



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB6312

Introduced 2/11/2016, by Rep. Ann Williams

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Illinois Trust Code. Provides that the Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. Defines terms. Adds provisions governing: judicial proceedings; representation; creation, validity, modification, and termination of trusts; creditor's claims; spendthrift and discretionary trusts; revocable trusts; the office of trustee; duties and powers of the trustee; the Illinois Uniform Prudent Investor Act; life insurance; affiliated investments; liability of trustees and rights of persons dealing with trustee; total return trusts; trust decanting; the Uniform Powers of Appointment Act; perpetuities; and application of the Code to existing trusts. Repeals a Section of the Probate Act of 1975 concerning testamentary powers of appointment. Repeals the Trusts and Trustees Act, the Trusts and Dissolutions of Marriage Act, the Statute Concerning Perpetuities, the Perpetuities Vesting Act, the Trust Accumulation Act, the Power of Appointment Exercise Act, and the Termination of Powers Act. Makes corresponding changes in the Public Use Trust Act, the Township Code, the Corporate Fiduciary Act, the Community-Integrated Living Arrangements Licensure and Certification Act, the Title Insurance Act, the Illinois Funeral or Burial Funds Act, the Mental Health and Developmental Disabilities Code, the Illinois Marriage and Dissolution of Marriage Act, the Probate Act of 1975, the Illinois Power of Attorney Act, the Common Trust Fund Act, the Religious Corporation Act, and the Illinois Pre-Need Cemetery Sales Act. Effective January 1, 2017.

LRB099 20636 HEP 45226 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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;

16 (4) liquidation trust;

17 (5) escrow;

18 (6) instrument under which a nominee, custodian for  
19 property, or paying or receiving agent is appointed;

20 (7) trust created by a deposit arrangement in a banking  
21 or savings institution, commonly known as a "Totten trust"  
22 unless in the trust instrument any of the provisions of

1 this Code are made applicable by specific reference; or  
2 (8) Grain Indemnity Trust Account or any other trust  
3 created under the Grain Code.

4 Section 103. Definitions. In this Code:

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

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

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

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

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

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

19 (4) "Charitable interest" means an interest in a trust  
20 that:

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

23 (B) benefits only charitable organizations and, if the  
24 interest were held by an identified charitable  
25 organization, would make the organization a qualified

1 beneficiary; or

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

6 (5) "Charitable organization" means:

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

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

12 (6) "Charitable purpose" means the relief of poverty, the  
13 advancement of education or religion, the promotion of health,  
14 municipal or other governmental purpose, or another purpose the  
15 achievement of which is beneficial to the community.

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

18 (8) "Community property" means all personal property,  
19 wherever situated, that was acquired as or became, and  
20 remained, community property under the laws of another  
21 jurisdiction, and all real property situated in another  
22 jurisdiction that is community property under the laws of that  
23 jurisdiction.

24 (9) "Current beneficiary" means a beneficiary that on the  
25 date the beneficiary's qualification is determined is a  
26 distributee or permissible distributee of trust income or

1 principal. The term "current beneficiary" includes the holder  
2 of a presently exercisable general power of appointment but  
3 does not include a person who is a beneficiary only because the  
4 person holds any other power of appointment.

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

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

9 (12) "Environmental law" means a federal, state, or local  
10 law, rule, regulation, or ordinance relating to protection of  
11 the environment.

12 (13) "General power of appointment" means a power of  
13 appointment exercisable in favor of a powerholder, the  
14 powerholder's estate, a creditor of the powerholder, or a  
15 creditor of the powerholder's estate.

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

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

21 (16) "Incapacitated" or "incapacity" means the inability  
22 of an individual to manage property or business affairs because  
23 the individual is a minor, adjudicated incompetent, has an  
24 impairment in the ability to receive and evaluate information  
25 or make or communicate decisions even with the use of  
26 technological assistance; or is at a location that is unknown

1 and not reasonably ascertainable. Without limiting the ways in  
2 which incapacity may be established, an individual is  
3 incapacitated if:

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

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

11 (iii) the individual was examined by a licensed  
12 physician who determined that the individual was  
13 incapacitated and the physician made a signed written  
14 record of the physician's determination within 90 days  
15 after the examination and no licensed physician  
16 subsequently made a signed written record of the  
17 physician's determination that the individual was not  
18 incapacitated within 90 days after examining the  
19 individual.

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

23 (18) "Interested persons" means: (A) the trustee; and (B)  
24 all beneficiaries, or their respective representatives  
25 determined after giving effect to the provisions of Article 3,  
26 whose consent or joinder would be required in order to achieve

1 a binding settlement were the settlement to be approved by the  
2 court. "Interested persons" includes a trust advisor,  
3 investment advisor, distribution advisor, trust protector, or  
4 other holder, or committee of holders, of fiduciary or  
5 nonfiduciary powers, if the person then holds powers material  
6 to a particular question or dispute to be resolved or affected  
7 by a nonjudicial settlement in accordance with Section 111 or  
8 by a judicial proceeding.

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

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

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

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

17 (23) "Person" means an individual, estate, business or  
18 nonprofit entity, public corporation, government or  
19 governmental subdivision, agency, or instrumentality, or other  
20 legal entity.

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

26 (25) "Power of withdrawal" means a presently exercisable

1 general power of appointment other than a power:

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

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

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

8 (27) "Presently exercisable power of appointment" means a  
9 power of appointment exercisable by the powerholder at the  
10 relevant time. The term "presently exercisable power of  
11 appointment":

12 (A) includes a power of appointment exercisable only  
13 after the occurrence of a specified event, the satisfaction  
14 of an ascertainable standard, or the passage of a specified  
15 time only after:

16 (i) the occurrence of the specified event;

17 (ii) the satisfaction of the ascertainable  
18 standard; or

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

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

22 (28) "Presumptive remainder beneficiary" means a  
23 beneficiary of a trust, as of the date of determination and  
24 assuming nonexercise of all powers of appointment, who either:  
25 (A) would be eligible to receive a distribution of income or  
26 principal if the trust terminated on that date; or (B) would be



1 eligible to receive a distribution of income or principal if  
2 the interests of all beneficiaries currently eligible to  
3 receive income or principal from the trust ended on that date  
4 without causing the trust to terminate.

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

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

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

13 (B) would be a distributee or permissible distributee  
14 of trust income or principal if the interests of the  
15 distributees described in subparagraph (A) terminated on  
16 that date without causing the trust to terminate; or

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

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

24 (32) "Settlor", except as otherwise provided in Sections  
25 113 and 1225, means a person, including a testator, who  
26 creates, or contributes property to, a trust. If more than one

1 person creates or contributes property to a trust, each person  
2 is a settlor of the portion of the trust property attributable  
3 to that person's contribution except to the extent another  
4 person has the power to revoke or withdraw that portion.

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

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

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

10 (34) "Spendthrift provision" means a term of a trust that  
11 restrains both voluntary and involuntary transfer of a  
12 beneficiary's interest.

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

19 (36) "Terms of the trust" means the manifestation of the  
20 settlor's intent regarding a trust's provisions as expressed in  
21 the trust instrument, as may be established by other evidence  
22 that would be admissible in a judicial proceeding, or as may be  
23 established by court order or nonjudicial settlement  
24 agreement.

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

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

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

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

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

19           Section 104. Knowledge.

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

22               (1) has actual knowledge of it;

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

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

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

16           Section 105. Default and mandatory rules.

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

25           (b) Specific terms of the trust instrument prevail over any

1 provision of this Code except:

2 (1) the requirements for creating a trust;

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

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

6 (4) the rules governing designated representatives as  
7 provided in Section 307;

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

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

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

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

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

22 (10) for trusts becoming irrevocable after the  
23 effective date of this Code, the trustee's duty under  
24 paragraph (b) (1) of Section 813.1 to provide information to  
25 the qualified beneficiaries;

26 (11) for trusts becoming irrevocable after the

1 effective date of this Code, the trustee's duty under  
2 paragraph (b) (2) of Section 813.1 to provide accountings to  
3 the current beneficiaries of the trust;

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

9 (13) the effect of an exculpatory term under Section  
10 1008;

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

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

16 Section 106. Common law of trusts; principles of equity.  
17 The common law of trusts and principles of equity supplement  
18 this Code, except to the extent modified by this Code or  
19 another statute of this State.

20 Section 107. Governing law.

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

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

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

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

8           Section 108. Principal place of administration.

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

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

16                 (2) all or part of the administration occurs in the  
17                 designated jurisdiction.

18          (b) The trustee, as the trustee reasonably determines is  
19          appropriate, may transfer the trust's principal place of  
20          administration to another state or to a jurisdiction outside of  
21          the United States. Language in a trust instrument that the  
22          trust shall be governed by the laws of a particular state shall  
23          not be deemed to expressly prohibit a transfer of the principal  
24          place of administration.

25          (c) Notwithstanding any other provision of this Code, the

1 trustee has no duty to inform beneficiaries, or any other  
2 interested party, about the availability of this Section and  
3 further has no duty to review the trust instrument to determine  
4 whether any action should be taken under this Section unless  
5 requested to do so in writing by a beneficiary then entitled to  
6 receive reports and information related to the administration  
7 of the trust.

8 (d) 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 in the  
11 trust instrument 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's Charitable Trust Bureau has the  
22 rights of a qualified beneficiary with respect to a charitable  
23 trust having its principal place of administration in this  
24 State.

1 Section 111. Nonjudicial settlement agreements.

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

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

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

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

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

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

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

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

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

1 compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 a similar provision demonstrating that intent, is sufficient to  
2 preclude the use of this Section.

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

10 Section 113. Insurable interest of trustee.

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

16 (1) the insured is:

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

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

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

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

1           life of the insured; or

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

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

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

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

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

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

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

22                           Article 2. Judicial proceedings.

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

24           (a) The court may adjudicate any matter arising in the



1 administration of a trust to the extent its jurisdiction is  
2 invoked by an interested person or as provided by law.

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

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

8 Section 202. Jurisdiction over trustee and beneficiary.

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

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

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

1 summons had been personally served within this State.

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

5 Section 203. (Reserved).

6 Section 204. Venue.

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

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

19 Article 3. Representation.

20 Section 301. Representation: basic effect.

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

22 (1) Notice, information, accountings, or reports given

1 to a person who may represent and bind another person under  
2 this Article have the same effect as if given directly to  
3 the person represented.

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

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

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

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

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

25 (2) the holder of a power of appointment under Section  
26 302;

- 1 (3) a designated representative under Section 307;
- 2 (4) a court-appointed guardian of the estate, or, if  
3 none, a court-appointed guardian of the person under  
4 subsection (b) of Section 303;
- 5 (5) an agent under a power of attorney for property  
6 under subsection (c) of Section 303;
- 7 (6) a parent of a person under subsection (d) of  
8 Section 303;
- 9 (7) another person having a substantially similar  
10 interest with respect to the particular question or dispute  
11 under subsection (a) of Section 304; and
- 12 (8) a representative under this Article for a person  
13 who has a substantially similar interest to a person who  
14 has a representative under subsection (b) of Section 304.
- 15 (e) A trustee is not liable for giving notice, information,  
16 accountings, or reports to a person who is represented by  
17 another person under this Article, and nothing in this Article  
18 prohibits the trustee from giving notice, information,  
19 accountings, or reports to the person represented.

20 Section 302. Representation by holders of certain powers.

- 21 (a) The holder of a testamentary or a presently exercisable  
22 power of appointment that is: (1) a general power of  
23 appointment; or (2) exercisable in favor of all persons other  
24 than the powerholder, the powerholder's estate, a creditor of  
25 the powerholder, or a creditor of the powerholder's estate, may

1 represent and bind all persons, including permissible  
2 appointees and takers in default, whose interests may be  
3 eliminated by the exercise or nonexercise of the power.

