust Code ~~Trusts and~~
9 ~~Trustees Act~~. Whenever the seller changes trustees pursuant to
10 this Act, the trustee must provide written notice of the change
11 in trustees to the Comptroller no less than 28 days prior to
12 the effective date of such a change in trustee. The trustee has
13 an ongoing duty to provide the Comptroller with a current and
14 true copy of the trust agreement under which the trust funds
15 are held pursuant to this Act.

16 (c) The trustee may rely upon certifications and affidavits
17 made to it under the provisions of this Act, and shall not be
18 liable to any person for such reliance.

19 (d) A trustee shall be allowed to withdraw from the trust
20 funds maintained pursuant to this Act a reasonable fee pursuant
21 to the Illinois Trust Code ~~Trusts and Trustees Act~~.

22 (e) The trust shall be a single-purpose trust fund. In the
23 event of the seller's bankruptcy, insolvency or assignment for
24 the benefit of creditors, or an adverse judgment, the trust
25 funds shall not be available to any creditor as assets of the

1 seller or to pay any expenses of any bankruptcy or similar
2 proceeding, but shall be distributed to the purchasers or
3 managed for their benefit by the trustee holding the funds.
4 Except in an action by the Comptroller to revoke a license
5 issued pursuant to this Act and for creation of a receivership
6 as provided in this Act, the trust shall not be subject to
7 judgment, execution, garnishment, attachment, or other seizure
8 by process in bankruptcy or otherwise, nor to sale, pledge,
9 mortgage, or other alienation, and shall not be assignable
10 except as approved by the Comptroller. The changes made by this
11 amendatory Act of the 91st General Assembly are intended to
12 clarify existing law regarding the inability of licensees to
13 pledge the trust.

14 (f) Because it is not known at the time of deposit or at
15 the time that income is earned on the trust account to whom the
16 principal and the accumulated earnings will be distributed, for
17 purposes of determining the Illinois Income Tax due on these
18 trust funds, the principal and any accrued earnings or losses
19 relating to each individual account shall be held in suspense
20 until the final determination is made as to whom the account
21 shall be paid.

22 (g) A trustee shall at least annually furnish to each
23 purchaser a statement identifying: (1) the receipts,
24 disbursements, and inventory of the trust, including an
25 explanation of any fees or expenses charged by the trustee
26 under paragraph (d) of this Section or otherwise, (2) an

1 explanation of the purchaser's right to a refund, if any, under
2 this Act, and (3) the primary regulator of the trust as a
3 corporate fiduciary under state or federal law.
4 (Source: P.A. 96-879, eff. 2-2-10.)

5 Article 99. Effective date.

6 Section 999. Effective date. This Act takes effect January
7 1, 2018."