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

12 Section 303. Representation by others.

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

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

23 (c) If an individual is incapacitated, an agent under a  
24 power of attorney for property who has authority to act with  
25 respect to the particular question or dispute and who does not

1 have a material conflict of interest with respect to the  
2 particular question or dispute may represent and bind the  
3 principal. An agent is deemed to have authority under this  
4 subsection if the power of attorney grants the agent the power  
5 to settle claims and to exercise powers with respect to trusts  
6 and estates, even if the powers do not include powers to make a  
7 will, to revoke or amend a trust, or to require the trustee to  
8 pay income or principal.

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

20 Section 304. Representation by person having substantially  
21 identical interest.

22 (a) To the extent there is no material conflict of interest  
23 between the representative and the represented beneficiary  
24 with respect to the particular question or dispute, a  
25 beneficiary who is incapacitated, unborn, or unascertainable

1 may, for all purposes, be represented by and bound by another  
2 beneficiary having a substantially similar interest with  
3 respect to the particular question or dispute.

4 (b) A guardian, agent, or parent who is the representative  
5 for a beneficiary under subsection (b), (c), or (d) of Section  
6 303 may, for all purposes, represent and bind any other  
7 beneficiary who is incapacitated, unborn, or unascertainable  
8 and who has an interest, with respect to the particular  
9 question or dispute, that is substantially similar to the  
10 interest of the beneficiary represented by the representative,  
11 but only to the extent that there is no material conflict of  
12 interest between the beneficiary represented by the  
13 representative and the other beneficiary with respect to the  
14 particular question or dispute.

15 Section 305. Appointment of representative.

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

25 (b) A representative may act on behalf of the individual

1 represented with respect to any matter arising under this Code,  
2 regardless of whether a judicial proceeding concerning the  
3 trust or estate is pending.

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

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

11 Section 306. Representation of charity. If a trust contains  
12 a charitable interest, the Attorney General's Charitable Trust  
13 Bureau may, in accordance with this Section, represent, bind,  
14 and act on behalf of the charitable interest with respect to  
15 any particular question or dispute, including without  
16 limitation representing the charitable interest in a  
17 nonjudicial settlement agreement under Section 111, in an  
18 agreement to convert a trust to a total return trust under  
19 Article 11, or in a distribution in further trust under Article  
20 12. A charitable organization that is specifically named as  
21 beneficiary of a trust or otherwise has a beneficial interest  
22 in a trust may act for itself. Notwithstanding any other  
23 provision, nothing in this Section shall be construed to limit  
24 or affect the Attorney General's authority to file an action or  
25 take other steps as he or she deems advisable at any time to



1 enforce or protect the general public interest as to a trust  
2 that provides a beneficial interest or expectancy for one or  
3 more charitable organizations or charitable purposes whether  
4 or not a specific charitable organization is named in the  
5 trust. This Section shall be construed as declarative of  
6 existing law and not as a new enactment.

7 Section 307. Designated representative.

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

17 (b) Notwithstanding subsection (a):

18 (1) A designated representative may not represent and  
19 bind a current beneficiary who is age 30 or older and is  
20 not incapacitated.

21 (2) A designated representative may not represent and  
22 bind a qualified beneficiary while the designated  
23 representative is serving as a trustee.

24 (3) Subject to paragraphs (1) and (2) of this  
25 subsection (b), a designated representative may not

1 represent and bind a qualified beneficiary if the  
2 designated representative is also a qualified beneficiary  
3 of the trust, unless:

4 (A) the designated representative was specifically  
5 nominated in the trust instrument; or

6 (B) the designated representative is the qualified  
7 beneficiary's spouse or a grandparent or descendant of  
8 a grandparent of the qualified beneficiary or of the  
9 qualified beneficiary's spouse.

10 (c) Each designated representative is a fiduciary of the  
11 trust subject to the standards applicable to a trustee of a  
12 trust under applicable law.

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

18 Article 4. Creation, validity, modification, and termination  
19 of trust.

20 Section 401. Methods of creating trust. A trust may be  
21 created by:

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

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

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

5           Section 402. Requirements for creation.

6           (a) A trust is created only if:

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

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

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

11                         (A) a charitable trust;

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

14                         (C) a trust for a noncharitable purpose, as  
15 provided in Section 409;

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

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

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

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

1 property had the power not been conferred.

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

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

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

11 (3) any trust property was located.

12 Section 404. Trust purposes. A trust may be created only to  
13 the extent its purposes are lawful and not contrary to public  
14 policy.

15 Section 405. Charitable purposes; enforcement.

16 (a) A charitable trust may be created for any charitable  
17 purpose.

18 (b) If the terms of a charitable trust do not indicate a  
19 particular charitable purpose or beneficiary and do not  
20 delegate to the trustee or others willing to exercise the  
21 authority to select one or more charitable purposes or  
22 beneficiaries, then the court may select one or more charitable  
23 purposes or beneficiaries. The selection must be consistent

1 with the settlor's intention to the extent it can be  
2 ascertained.

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

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

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

19 Section 408. Trusts for domestic or pet animals.

20 (a) A trust for the care of one or more designated domestic  
21 or pet animals is valid. The trust terminates when no living  
22 animal is covered by the trust. A trust instrument shall be  
23 liberally construed to bring the transfer within this Section,

1 to presume against a merely precatory or honorary nature of its  
2 disposition, and to carry out the general intent of the  
3 transferor. Extrinsic evidence is admissible in determining  
4 the transferor's intent.

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

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

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

14 (A) as directed in the trust instrument;

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

16 (C) if there is no direction in the trust  
17 instrument and if the trust was created in a  
18 non-residuary clause in the transferor's will, then  
19 under the residuary clause in the transferor's will;

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

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

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

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

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

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

23           Section 409. Noncharitable trust without ascertainable  
24 beneficiary.

25           (a) Except as otherwise provided in Section 408 or by

1 another statute, a trust may be created for a noncharitable  
2 purpose without a definite or definitely ascertainable  
3 beneficiary or for a noncharitable but otherwise valid purpose  
4 to be selected by the trustee.

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

9 (1) as directed in the trust instrument;

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

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

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

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

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

25 Section 410. Modification or termination of trust;



1 proceedings for approval or disapproval.

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

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

14 Section 411. Modification or termination of noncharitable  
15 irrevocable trust by consent.

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

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

24 (c) The court shall consider spendthrift provisions as a  
25 factor in making a decision under this Section, but the court

1 is not precluded from modifying or terminating a trust because  
2 the trust contains spendthrift provisions.

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

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

10 (1) if all of the beneficiaries had consented, the  
11 trust could have been modified or terminated under this  
12 Section; and

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

15 Section 412. Modification or termination because of  
16 unanticipated circumstances or inability to administer trust  
17 effectively.

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

24 (b) The court may modify the administrative terms of a  
25 trust if continuation of the trust on its existing terms would

1 be impracticable or wasteful or impair the trust's  
2 administration.

3 (c) Upon termination of a trust under this Section, the  
4 court shall order the distribution of the trust property as  
5 agreed by the beneficiaries, or if the beneficiaries cannot  
6 agree, then as the court determines is equitable and consistent  
7 with the purposes of the trust.

8 Section 413. Cy pres.

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

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

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

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

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

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

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

3           Section 414. Modification or termination of uneconomic  
4           trust.

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

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

15          (c) Upon termination of a trust under this Section, the  
16          trustee shall distribute the trust property to the current  
17          beneficiaries in the proportions to which they are entitled to  
18          mandatory current distributions, or if their interests are  
19          indefinite, to the current beneficiaries per stirpes if they  
20          have a common ancestor, or if not, then in equal shares. The  
21          trustee shall give notice to the current beneficiaries at least  
22          30 days prior to the effective date of the termination.

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

25          (e) If a particular trustee is a current beneficiary of the

1 trust or is legally obligated to a current beneficiary, then  
2 that particular trustee may not participate as a trustee in the  
3 exercise of this termination power; provided, however, that if  
4 the trust has one or more cotrustees who are not so  
5 disqualified from participating, the cotrustee or cotrustees  
6 may exercise this power.

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

11 Section 415. Reformation to correct mistakes. The court may  
12 reform the terms of a trust, even if unambiguous, to conform  
13 the terms to the settlor's intention if it is proved by clear  
14 and convincing evidence what the settlor's intention was and  
15 that the terms of the trust instrument were affected by a  
16 mistake of fact or law, whether in expression or inducement.

17 Section 416. Modification to achieve settlor's tax  
18 objectives. To achieve the settlor's tax objectives, the court  
19 may modify the terms of a trust in a manner that is not  
20 contrary to the settlor's probable intention. The court may  
21 provide that the modification has retroactive effect.

22 Section 417. Combination and division of trusts.

23 (a) Subject to subsections (b), (c), and (d) of this

1 Section, after notice to the qualified beneficiaries, a trustee  
2 may:

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

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

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

9 (b) No consolidation, severance, or segregation may be made  
10 if the result impairs the rights of any beneficiary or  
11 adversely affects achievement of the material purposes of the  
12 subject trust or trusts.

13 (c) A severance or consolidation may be made for any reason  
14 including to reflect a partial disclaimer, to reflect  
15 differences in perpetuities periods, to reflect or result in  
16 differences in federal or state tax attributes, to satisfy any  
17 federal tax requirement or election, or to reduce potential  
18 generation-skipping transfer tax liability, and shall be made  
19 in a manner consistent with the rules governing disclaimers,  
20 federal tax attributes, requirements or elections, or any  
21 applicable federal or state tax rules or regulations.

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

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

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

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

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

22           Article 5. Creditor's claims; spendthrift and discretionary  
23 trusts.

24           Section 501. Rights of beneficiary's creditor or assignee.

1 Except as provided in Section 504, to the extent a  
2 beneficiary's interest is not subject to a spendthrift  
3 provision, the court may authorize a creditor or assignee of  
4 the beneficiary to reach the beneficiary's interest by  
5 attachment of present or future distributions to or for the  
6 benefit of the beneficiary or other means. The court may limit  
7 the award to such relief as is appropriate under the  
8 circumstances.

9 Section 502. Spendthrift provision.

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

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

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

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



1 Section 503. Exceptions to spendthrift provision.

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

5 (b) A spendthrift provision is unenforceable against:

6 (1) a beneficiary's child, spouse, or former spouse who  
7 has a judgment or court order against the beneficiary for  
8 child support obligations owed by the beneficiary as  
9 provided in the Income Withholding for Support Act, the  
10 Non-Support Punishment Act, the Illinois Parentage Act of  
11 2015, the Illinois Marriage and Dissolution of Marriage  
12 Act, and similar provisions of other Acts that provide for  
13 the support of a child;

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

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

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

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

5 Section 504. Discretionary distributions; effect of  
6 standard.

7 (a) As used in this Section, "discretionary distribution"  
8 means a distribution that is subject to the trustee's  
9 discretion regardless of whether the discretion is expressed in  
10 the form of a standard of distribution and regardless of  
11 whether the trustee has abused the discretion.

12 (b) Regardless of whether a trust contains a spendthrift  
13 provision, and regardless of whether the beneficiary is acting  
14 as trustee, if a trustee may make discretionary distributions  
15 to or for the benefit of a beneficiary, a creditor of the  
16 beneficiary, including a creditor described in subsection (b)  
17 of Section 503, may not:

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

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

24 (c) If the trustee's discretion to make distributions for  
25 the trustee's own benefit is limited by an ascertainable

1 standard, a creditor may not reach or compel distribution of  
2 the beneficial interest except to the extent the interest would  
3 be subject to the creditor's claim were the beneficiary not  
4 acting as trustee.

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

9 Section 505. Creditor's claim against settlor.

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

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

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

23 (3) Notwithstanding the provisions of paragraph (2),  
24 the assets of an irrevocable trust may not be subject to  
25 the claims of an existing or subsequent creditor or

1 assignee of the settlor, in whole or in part, solely  
2 because of the existence of a discretionary power granted  
3 to the trustee by the terms of the trust instrument, or any  
4 other provision of law, to pay directly to the taxing  
5 authorities or to reimburse the settlor for any tax on  
6 trust income or principal that is payable by the settlor  
7 under the law imposing the tax.

8 (4) Paragraph (2) does not apply to the assets of an  
9 irrevocable trust established for the benefit of a person  
10 with a disability that meets the requirements of 42 U.S.C.  
11 1396p(d)(4) or similar federal law governing the transfer  
12 to such a trust.

13 (5) After the death of a settlor, and subject to the  
14 settlor's right to direct the source from which liabilities  
15 will be paid, the property of a trust that was revocable at  
16 the settlor's death is subject to claims of the settlor's  
17 creditors, costs of administration of the settlor's  
18 estate, the expenses of the settlor's funeral and disposal  
19 of remains, and statutory allowances to a surviving spouse  
20 and children to the extent the settlor's probate estate is  
21 inadequate to satisfy those claims, costs, expenses, and  
22 allowances. Distributees of the trust take property  
23 distributed after payment of such claims; subject to the  
24 following conditions:

25 (A) sums recovered by the personal representative  
26 of the settlor's estate must be administered as part of

1 the decedent's probate estate, and the liability  
2 created by this subsection does not apply to any assets  
3 to the extent that the assets are otherwise exempt  
4 under the laws of this State or under federal law;

5 (B) with respect to claims, expenses, and taxes in  
6 connection with the settlement of the settlor's  
7 estate, any claim of a creditor that would be barred  
8 against the personal representative of a settlor's  
9 estate or the estate of the settlor is barred against  
10 the trust property of a trust that was revocable at the  
11 settlor's death, the trustee of the revocable trust,  
12 and the beneficiaries of the trust; and

13 (C) Sections 18-10 and 18-13 of the Probate Act of  
14 1975, detailing the classification and priority of  
15 payment of claims, expenses, and taxes from the probate  
16 estate of a decedent, or comparable provisions of the  
17 law of the deceased settlor's domicile at death if not  
18 Illinois, apply to a revocable trust to the extent the  
19 assets of the settlor's probate estate are inadequate  
20 and the personal representative or creditor or taxing  
21 authority of the settlor's estate has perfected its  
22 right to collect from the settlor's revocable trust.

23 (6) After the death of a settlor, a trustee of a trust  
24 that was revocable at the settlor's death is released from  
25 liability under this Section for any assets distributed to  
26 the trust's beneficiaries in accordance with the governing

1 trust instrument if:

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

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

11 (b) For purposes of this Section:

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

16 (2) upon the lapse, release, or waiver of the power,  
17 the holder is treated as the settlor of the trust only to  
18 the extent the value of the property affected by the lapse,  
19 release, or waiver exceeds the greater of the amount  
20 specified in Section 2041(b)(2) or 2514(e) of the Internal  
21 Revenue Code.

22 Section 506. Overdue distribution.

23 (a) In this Section, "mandatory distribution" means a  
24 distribution of income or principal that the trustee is  
25 required to make to a beneficiary under the trust instrument,

1 including a distribution upon termination of the trust. The  
2 term does not include a distribution subject to the exercise of  
3 the trustee's discretion even if (1) the discretion is  
4 expressed in the form of a standard of distribution, or (2) the  
5 terms of the trust instrument authorizing a distribution couple  
6 language of discretion with language of direction.

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

13 Section 507. Personal obligations of trustee. Trust  
14 property is not subject to personal obligations of the trustee,  
15 even if the trustee becomes insolvent or bankrupt.

16 Section 508. Lapse of power to withdraw. A beneficiary of a  
17 trust may not be considered to be a settlor or to have made a  
18 transfer to the trust merely because of a lapse, release, or  
19 waiver of his or her power of withdrawal to the extent that the  
20 value of the affected property does not exceed the greatest of  
21 the amounts specified in Sections 2041(b)(2), 2514(e), and  
22 2503(b) of the Internal Revenue Code.

23 Section 509. Trust for disabled beneficiary.

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

4           (b) A discretionary trust for the benefit of an individual  
5           who is incapacitated other than by reason of being a minor or  
6           an individual whose location is uncertain, or who otherwise has  
7           a disability that substantially impairs the individual's  
8           ability to provide for his or her own care or custody and  
9           constitutes a substantial disability, is not be liable to pay  
10          or reimburse this State or any public agency for financial aid  
11          or services to the individual except to the extent the trust  
12          was created by the individual or trust property has been  
13          distributed directly to or is otherwise under the control of  
14          the individual, except that this exception does not apply to a  
15          trust created with the individual with a disability's own  
16          property or property within his or her control if the trust  
17          complies with Medicaid reimbursement requirements of federal  
18          law. Notwithstanding any other provisions, a trust created with  
19          the individual with a disability's own property or property  
20          within his or her control is liable, after the reimbursement of  
21          Medicaid expenditures, to this State for reimbursement of any  
22          other service charges outstanding at the death of the  
23          individual with a disability. Property, goods, and services  
24          purchased or owned by a trust for and used or consumed by a  
25          beneficiary with a disability shall not be considered trust  
26          property distributed to or under the control of the



1 beneficiary.

2 Article 6. Revocable trusts.

3 Section 601. Capacity of settlor of revocable trust. The  
4 capacity required of the settlor to create, amend, revoke in  
5 whole or in part, or add property to a revocable trust is the  
6 same as that required to make a will.

7 Section 602. Revocation or amendment of revocable trust.

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

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

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

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

22 (3) upon the revocation or amendment of the trust by  
23 fewer than all of the settlors, the trustee shall promptly

1 notify the other settlors of the revocation or amendment.

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

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

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

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

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

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

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

1 trust had not been amended or revoked.

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

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

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

13 (c) Except as provided in subsection (d), only the settlor,  
14 a representative of the settlor under Article 3 during the  
15 settlor's lifetime if the settlor is incapacitated, and the  
16 representative of the settlor's estate after the settlor's  
17 death have standing to contest, challenge, or bring any  
18 proceeding in any court regarding any action of the trustee of  
19 a revocable trust taken or not taken while the trust is  
20 revocable.

21 (d) An individual who is or was a current beneficiary  
22 during the settlor's lifetime, a representative of such an  
23 individual under Article 3 or the representative of such  
24 individual's estate after the individual's death, has standing  
25 to contest, challenge, or bring any proceeding in any court

1 regarding any action of the trustee of a revocable trust while  
2 the trust is revocable but the settlor does not personally have  
3 capacity to revoke the trust, but only to the extent the action  
4 of the trustee affects the interest of the individual as a  
5 current beneficiary of the trust during the lifetime of the  
6 settlor while the settlor does not personally have the capacity  
7 to revoke the trust.

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

12 Section 604. Limitation on action contesting validity of  
13 revocable trust; distribution of trust property.

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

17 (1) 2 years after the settlor's death; or

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

22 (B) in the case of a trust other than a trust described  
23 in subdivision (A), 6 months after the trustee sent the  
24 person a copy of the trust instrument and a notice  
25 informing the person of the trust's existence, of the

1 trustee's name and address, and of the 6 month period  
2 allowed for commencing a proceeding.

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

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

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

14 (c) A beneficiary of a trust that was revocable at the  
15 settlor's death that is determined to have been invalid is  
16 liable to return any distribution received and all income and  
17 appreciation associated with the distribution from the date of  
18 receipt until the date of return of the distribution.

19 Section 605. Revocation of provisions in revocable trust by  
20 divorce or annulment

21 (a) As used in this Section:

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

25 (2) "Provision pertaining to the settlor's former

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

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

7 (4) Notwithstanding the definition of "revocable" in  
8 Section 103, a provision is revocable by the settlor if the  
9 settlor has the power at the time of the entry of the  
10 judgment or judicial termination of marriage of the settlor  
11 to revoke, modify, or amend the provision, either alone or  
12 in conjunction with any other person or persons.

13 (b) Unless the trust instrument or the judgment of judicial  
14 termination of marriage expressly provides otherwise, judicial  
15 termination of marriage of the settlor of a trust revokes every  
16 provision that is revocable by the settlor pertaining to the  
17 settlor's former spouse in a trust instrument or amendment  
18 executed by the settlor before the entry of the judgment of  
19 judicial termination of marriage of the settlor and any such  
20 trust shall be administered and construed as if the settlor's  
21 former spouse had died upon entry of the judgment of judicial  
22 termination of marriage.

23 (c) A trustee who has no actual knowledge of a judgment of  
24 judicial termination of marriage of the settlor is not liable  
25 for any action taken or omitted in good faith on the assumption  
26 that the settlor is married. The preceding sentence is intended

1 to affect only the liability of the trustee and shall not  
2 affect the disposition of beneficial interests in any trust.

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

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

15 Article 7. Office of trustee.

16 Section 701. Accepting or declining trusteeship.

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

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

21 (2) if the trust instrument does not provide a method  
22 or the method provided in the trust instrument is not  
23 expressly made exclusive, by accepting delivery of the  
24 trust property, exercising powers or performing duties as

1 trustee, or otherwise indicating acceptance of the  
2 trusteeship.

3 (b) A person designated as trustee who has not yet accepted  
4 the trusteeship may decline the trusteeship. A designated  
5 trustee who does not accept the trusteeship within 120 days  
6 after receiving notice of the designation is deemed to have  
7 declined the trusteeship.

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

10 (1) act to preserve the trust property if, within 120  
11 days after receiving notice of the designation, the person  
12 sends a declination of the trusteeship to the settlor or,  
13 if the settlor is deceased or incapacitated, to the  
14 qualified beneficiaries; and

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

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

20 Section 702. Trustee's bond. A trustee is not required to  
21 give bond to secure performance of the trustee's duties unless  
22 bond is required by the trust instrument and the court has not  
23 dispensed with the requirement.

24 Section 703. Cotrustees.



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

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

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

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

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

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

26           (g) Each trustee who is not an excluded fiduciary under

1 Section 808 shall exercise reasonable care to:

2 (1) prevent a cotrustee from committing a serious  
3 breach of trust; and

4 (2) compel a cotrustee to redress a serious breach of  
5 trust.

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

11 Section 704. Vacancy in trusteeship; appointment of  
12 successor.

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

14 (1) a person designated as trustee declines the  
15 trusteeship;

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

18 (3) a trustee resigns;

19 (4) a trustee is disqualified or removed;

20 (5) a trustee dies;

21 (6) a guardian is appointed for an individual serving  
22 as trustee; or

23 (7) an individual serving as trustee becomes  
24 incapacitated.

25 (b) If one or more cotrustees remain in office, a vacancy

1 in a trusteeship need not be filled and the remaining  
2 cotrustees or trustee may act for the trust. A vacancy in a  
3 trusteeship must be filled if the trust has no remaining  
4 trustee, or if the existing vacancy impairs the administration  
5 of the trust as determined by the remaining trustees.

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

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

10 (2) by a person appointed by a majority of the  
11 beneficiaries who are distributees or permissible  
12 distributees of trust income; or

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

14 (d) If a trust contains a charitable interest, then the  
15 appointment of a successor trustee provided under paragraph (2)  
16 of subsection (c) of this Section shall not take effect until  
17 30 days after written notice is delivered to the Attorney  
18 General's Charitable Trust Bureau. The Attorney General's  
19 Charitable Trust Bureau may waive this notice requirement.

20 Section 705. Resignation of trustee.

21 (a) A trustee may resign:

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

25 (2) with the approval of the court.

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

4           (c) Any liability of a resigning trustee or of any sureties  
5 on the trustee's bond for acts or omissions of the trustee is  
6 not discharged or affected by the trustee's resignation.

7           Section 706. Removal of trustee.

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

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

12                 (1) the trustee has committed a serious breach of  
13 trust;

14                 (2) lack of cooperation among cotrustees substantially  
15 impairs the administration of the trust;

16                 (3) because of unfitness, unwillingness, or persistent  
17 failure of the trustee to administer the trust effectively,  
18 the court determines that removal of the trustee best  
19 serves the purposes of the trust and the interests of the  
20 beneficiaries; or

21                 (4) there has been a substantial change of  
22 circumstances or removal is requested by all of the  
23 qualified beneficiaries, the court finds that removal of  
24 the trustee best serves the interests of all of the  
25 beneficiaries and is not inconsistent with any material

1           purpose of the trust, and a suitable cotrustee or successor  
2           trustee is available.

3           (c) Pending a final decision on a request to remove a  
4           trustee, or in lieu of or in addition to removing a trustee,  
5           the court may order such appropriate relief under subsection  
6           (b) of Section 1001 as may be necessary to protect the trust  
7           property or the interests of the beneficiaries.

8           Section 707. Delivery of property by former trustee.

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

14          (b) A trustee who has resigned or been removed shall  
15          proceed expeditiously to deliver the trust property within the  
16          trustee's possession to the cotrustee, successor trustee, or  
17          other person entitled to it.

18          Section 708. Compensation of trustee.

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

22          (b) If the trust instrument specifies the trustee's  
23          compensation, the trustee is entitled to be compensated as  
24          specified, but the court may allow more or less compensation

1 if:

2 (1) the duties of the trustee are substantially  
3 different from those contemplated when the trust was  
4 created; or

5 (2) the compensation specified by the trust instrument  
6 would be unreasonably low or high.

7 Section 709. Reimbursement of expenses.

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

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

12 (2) to the extent necessary to prevent unjust  
13 enrichment of the trust, expenses that were not properly  
14 incurred in the administration of the trust.

15 (b) An advance by the trustee of money for the protection  
16 of the trust gives rise to a right to reimbursement with  
17 reasonable interest.

18 Article 8. Duties and powers of trustee.

19 Section 801. Duty to administer trust. Upon acceptance of a  
20 trusteeship, the trustee shall administer the trust in good  
21 faith, in accordance with its purposes and the terms of the  
22 trust instrument, and in accordance with this Code.

1 Section 802. Duty of loyalty.

2 (a) Subject to the rights of persons dealing with or  
3 assisting the trustee as provided in Section 1012, a sale,  
4 encumbrance, or other transaction involving the investment or  
5 management of trust property entered into by the trustee for  
6 the trustee's own personal account or that is otherwise  
7 affected by a conflict between the trustee's fiduciary and  
8 personal interests is voidable by a beneficiary affected by the  
9 transaction unless:

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

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

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

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

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

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

1 (1) the trustee's spouse;

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

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

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

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

19 (e) An investment by a trustee in securities of an  
20 investment company or investment trust to which the trustee, or  
21 its affiliate, provides services in a capacity other than as  
22 trustee is not presumed to be affected by a conflict between  
23 personal and fiduciary interests if the investment otherwise  
24 complies with the prudent investor rule. In addition to its  
25 compensation for acting as trustee, the trustee may be  
26 compensated by the investment company or investment trust for



1 providing those services out of fees charged to the trust so  
2 long as the total compensation paid by the trust as trustee's  
3 fees and mutual fund or other investment fees is reasonable.

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

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

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

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

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

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

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

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

6           Section 803. Impartiality.

7           (a) If a trust has 2 or more beneficiaries, the trustee  
8 shall act impartially in investing, managing, and distributing  
9 the trust property giving due regard to the beneficiaries  
10 respective interests. The trustee must treat the beneficiaries  
11 equitably in light of the purposes and terms of the trust,  
12 including any manifestation of an intention to favor one or  
13 more beneficiaries.

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

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

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

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

1           Section 804. Prudent administration. A trustee shall  
2 administer the trust as a prudent person would, by considering  
3 the purposes, terms, distribution requirements, and other  
4 circumstances of the trust. In satisfying this standard, the  
5 trustee shall exercise reasonable care, skill, and caution.

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

9           Section 806. (Reserved).

10          Section 807. Delegation by trustee.

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

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

18                   (1) selecting an agent;

19                   (2) establishing the scope and terms of the delegation,  
20 consistent with the purposes of the trust and the trust  
21 instrument; and

22                   (3) periodically reviewing the agent's actions in

1 order to monitor the agent's performance and compliance  
2 with the terms of the delegation.

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

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

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

12 Section 808. Directed trusts.

13 (a) In this Section:

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

20 (2) "Excluded fiduciary" means any fiduciary that by  
21 the trust instrument is directed to act in accordance with  
22 the exercise of specified powers by a directing party, in  
23 which case the specified powers are deemed granted not to  
24 the fiduciary but to the directing party and the fiduciary  
25 is deemed excluded from exercising the specified powers. If

1 a trust instrument provides that a fiduciary as to one or  
2 more specified matters is to act, omit action, or make  
3 decisions only with the consent of a directing party, then  
4 the fiduciary is an excluded fiduciary with respect to the  
5 matters. Notwithstanding any provision of this Section, a  
6 person does not fail to qualify as an excluded fiduciary  
7 solely by reason of having effectuated, participated in, or  
8 consented to a transaction, including, but not limited to,  
9 any transaction described in Section 111 or 411 or Article  
10 12 of this Code invoking the provisions of this Section  
11 with respect to any new or existing trust.

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

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

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

24 (6) "Trust protector" means any one or more persons  
25 given any one or more of the powers specified in subsection  
26 (d), regardless of whether the power is designated with the

1 title of trust protector by the trust instrument.

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

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

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

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

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

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

19          (d) A trust protector may be designated in the trust  
20          instrument of a trust. The powers of a trust protector may be  
21          exercised or not exercised in the sole and absolute discretion  
22          of the trust protector, and are binding on all other persons,  
23          including, but not limited to, each beneficiary, investment  
24          trust advisor, distribution trust advisor, fiduciary, excluded  
25          fiduciary, and any other party having an interest in the trust.  
26          The trust instrument may use the title "trust protector" or any

1 similar name or description demonstrating the intent to provide  
2 for the office and function of a trust protector. The powers  
3 granted to a trust protector by the trust instrument may  
4 include but are not limited to authority to do any one or more  
5 of the following:

6 (1) modify or amend the trust instrument to achieve  
7 favorable tax status or respond to changes in the Internal  
8 Revenue Code, federal laws, state law, or the rulings and  
9 regulations under such laws;

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

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

17 (4) remove, appoint, or remove and appoint, a trustee,  
18 investment trust advisor, distribution trust advisor,  
19 another directing party, investment committee member, or  
20 distribution committee member, including designation of a  
21 plan of succession for future holders of any such office;

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

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



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

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

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

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

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

18           (e) A directing party is a fiduciary of the trust subject  
19 to the same duties and standards applicable to a trustee of a  
20 trust as provided by applicable law unless the trust instrument  
21 provides otherwise, but the trust instrument may not, however,  
22 relieve or exonerate a directing party from the duty to act or  
23 withhold acting as the directing party in good faith reasonably  
24 believes is in the best interests of the trust.

25           (f) The excluded fiduciary shall act in accordance with the  
26 trust instrument and comply with the directing party's exercise

1 of the powers granted to the directing party by the trust  
2 instrument. Unless otherwise provided in the trust instrument,  
3 an excluded fiduciary has no duty to monitor, review, inquire,  
4 investigate, recommend, evaluate, or warn with respect to a  
5 directing party's exercise or failure to exercise any power  
6 granted to the directing party by the trust instrument,  
7 including, but not limited to, any power related to the  
8 acquisition, disposition, retention, management, or valuation  
9 of any asset or investment. Except as otherwise provided in  
10 this Section or the trust instrument, an excluded fiduciary is  
11 not liable, either individually or as a fiduciary, for any  
12 action, inaction, consent, or failure to consent by a directing  
13 party, including, but not limited to, any of the following:

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

24 (2) if a trust instrument provides that an excluded  
25 fiduciary is to act or omit to act only with the consent of  
26 a directing party, then except in cases of willful

1 misconduct on the part of the excluded fiduciary, the  
2 excluded fiduciary is not liable for any loss resulting  
3 directly or indirectly from any act taken or omitted as a  
4 result of such directing party's failure to provide such  
5 consent after having been asked to do so by the excluded  
6 fiduciary; or

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

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

23 (h) Each directing party shall keep the excluded fiduciary  
24 and any other directing party reasonably informed regarding the  
25 administration of the trust with respect to any specific duty  
26 or function being performed by the directing party to the

1 extent that the duty or function would normally be performed by  
2 the excluded fiduciary or to the extent that providing such  
3 information to the excluded fiduciary or other directing party  
4 is reasonably necessary for the excluded fiduciary or other  
5 directing party to perform its duties, and the directing party  
6 shall provide such information as reasonably requested by the  
7 excluded fiduciary or other directing party. Neither the  
8 performance nor the failure to perform of a directing party's  
9 duty to inform as provided in this subsection affects  
10 whatsoever the limitation on the liability of the excluded  
11 fiduciary as provided in this Section.

12 (i) Other required notices.

13 (1) A directing party shall:

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

26 (B) notify each qualified beneficiary in advance

1 of any change in the rate of or the method of  
2 determining the directing party's compensation; and

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

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

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

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

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

21 (2) any existing or future trust that:

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

25 (B) is modified to appoint or provide for a  
26 directing party, including, but not limited to, a party

1 granted power or authority effectively comparable in  
2 substance to that of a directing party, in accordance  
3 with: (i) a court order; (ii) a nonjudicial settlement  
4 agreement made in accordance with Section 111; or (iii)  
5 an exercise of decanting power under Article 12,  
6 regardless of whether the order, agreement, or second  
7 trust instrument specifies that this Section governs  
8 the responsibilities, actions, and liabilities of a  
9 person designated as a directing party or excluded  
10 fiduciary.

11 Section 809. Control and protection of trust property. A  
12 trustee shall take reasonable steps to take control of and  
13 protect the trust property. If a corporation is acting as  
14 cotrustee with one or more individuals, the corporate trustee  
15 shall have custody of the trust estate unless all the trustees  
16 otherwise agree.

17 Section 810. Recordkeeping and identification of trust  
18 property.

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

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

23 (c) Except as otherwise provided in subsection (d), a  
24 trustee not subject to federal or state banking regulation

1 shall cause the trust property to be designated so that the  
2 interest of the trust, to the extent feasible, appears in  
3 records maintained by a party other than a trustee or  
4 beneficiary to whom the trustee has delivered the property.

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

8 Section 811. Enforcement and defense of claims. A trustee  
9 shall take reasonable steps to enforce claims of the trust and  
10 to defend claims against the trust. It may be reasonable for a  
11 trustee not to enforce a claim, not to defend an action, to  
12 settle an action, or to suffer a default, depending upon the  
13 likelihood of recovery and the cost of suit and enforcement.

14 Section 812. Powers and duties of successor; liability for  
15 acts of predecessor; approval of accounts.

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

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

22 (c) With the approval of a majority in interest of the  
23 beneficiaries then entitled to receive or eligible to have the  
24 benefit of the income from the trust, a successor trustee may

1 accept the account rendered by, and the property received from,  
2 the predecessor trustee as a full and complete discharge of the  
3 predecessor trustee without incurring any liability.

4 Section 813.1. Duty to inform and account; trusts  
5 irrevocable and trustees accepting appointment after effective  
6 date of Code.

7 (a) The provisions of this Section are prospective only and  
8 do not apply to any trust that was irrevocable prior to the  
9 effective date of this Code, or to a trustee who accepts a  
10 trusteeship before the effective date of this Code. Subject to  
11 Section 105, this Section supplants any common law duty of a  
12 trustee to inform and account to trust beneficiaries. This  
13 Section does not apply to trusts that became irrevocable prior  
14 to the effective date of this Code.

15 (b) General principles.

16 (1) The trustee shall notify each qualified  
17 beneficiary:

18 (A) of the trust's existence;

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

21 (C) whether the beneficiary has a right to receive  
22 or request accountings.

23 The notice required by this paragraph (1) must be  
24 given: (i) within 90 days of the trust becoming irrevocable  
25 or if no trustee is then acting within 90 days of the



1 trustee's acceptance of the trusteeship; (ii) within 90  
2 days of the trustee acquiring knowledge that a qualified  
3 beneficiary has a representative under Article 3 who did  
4 not previously receive notice; (iii) within 90 days of the  
5 trustee acquiring knowledge that a qualified beneficiary  
6 who previously had a representative under Article 3 no  
7 longer has a representative under Article 3; and (iv)  
8 within 90 days of the trustee acquiring knowledge that  
9 there is a new qualified beneficiary.

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

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

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

17 (5) Notwithstanding any other provision, a trustee in  
18 its discretion may provide notice, information, trust  
19 accountings, or reports to any beneficiary of the trust  
20 regardless of whether the communication is otherwise  
21 required to be provided.

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

26 (7) Notwithstanding any other provision, a trustee is

1 deemed to have fully and completely discharged the  
2 trustee's duties to inform and account to all  
3 beneficiaries, under this Section, at common law, or  
4 otherwise, if the trustee provides at least annually and on  
5 termination of the trust a trust accounting required by  
6 paragraph (2), (3), or (4) to each beneficiary entitled to  
7 a trust accounting.

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

15 (c) Upon a vacancy in a trusteeship, unless a cotrustee  
16 remains in office, the trust accounting required by subsection  
17 (b) of this Section must be sent to the beneficiaries entitled  
18 to the accounting by the former trustee. A personal  
19 representative, guardian of the estate, or guardian of the  
20 person may send the trust accounting to the beneficiaries  
21 entitled to the accounting on behalf of a deceased or  
22 incapacitated trustee.

23 (d) Other required notices.

24 (1) A trustee shall:

25 (A) within 90 days after accepting a trusteeship,  
26 notify each qualified beneficiary of the acceptance

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

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

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

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

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

26 (e) Each request for information under this Section must be

1 with respect to a single trust that is sufficiently identified  
2 to enable the trustee to locate the trust's records. A trustee  
3 may charge a reasonable fee for providing information under  
4 this Section to:

5 (1) a nonqualified beneficiary;

6 (2) a qualified beneficiary for providing information  
7 that was previously provided to the qualified beneficiary  
8 or a representative under Article 3 for the qualified  
9 beneficiary; or

10 (3) a representative under Article 3 for a qualified  
11 beneficiary for information that was previously provided  
12 to the qualified beneficiary or a representative under  
13 Article 3 for the qualified beneficiary.

14 (f) If a trustee is bound by any confidentiality  
15 restrictions regarding a trust asset, then, prior to receiving  
16 the information, a beneficiary eligible under this Section to  
17 receive any information about that asset must agree to be bound  
18 by the same confidentiality restrictions. The trustee has no  
19 duty or obligation to disclose to any beneficiary any  
20 information that is otherwise prohibited to be disclosed by  
21 applicable law.

22 (g) A qualified beneficiary may waive the right to receive  
23 information otherwise required to be furnished under this  
24 Section, such as a trust accounting, by an instrument in  
25 writing delivered to the trustee. A qualified beneficiary may  
26 at any time, by an instrument in writing delivered to the

1 trustee, withdraw a waiver previously given with respect to  
2 future trust accountings.

3 (h) Receipt of information, notices, or a trust accounting  
4 by a beneficiary is presumed if the trustee has procedures in  
5 place requiring the mailing or delivery of information,  
6 notices, or trust accountings to the beneficiary. This  
7 presumption applies to the mailing or delivery of information,  
8 notices or trust accountings by electronic means or the  
9 provision of access to an account by electronic means for so  
10 long as the beneficiary has agreed to receive electronic  
11 delivery or access.

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

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

22 Section 813.2. Duty to inform and account; trusts  
23 irrevocable and trustees accepting appointment prior to the  
24 effective date of Code.

25 (a) This Section applies to all trusts that were

1 irrevocable prior to the effective date of this Code and to a  
2 trustee who accepts a trusteeship before the effective date of  
3 this Code.

4 (b) Every trustee at least annually shall furnish to the  
5 beneficiaries then entitled to receive or receiving the income  
6 from the trust estate, or, if none, then to those beneficiaries  
7 eligible to have the benefit of the income from the trust  
8 estate, a current account showing the receipts, disbursements,  
9 and inventory of the trust estate.

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

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

23 (e) For each asset or class of assets described in a trust  
24 accounting for which there is no readily available market  
25 value, the trustee, in the trustee's discretion, may determine  
26 whether to estimate the value or use a nominal carrying value

1 for such an asset, how to estimate the value of such an asset,  
2 and whether and how often to engage a professional appraiser to  
3 value such an asset.

4 Section 814. Discretionary powers; tax savings.

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

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

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

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

24 (c) Subject to subsections (d) and (e), if a beneficiary of  
25 a trust, in an individual, trustee, or other capacity, removes

1 a fiduciary and appoints a successor fiduciary who would be  
2 related or subordinate to that beneficiary within the meaning  
3 of Section 672(c) of the Internal Revenue Code if the  
4 beneficiary were the grantor, that successor fiduciary's  
5 discretionary powers are limited as follows:

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

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

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

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

16 (1) the appointment of the trustee or other fiduciary  
17 by the beneficiary may be made only in conjunction with  
18 another person having a substantial interest in the  
19 property of the trust subject to the power that is adverse  
20 to the interest of the beneficiary within the meaning of  
21 Section 2041(b)(1)(C)(ii) of the Internal Revenue Code; or

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

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

26 (1) a person other than a settlor who is a beneficiary



1 and trustee or other fiduciary of a trust that confers on  
2 such fiduciary a power exercisable only in conjunction with  
3 another person having a substantial interest in the  
4 property subject to the power that is adverse to the  
5 interest of that fiduciary within the meaning of Section  
6 2041(b)(1)(C)(ii) of the Internal Revenue Code;

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

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

13 (4) a trust if contributions to the trust qualify for  
14 the annual exclusion under Section 2503(c) of the Internal  
15 Revenue Code; or

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

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

1 Section 815. General powers of trustee.

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

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

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

6 (A) all powers over the trust property that an  
7 unmarried owner with legal capacity has over  
8 individually owned property;

9 (B) any other powers appropriate to achieve the  
10 proper investment, management, and distribution of the  
11 trust property; and

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

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

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

17 (1) collect trust property and accept or reject  
18 additions to the trust property from a settlor or any other  
19 person;

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

22 (3) exchange, partition, or otherwise change the  
23 character of trust property;

24 (4) deposit trust money in an account in a regulated

1 financial-service institution;

2 (5) borrow money, with or without security, and  
3 mortgage or pledge or otherwise encumber trust property for  
4 a period within or extending beyond the duration of the  
5 trust;

6 (6) with respect to an interest in a proprietorship,  
7 partnership, limited liability company, business trust,  
8 corporation, or other form of business or enterprise,  
9 continue the business or other enterprise and take any  
10 action that may be taken by shareholders, members, or  
11 property owners, including merging, dissolving, pledging  
12 other trust assets or guaranteeing a debt obligation of the  
13 business or enterprise, or otherwise changing the form of  
14 business organization or contributing additional capital;

15 (7) with respect to stocks or other securities,  
16 exercise the rights of an absolute owner, including the  
17 right to:

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

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

24 (C) pay calls, assessments, and other sums  
25 chargeable or accruing against the securities, and  
26 sell or exercise stock subscription or conversion

1 rights;

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

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

6 (8) with respect to an interest in real property,  
7 construct, or make ordinary or extraordinary repairs to,  
8 alterations to, or improvements in, buildings or other  
9 structures, demolish improvements, raze existing or erect  
10 new party walls or buildings, subdivide or develop land,  
11 dedicate any interest in real estate, dedicate land to  
12 public use or grant public or private easements, enter into  
13 contracts relating to real estate, and make or vacate plats  
14 and adjust boundaries;

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

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

25 (11) insure the property of the trust against damage or  
26 loss and insure the trustee, the trustee's agents, and

1 beneficiaries against liability arising from the  
2 administration of the trust;

3 (12) abandon or decline to administer property of no  
4 value or of insufficient value to justify its collection or  
5 continued administration;

6 (13) with respect to possible liability for violation  
7 of environmental law:

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

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

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

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

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

4           (14) pay, contest, prosecute, or abandon any claim,  
5           settle a claim or charges in favor of or against the trust,  
6           and release, in whole or in part, a claim belonging to the  
7           trust;

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

11          (16) exercise elections with respect to federal,  
12          state, and local taxes;

13          (17) select a mode of payment under any employee  
14          benefit or retirement plan, annuity, or life insurance  
15          payable to the trustee, exercise rights related to the  
16          employee benefit or retirement plan, annuity, or life  
17          insurance payable to the trustee, including exercise the  
18          right to indemnification for expenses and against  
19          liabilities, and take appropriate action to collect the  
20          proceeds;

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

26          (19) pledge trust property to guarantee loans made by

1 others to the beneficiary;

2 (20) appoint a trustee to act in another jurisdiction  
3 to act as sole or cotrustee with respect to any part or all  
4 of trust property located in the other jurisdiction, confer  
5 upon the appointed trustee any or all of the rights,  
6 powers, and duties of the appointing trustee, require that  
7 the appointed trustee furnish security, and remove any  
8 trustee so appointed;

9 (21) distribute income and principal in one or more of  
10 the following ways, without being required to see to the  
11 application of any distribution, as the trustee believes to  
12 be for the best interests of any beneficiary who at the  
13 time of distribution is incapacitated or in the opinion of  
14 the trustee is unable to manage property or business  
15 affairs because of incapacity:

16 (A) directly to the beneficiary;

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

19 (C) to a custodian for the beneficiary under any  
20 state's Uniform Transfers to Minors Act, Uniform Gifts  
21 to Minors Act or Uniform Custodial Trust Act, and, for  
22 that purpose, to create a custodianship or custodial  
23 trust;

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

26 (E) by expending the money or using the property

1 directly for the benefit of the beneficiary;

2 (F) to a trust, created prior to the time the  
3 distribution becomes payable, for the sole benefit of  
4 the beneficiary and those dependent upon the  
5 beneficiary during his or her lifetime, to be  
6 administered as a part of the trust, except that any  
7 amount distributed to the trust under this  
8 subparagraph (F) shall be separately accounted for by  
9 the trustee of the trust and shall be indefeasibly  
10 vested in the beneficiary so that if the beneficiary  
11 dies prior to complete distribution of the amounts, the  
12 amounts and the accretions, earnings, and income, if  
13 any, shall be paid to the beneficiary's estate, except  
14 that this subparagraph (F) does not apply to the extent  
15 that it would cause a trust otherwise qualifying for  
16 the federal estate tax marital deduction not to  
17 qualify; and

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

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



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

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

9           (25) execute contracts, notes, conveyances, and other  
10          instruments that are useful to achieve or facilitate the  
11          exercise of the trustee's powers, regardless of whether the  
12          instruments contain covenants and warranties binding upon  
13          and creating a charge against the trust estate or excluding  
14          personal liability;

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

19          (27) enter into agreements for bank or other deposit  
20          accounts, safe deposit boxes, or custodian, agency, or  
21          depository arrangements for all or any part of the trust  
22          estate, including, to the extent fair to the beneficiaries,  
23          agreements for services provided by a bank operated by or  
24          affiliated with the trustee, and to pay reasonable  
25          compensation for those services, including, to the extent  
26          fair to the beneficiaries, compensation to the bank

1 operated by or affiliated with the trustee, except that  
2 nothing in this Section shall be construed as removing any  
3 depositary arrangements from the requirements of the  
4 prudent investor rule;

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

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

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

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

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

22 (33) except as otherwise directed by the court, have  
23 all of the rights, powers, and duties given to or imposed  
24 upon the trustee by law and the provisions of the trust  
25 instrument during the period between the termination of the  
26 trust and the distribution of the trust assets and during

1 any period in which any litigation is pending that may void  
2 or invalidate the trust in whole or in part or affect the  
3 rights, powers, duties, or discretions of the trustee;

4 (34) plant and harvest crops; breed, raise, purchase,  
5 and sell livestock; lease land, equipment, or livestock for  
6 cash or on shares, purchase and sell, exchange or otherwise  
7 acquire or dispose of farm equipment and farm produce of  
8 all kinds; make improvements, construct, repair, or  
9 demolish and remove any buildings, structures, or fences,  
10 engage agents, managers, and employees and delegate powers  
11 to them; engage in drainage and conservation programs;  
12 terrace, clear, ditch, and drain lands and install  
13 irrigation systems; replace improvements and equipment;  
14 fertilize and improve the soil; engage in the growing,  
15 improvement, and sale of trees and other forest crops;  
16 participate or decline to participate in governmental  
17 agricultural or land programs; and perform such acts as the  
18 trustee deems appropriate using such methods as are  
19 commonly employed by other farm owners in the community in  
20 which the farm property is located;

21 (35) drill, mine, and otherwise operate for the  
22 development of oil, gas, and other minerals; enter into  
23 contracts relating to the installation and operation of  
24 absorption and repressuring plants; enter into unitization  
25 or pooling agreements for any purpose including primary,  
26 secondary, or tertiary recovery; place and maintain pipe

1 lines; execute oil, gas, and mineral leases, division and  
2 transfer orders, grants, deeds, releases and assignments,  
3 and other instruments; participate in a cooperative coal  
4 marketing association or similar entity; and perform such  
5 other acts as the trustee deems appropriate using such  
6 methods as are commonly employed by owners of similar  
7 interests in the community in which the interests are  
8 located;

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

14 (37) continue a business in the partnership form and  
15 participate in its management by having the trustee or one  
16 or more agents of the trustee act as a partner, limited  
17 partner, or employee with appropriate compensation from  
18 the business; enter into new partnership agreements and  
19 incorporate the business; and, with respect to activities  
20 under this paragraph (37), the trustee or the agent or  
21 agents of the trustee shall not be personally liable to  
22 third persons with respect to actions not sounding in tort  
23 unless the trustee or agent fails to identify the trust  
24 estate and disclose that the trustee or agent is acting in  
25 a representative capacity, except that nothing in this  
26 paragraph impairs in any way the liability of the trust

1 estate with respect to activities under this paragraph (37)  
2 to the extent of the assets of the trust estate.

3 Section 817. Distribution upon termination. Before  
4 distributing property to a beneficiary upon the termination of  
5 a trust in whole or in part, including the exercise by a  
6 beneficiary of a right to withdraw trust principal, the trustee  
7 has the right to require from the beneficiary a written  
8 approval of the trustee's accountings provided to the  
9 beneficiary and, at the trustee's election, a refunding  
10 agreement from the beneficiary for liabilities that would  
11 otherwise be payable from trust property to the extent of the  
12 beneficiary's share of the distribution. An accounting  
13 approved under this Section is binding on the beneficiary  
14 providing the approval and on the beneficiary's successors,  
15 heirs, representatives, and assigns. A trustee may elect to  
16 withhold a distribution or require a reasonable reserve for the  
17 payment of debts, expenses, and taxes payable from the trust  
18 pending the receipt of a written approval of the trustee's  
19 accountings provided to the beneficiary and refunding  
20 agreement from a beneficiary or a judicial settlement of  
21 accounts.

22 Section 818. Notice of proposed action.

23 (a) A trustee or directing party may give a notice of  
24 proposed action under this Section regarding any matter

1 governed by this Code over which the trustee or directing party  
2 is granted power or discretion under the trust instrument or  
3 any provision of this Code if there is no other notice or  
4 consent procedure prescribed for the matter in another Section  
5 of this Code.

6 (b) A trustee or directing party shall provide any notice  
7 of proposed action to all qualified beneficiaries of a trust,  
8 except that a trustee or directing party is not required to  
9 give a notice of proposed action to any person who consents, at  
10 any time before or after the proposed action is taken, in  
11 writing to the proposed action.

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

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

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

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

21 (4) The time period in which objections to the proposed  
22 action may be made, which shall not expire until at least  
23 60 days after the trustee or directing party provides the  
24 notice of proposed action.

25 (5) A statement that if no objection is received during  
26 the time period in which objections to the proposed action

1           may be made, the trustee or directing party is not liable  
2           to any current or future beneficiary with respect to the  
3           proposed action.

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

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

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

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

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

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

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

23          (f) If the trustee or directing party receives a written  
24          objection within the applicable period, either the trustee or  
25          directing party or a beneficiary may petition the court to have  
26          the proposed action taken as proposed, taken with

1 modifications, or denied. In the proceeding, a beneficiary  
2 objecting to the proposed action has the burden of proving that  
3 the trustee's proposed action should not be taken. A  
4 beneficiary who has not objected is not estopped from opposing  
5 the proposed action in the proceeding. If the trustee or  
6 directing party decides not to implement the proposed action,  
7 the trustee or directing party shall provide written notice to  
8 each qualified beneficiary of the decision not to take the  
9 action. The decision of the trustee or directing party not to  
10 implement the proposed action does not itself give rise to  
11 liability to any beneficiary. Within 60 days after receiving  
12 notice from the trustee or directing party that it will not to  
13 implement the proposed action, a beneficiary may petition the  
14 court to have the action taken and has the burden of proving  
15 that it should be taken.

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

19 (1) Allowance of the trustee's or directing party's  
20 compensation.

21 (2) Allowance of compensation of the attorney for the  
22 trustee or directing party.

23 (3) Settlement of a trustee's or directing party's  
24 accounts.

25 (4) Preliminary and final distributions from a trust  
26 and discharge of any trustee or directing party.



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

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

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

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

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

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

21          (h) Notwithstanding any other provision of this Code,  
22 delivery of notice of a proposed action to a representative  
23 under Article 3 on behalf of a beneficiary is effective for  
24 purposes of this Section only if the representative previously  
25 acknowledged or acknowledges in writing prior to the end of the  
26 period for objections to the proposed action that the

1 representative is representing the beneficiary.

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

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

17 Section 820. Proceeds of eminent domain or partition. If a  
18 trustee is appointed by a court of this State to receive money  
19 under eminent domain or partition proceedings and to invest it  
20 for the benefit of the person who would be entitled to the real  
21 estate or its income if it had not been taken or sold, on  
22 petition of any interested person describing the real estate to  
23 be purchased, the price to be paid, the probable income to be  
24 derived and the state of the title, the court may authorize the

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

17 Section 821. Lands or estates subject to future interest or  
18 power of appointment; waste; appointment of trustee. If lands  
19 or any estate therein are subject to any legal or equitable  
20 future interest of any kind or to any power of appointment,  
21 whether a trust is involved or not, and it is made to appear  
22 that such lands or estate are liable to waste or depreciation  
23 in value, or that the sale thereof and the safe and proper  
24 investment of the proceeds will inure to the benefit and  
25 advantage of the persons entitled thereto, or that it is

1 otherwise necessary for the conservation, preservation or  
2 protection of the property or estate or of any present or  
3 future interest therein that such lands or estate be sold,  
4 mortgaged, leased, converted, exchanged, improved, managed or  
5 otherwise dealt with, the court may, pending the happening of  
6 the contingency, if any, and the vesting in possession of such  
7 future interest, declare a trust, and appoint a trustee or  
8 trustees for such lands or estate and vest in a trustee or  
9 trustees title to the property, and authorize and direct the  
10 sale of such property, either at a public sale or at private  
11 sale, and upon such terms and conditions as the court may  
12 direct, and in such case may authorize the trustee or trustees  
13 to make such sale and to receive, hold and invest the proceeds  
14 thereof under the direction of the court for the benefit of the  
15 persons entitled or who may become entitled thereto according  
16 to their respective rights and interests, authorize and direct  
17 that all or any portion of the property, or the proceeds  
18 thereof, so subject to such future interests or powers of  
19 appointment, be leased, mortgaged, converted, exchanged,  
20 improved, managed, invested, reinvested, or otherwise dealt  
21 with, as the rights and interests of the parties and the  
22 equities of the case may require, and to that end may confer  
23 all necessary powers on the trustee or trustees. All orders of  
24 every court entered pursuant to this Section subsequent to June  
25 30, 1982 and prior to September 16, 1985 vesting title to  
26 property in a trustee are hereby validated and such title is

1 vested in such trustee effective the day the court entered such  
2 order.

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

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

7 Section 901. Prudent investor rule.

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

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

17 Section 902. Standard of care; portfolio strategy; risk and  
18 return objectives.

19 (a) A trustee has a duty to invest and manage trust assets  
20 as a prudent investor would, considering the purposes, terms,  
21 distribution requirements, and other circumstances of the  
22 trust. This standard requires the exercise of reasonable care,

1 skill, and caution and applies not in isolation, but in the  
2 context of the trust portfolio as a whole and as a part of an  
3 overall investment strategy that incorporates risk and return  
4 objectives reasonably suitable to the trust.

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

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

13 (1) the general economic conditions;

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

15 (3) the expected tax consequences of investment  
16 decisions or strategies;

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

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

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

23 (7) environmental and social considerations;

24 (8) governance policies of the entities in which the  
25 trustee may invest;

26 (9) needs for liquidity, regularity of income, and

1 preservation or appreciation of capital; and

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

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

9 Section 903. Diversification. A trustee has a duty to  
10 diversify the investments of the trust unless, under the  
11 circumstances, the trustee reasonably believes it is in the  
12 interests of the beneficiaries and furthers the purposes of the  
13 trust not to diversify.

14 Section 904. Duties at inception of trusteeship. A trustee  
15 has a duty, within a reasonable time after the acceptance of a  
16 trusteeship, to review trust assets and to make and implement  
17 decisions concerning the retention and disposition of original  
18 pre-existing investments, in order to conform to the provisions  
19 of this Article. A trustee's decision to retain or dispose of  
20 an asset may properly be influenced by the asset's special  
21 relationship or value to the purposes of the trust or to some  
22 or all of the beneficiaries, consistent with the trustee's duty  
23 of impartiality.

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

8           Section 906. (Reserved).

9           Section 907. (Reserved).

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

20          Section 909. Delegation of investment and management  
21 functions. Notwithstanding any other provision of this Code,  
22 prior to delegating any investment functions to an agent in



1 accordance with the provisions of subsection (b) of Section  
2 807, a trustee shall conduct an inquiry into the experience,  
3 performance history, professional licensing or registration,  
4 if any, and financial stability of the investment agent.

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

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

21 Section 912. Application to existing trusts. The Sections  
22 of this Article that proceed this Section apply to all existing  
23 and future trusts, but only as to actions or inactions

1 occurring on or after January 1, 1992.

2 Section 913. Life insurance.

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

10 (1) to determine whether any contract of life insurance  
11 in the trust, or to be acquired by the trust, is or remains  
12 a proper investment, including, without limitation, with  
13 respect to:

14 (A) the type of insurance contract;

15 (B) the quality of the insurance contract;

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

17 (D) the investments held within the insurance  
18 contract.

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

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

24 (4) to prevent the lapse of a life insurance contract  
25 if the trust does not receive contributions or hold other

1 readily marketable assets to pay the life insurance  
2 contract premiums; or

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

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

12 (c) This Section applies to an irrevocable trust created  
13 after the effective date of this Code or to a revocable trust  
14 that becomes irrevocable after the effective date of this Code.  
15 The trustee of a trust described under this Section established  
16 prior to the effective date of this Code shall notify the  
17 settlor in writing that, unless the settlor provides written  
18 notice to the contrary to the trustee within 90 days of the  
19 trustee's notice, the provisions of this Section apply to the  
20 trust. This Section does not apply if, within 90 days of the  
21 trustee's notice, the settlor notifies the trustee in writing  
22 that this Section does not apply. If the settlor is deceased,  
23 then the trustee shall give notice to all of the legally  
24 competent current beneficiaries, and this Section applies to  
25 the trust unless the majority of the beneficiaries notify the  
26 trustee to the contrary in writing within 90 days of the

1 trustee's notice.

2 Section 914. Investments in affiliated investments;  
3 transactions with affiliates.

4 (a) As used in this Section:

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

10 (2) "Affiliated investment" means an investment for  
11 which the fiduciary or an affiliate of the fiduciary acts  
12 as adviser, administrator, distributor, placement agent,  
13 underwriter, broker, or in any other capacity for which the  
14 fiduciary or an affiliate of the fiduciary receives or has  
15 received compensation from the investment.

16 (3) "Fiduciary capacity" includes an agent with  
17 investment discretion to determine what securities or  
18 other assets to purchase or sell on behalf of a fiduciary  
19 account.

20 (b) A financial institution acting in any fiduciary  
21 capacity may purchase any affiliated investment, including,  
22 but not limited to, insurance, equity derivatives, or  
23 securities underwritten or otherwise distributed by the  
24 financial institution or by an affiliate, through or directly  
25 from the financial institution or an affiliate or from a

1 syndicate or selling group that includes the financial  
2 institution or an affiliate, if the purchase is otherwise  
3 prudent under the applicable fiduciary investment standard.

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

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

14 (1) any purchase of an affiliated investment  
15 authorized by this Section, including all compensation  
16 paid or to be paid by the fiduciary account or to be  
17 received by an affiliate arising from the affiliated  
18 investment;

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

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

24 (e) The disclosure shall be given, in writing or  
25 electronically by any document prepared for an affiliated  
26 investment under federal or state securities laws or in a

1 written summary that includes all compensation received or to  
2 be received by the financial institution or any affiliate and  
3 an explanation of the manner in which the compensation is  
4 calculated (either as a percentage of the assets invested or by  
5 some other formula or method), to each principal in an agency  
6 relationship and to all persons entitled to receive account  
7 statements of any other fiduciary account.

8 (f) This Section applies to the purchase of securities made  
9 at the time of the initial offering of the securities or at any  
10 time thereafter.

11 (g) A financial institution that has complied with the  
12 terms of this Section has full authority to administer an  
13 affiliated investment, including the authority to vote proxies  
14 on the affiliated investment.

15 Article 10. Liability of trustees and rights of persons dealing  
16 with trustee.

17 Section 1001. Remedies for breach of trust.

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

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

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

23 (2) enjoin the trustee from committing a breach of  
24 trust;

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

3           (4) order a trustee to account;

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

6           (6) suspend the trustee;

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

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

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

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

15          Section 1002. Damages for breach of trust.

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

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

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

23          (b) Except as otherwise provided in this subsection, if  
24          more than one trustee is liable to the beneficiaries for a  
25          breach of trust, a trustee is entitled to contribution from the

1 other trustee or trustees liable for the breach. A trustee is  
2 not entitled to contribution if the trustee was substantially  
3 more at fault than another trustee or if the trustee committed  
4 the breach of trust in bad faith or with reckless indifference  
5 to the purposes of the trust or the interests of the  
6 beneficiaries. A trustee who received a benefit from the breach  
7 of trust is not entitled to contribution from another trustee  
8 to the extent of the benefit received.

9 Section 1003. No damages in absence of breach. Absent a  
10 breach of trust, a trustee is not liable to a beneficiary for a  
11 loss or depreciation in the value of trust property or for any  
12 benefit received by the trustee by reason of the administration  
13 of the trust.

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

19 Section 1005. Limitation on action against trustee.

20 (a) A beneficiary may not commence a proceeding against a  
21 trustee for breach of trust for any matter disclosed in writing  
22 by a trust accounting, or otherwise as provided in Sections  
23 813.1, 813.2, and Section 1102, after the date on which the



1 disclosure becomes binding upon the beneficiary as provided  
2 below:

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

20 (2) With respect to a trust that became irrevocable  
21 prior to the effective date of this Code or a trustee that  
22 accepted appointment prior to the effective date of this  
23 Code, a current account is binding on each beneficiary  
24 receiving the account and on the beneficiary's heirs and  
25 assigns unless an action against the trustee is instituted  
26 by the beneficiary or the beneficiary's heirs and assigns

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

16       (3) Notwithstanding paragraphs (1) and (2) of this  
17       subsection (a), with respect to trust estates that  
18       terminated and were distributed 10 years or less prior to  
19       January 1, 1988, the final account furnished to the  
20       beneficiaries entitled to distribution of the trust estate  
21       is binding on the beneficiaries receiving the final  
22       account, and all persons claiming by or through them,  
23       unless an action against the trustee is instituted by the  
24       beneficiary or person claiming by or through him or her  
25       within 5 years after January 1, 1988 or within 10 years  
26       after the date the final account was furnished, whichever

1 is longer.

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

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

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

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

19 (3) the termination of the trust.

20 (c) Notwithstanding any other provision of this Section, a  
21 beneficiary may bring any action against the trustee for  
22 fraudulent concealment within the time limit set forth in  
23 Section 13-215 of the Code of Civil Procedure.

24 Section 1006. Reliance on trust instrument. A trustee who  
25 acts in reasonable reliance on the express language of the

1 trust instrument is not liable to a beneficiary for a breach of  
2 trust to the extent the breach resulted from the reliance.

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

10 Section 1008. Exculpation of trustee.

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

13 (1) relieves the trustee of liability for breach of  
14 trust committed in bad faith or with reckless indifference  
15 to the purposes of the trust or the interests of the  
16 beneficiaries; or

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

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

1 settlor. These conditions are satisfied if the settlor was  
2 represented by independent counsel.

3 Section 1009. Beneficiary's consent, release, or  
4 ratification.

5 (a) A trustee is not liable to a beneficiary, or to anyone  
6 claiming by or through the beneficiary, for breach of trust if  
7 the beneficiary consented to the conduct constituting the  
8 breach, released the trustee from liability for the breach, or  
9 ratified the transaction constituting the breach, unless:

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

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

17 (b) If the beneficiary's consent, release, or ratification  
18 involves a self-dealing transaction, the consent, release, or  
19 ratification is binding only if the transaction was fair and  
20 reasonable. The condition that a self-dealing transaction must  
21 be fair and reasonable is satisfied if the beneficiary was  
22 represented by independent counsel. No consideration is  
23 required for the consent, release, or ratification to be valid.

24 Section 1010. Limitation on personal liability of trustee.

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

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

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

18           Section 1011. Interest as general partner.

19           (a) Except as otherwise provided in subsection (c) or  
20 unless personal liability is imposed in the contract, a trustee  
21 who holds an interest as a general partner in a general or  
22 limited partnership is not personally liable on a contract  
23 entered into by the partnership after the trust's acquisition  
24 of the interest if the fiduciary capacity was disclosed in the  
25 contract or in a statement previously filed pursuant to the

1 Uniform Partnership Act (1997) or Uniform Limited Partnership  
2 Act (2001) or any other similar state law.

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

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

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

17 Section 1012. Protection of person dealing with trustee.

18 (a) A person other than a beneficiary or a beneficiary's  
19 representative under Article 3 acting in a representative  
20 capacity who in good faith assists a trustee, or who in good  
21 faith and for value deals with a trustee, without knowledge  
22 that the trustee is exceeding or improperly exercising the  
23 trustee's powers is protected from liability as if the trustee  
24 properly exercised the power.

25 (b) A person other than a beneficiary or a beneficiary's

1 representative under Article 3 acting in a representative  
2 capacity who in good faith deals with a trustee is not required  
3 to inquire into the extent of the trustee's powers or the  
4 propriety of their exercise.

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

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

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

17 Section 1013. Certification of trust.

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

22 (1) that the trust exists and the date the trust  
23 instrument was executed;

24 (2) the identity of the settlor;

25 (3) the identity and address of the currently acting



1 trustee;

2 (4) the powers of the trustee;

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

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

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

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

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

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

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

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

25 (f) A person who acts in reliance upon a certification of  
26 trust without actual knowledge that the representations

1 contained therein are incorrect is not liable to any person for  
2 so acting and may assume without inquiry the existence of the  
3 facts contained in the certification. Knowledge of the trust  
4 instrument may not be inferred solely from the fact that a copy  
5 of all or part of the trust instrument is held by the person  
6 relying upon the certification.

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

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

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

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

4 CERTIFICATION OF TRUST

5 Name of trust: .....

6 Date trust instrument was executed: .....

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

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

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

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

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

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

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

17 Name(s) of successor trustee(s): .....

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

20 Title to the trust property shall be taken as follows (for  
 21 example, "John Doe and Jane Doe, cotrustees of the Doe Family  
 22 Living Trust, dated January 4, 1999"): .....

23 .... This is an irrevocable trust.

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

26 .... This is an unamendable trust.

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

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

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

11 Trustee Signature: .....

12 Printed Name: .....

13 Trustee Signature: .....

14 Printed Name: .....

15 [OPTIONAL:

16 State of .....)

17 County of .....)

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

1 (Signature of Notary Public):

2 .....

3 (SEAL)]

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

13 Article 11. Total return trusts.

14 Section 1101. Total return trust defined; trustee duty to  
15 inform.

16 (a) In this Article, "total return trust" means a trust  
17 converted in accordance with this Article that the trustee  
18 shall manage and invest seeking a total return without regard  
19 to whether the return is from income or appreciation of  
20 principal.

21 (b) Notwithstanding any other provision of this Article, a  
22 trustee has no duty to inform beneficiaries about the  
23 availability of this Article and has no duty to review the

1 trust to determine whether any action should be taken under  
2 this Article unless requested to do so in writing by a  
3 qualified beneficiary.

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

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

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

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

21 Section 1103. Conversion by agreement. Conversion to a  
22 total return trust may be made by agreement between a trustee  
23 and all qualified beneficiaries. The agreement may include any  
24 actions a court could properly order under Section 1108 of this

1 Article; however, any distribution percentage determined by  
2 the agreement may not be less than 3% nor greater than 5%.

3 Section 1104. Conversion or reconversion by court.

4 (a) The trustee may for any reason elect to petition the  
5 court to order conversion to a total return trust, including  
6 without limitation the reason that conversion under Section  
7 1102 is unavailable because a beneficiary timely objects to the  
8 conversion to a total return trust.

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

14 (c) The trustee may petition the court prospectively to  
15 reconvert from a total return trust or adjust the distribution  
16 percentage if the trustee determines that the reconversion or  
17 adjustment will enable the trustee to better carry out the  
18 purposes of the trust. A beneficiary may request the trustee to  
19 petition the court prospectively to reconvert from a total  
20 return trust or adjust the distribution percentage. If the  
21 trustee declines or fails to act within 6 months after  
22 receiving a written request to do so, the beneficiary may  
23 petition the court to order the reconversion or adjustment.

24 (d) In a judicial proceeding under this Section, the  
25 trustee may, but need not, present the trustee's opinions and

1 reasons (1) for supporting or opposing conversion to (or  
2 reconversion from or adjustment of the distribution percentage  
3 of) a total return trust, including whether the trustee  
4 believes conversion (or reconversion or adjustment of the  
5 distribution percentage) would enable the trustee to better  
6 carry out the purposes of the trust, and (2) about any other  
7 matters relevant to the proposed conversion (or reconversion or  
8 adjustment of the distribution percentage). A trustee's  
9 actions in accordance with this Section shall not be deemed  
10 improper or inconsistent with the trustee's duty of  
11 impartiality unless the court finds from all the evidence that  
12 the trustee acted in bad faith.

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

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

- 24 (1) select a distribution percentage other than 4%;
- 25 (2) average the valuation of the trust's net assets  
26 over a period other than 3 years;



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

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

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

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

12          Section 1105. Post conversion. While a trust is a total  
13 return trust, all of the following apply to the trust:

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

17           (2) the term "income" in the trust instrument means an  
18 annual amount (the "distribution amount") equal to a  
19 percentage (the "distribution percentage") of the net fair  
20 market value of the trust's assets, whether the assets are  
21 considered income or principal under the Principal and  
22 Income Act, averaged over the lesser of:

23                   (A) the 3 preceding years; or

24                   (B) the period during which the trust has been in  
25 existence;

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

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

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

21           Section 1106. Administration.

22           (a) As used in this Section, "excluded asset" means an  
23 asset for which there is no readily available market value and  
24 that the trustee determines in accordance with subsection (d)  
25 shall be excluded from the net fair market value of the trust's

1 assets for purposes of determining the distribution amount  
2 under paragraph (2) of Section 1105.

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

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

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

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

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

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

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

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

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

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

25 (8) which trust assets are excluded assets; and

26 (9) any other administrative matters as the trustee

1 determines necessary or helpful for the proper functioning  
2 of the total return trust.

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

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

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

1 Section 1107. Allocations.

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

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

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

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

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

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

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

18 (6) then from other trust principal.

19 Section 1108. Restrictions. Conversion to a total return  
20 trust does not affect any provision in the trust instrument:

21 (1) directing or authorizing the trustee to distribute  
22 principal;

23 (2) directing or authorizing the trustee to distribute  
24 a fixed annuity or a fixed fraction of the value of trust

1 assets;

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

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

8 Section 1109. Tax limitations.

9 (a) If a particular trustee is a beneficiary of the trust  
10 and conversion or failure to convert would enhance or diminish  
11 the beneficial interest of the trustee, or if possession or  
12 exercise of the conversion power by a particular trustee would  
13 alone cause any individual to be treated as owner of a part of  
14 the trust for income tax purposes or cause a part of the trust  
15 to be included in the gross estate of any individual for estate  
16 tax purposes, then the particular trustee may not participate  
17 as a trustee in the exercise of the conversion power except  
18 that the particular trustee may petition the court under  
19 subsection (a) of Section 1104 to order conversion in  
20 accordance with this Article.

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

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

8           Section 1111. Remedies. A trustee who reasonably and in  
9 good faith takes any action under this Article is not liable to  
10 any interested person. If a trustee reasonably and in good  
11 faith takes any action under this Article and an interested  
12 person opposes the action, the person's exclusive remedy is to  
13 obtain an order of the court directing the trustee to convert  
14 the trust to a total return trust, to reconvert from a total  
15 return trust, to change the distribution percentage, or to  
16 order any administrative procedures the court determines  
17 necessary or helpful for the proper functioning of the trust.  
18 An action by a trustee under this Article is presumed taken or  
19 omitted reasonably and in good faith unless it is determined by  
20 the court to have been an abuse of discretion.

21           Section 1112. Application. This Article is available to  
22 trusts in existence on or after August 22, 2002. This Article  
23 shall be construed as pertaining to the administration of a  
24 trust and shall be available to any trust that is administered

1 in Illinois or that is governed by Illinois law with respect to  
2 the meaning and effect of its terms unless one of the following  
3 apply:

4 (1) The trust is a trust described in Section  
5 642(c)(5), 664(d), 2702(a)(3), or 2702(b) of the Internal  
6 Revenue Code.

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

15 Section 1113. Application to express trusts.

16 (a) In this Section:

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

22 (2) "Unitrust amount" means an amount equal to a  
23 percentage of a trust's assets that may or must be  
24 distributed to one or more beneficiaries annually in  
25 accordance with the terms of the trust. The unitrust amount



1           may be determined by reference to the net fair market value  
2           of the trust's assets as of a particular date or as an  
3           average determined on a multiple year basis.

4           (b) A unitrust changes the definition of income by  
5           substituting the unitrust amount for net trust accounting  
6           income as the method of determining current return and shall be  
7           given effect notwithstanding any contrary provision of the  
8           Principal and Income Act. By way of example and not limitation,  
9           a unitrust amount determined by a percentage of not less than  
10          3% nor greater than 5% is conclusively presumed a reasonable  
11          current return that fairly apportions the total return of a  
12          unitrust.

13          (c) Subsection (b) of Section 1107 applies to a unitrust  
14          except to the extent its trust instrument expressly provides  
15          otherwise.

16          (d) This Section does not apply to a charitable remainder  
17          unitrust as defined by Section 664(d) of the Internal Revenue  
18          Code.

19                               Article 12. Trust decanting.

20           Section 1201. Article title. This Article may be referred  
21           to as the Trust Decanting Law.

22           Section 1202. Definitions. In this Article:

23           (1) "Appointive property" means the property or property

1 interest subject to a power of appointment.

2 (2) "Authorized fiduciary" means:

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

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

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

10 (3) "Court" means the court in this State having  
11 jurisdiction in matters relating to trusts.

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

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

19 (6) "First trust" means a trust over which an authorized  
20 fiduciary may exercise the decanting power.

21 (7) "First-trust instrument" means the trust instrument  
22 for a first trust.

23 (8) "Reasonably definite standard" means a clearly  
24 measurable standard under which a holder of a power of  
25 distribution is legally accountable within the meaning of  
26 Section 674(b) (5) (A) of the Internal Revenue Code, as amended,

1 and any applicable regulations.

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

5 (10) "Second trust" means:

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

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

10 (11) "Second-trust instrument" means the trust instrument  
11 for a second trust.

12 Section 1203. Scope.

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

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

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

21 (d) This Article does not limit the power of a trustee,  
22 powerholder, or other person to distribute or appoint property  
23 in further trust or to modify a trust under the trust  
24 instrument, law of this State other than this Article, common  
25 law, a court order, or a nonjudicial settlement agreement.

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

5           Section 1204. Fiduciary duty.

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

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

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

17          Section 1205. Application; governing law. This Article  
18 applies to a trust created before, on, or after the effective  
19 date of this Code that:

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

23               (2) provides by its trust instrument that it is  
24 governed by the law of this State or is governed by the law

1 of this State for the purpose of:

2 (A) administration, including administration of a  
3 trust whose governing law for purposes of  
4 administration has been changed to the law of this  
5 State;

6 (B) construction of terms of the trust; or

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

9 Section 1206. Reasonable reliance. A trustee or other  
10 person that reasonably relies on the validity of a distribution  
11 of part or all of the property of a trust to another trust, or a  
12 modification of a trust, under this Article, law of this State  
13 other than this Article or the law of another jurisdiction is  
14 not liable to any person for any action or failure to act as a  
15 result of the reliance.

16 Section 1207. Notice.

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

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

23 (c) Except as otherwise provided in subsection (f), an  
24 authorized fiduciary shall give notice in a record of the

1 intended exercise of the decanting power not later than 60 days  
2 before the exercise to:

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

5 (2) each qualified beneficiary of the first trust;

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

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

10 (5) each other fiduciary of the first trust;

11 (6) each fiduciary of the second trust; and

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

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

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

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

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

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

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

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

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

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

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

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

17 Section 1208. (Reserved).

18 Section 1209. Court involvement.

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

24 (1) provide instructions to the authorized fiduciary

1 regarding whether a proposed exercise of the decanting  
2 power is permitted under this Article and consistent with  
3 the fiduciary duties of the authorized fiduciary;

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

8 (3) approve an exercise of the decanting power;

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

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

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

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

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

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

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

26 (1) an increase in the fiduciary's compensation under



1 Section 1216; or

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

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

12 Section 1211. Decanting power under expanded distributive  
13 discretion.

14 (a) In this Section:

15 (1) "Noncontingent" right means a right that is not  
16 subject to the exercise of discretion or the occurrence of  
17 a specified event that is not certain to occur. The term  
18 does not include a right held by a beneficiary if any  
19 person has discretion to distribute property subject to the  
20 right of any person other than the beneficiary or the  
21 beneficiary's estate.

22 (2) "Presumptive remainder beneficiary" means a  
23 qualified beneficiary other than a current beneficiary.

24 (3) "Successor beneficiary" means a beneficiary that

1 on the date the beneficiary's qualification is determined  
2 is not a qualified beneficiary. The term does not include a  
3 person that is a beneficiary only because the person holds  
4 a nongeneral power of appointment.

5 (4) "Vested interest" means:

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

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

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

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

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

24 (b) Subject to subsection (c) and Section 1214, an  
25 authorized fiduciary that has expanded distributive discretion  
26 to distribute the principal of a first trust to one or more

1 current beneficiaries may exercise the decanting power over the  
2 principal of the first trust.

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

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

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

13 (3) reduce or eliminate a vested interest.

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

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

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

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

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

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

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

17           Section 1212. Decanting power under limited distributive  
18 discretion.

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

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

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

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

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

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

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

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

1 Section 1213. Trust for beneficiary with disability.

2 (a) In this Section:

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

9 (2) "Best interests" of a beneficiary with a disability  
10 include, without limitation, consideration of the  
11 financial impact to the family of the beneficiary who has a  
12 disability.

13 (3) "Governmental benefits" means financial aid or  
14 services from a state, federal, or other public agency.

15 (4) "Special-needs fiduciary" means, with respect to a  
16 trust that has a beneficiary with a disability:

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

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

26 (C) if no trustee or fiduciary has discretion under

1           subparagraphs (A) and (B), a trustee or other  
2           fiduciary, other than a settlor, that is required to  
3           distribute part or all of the income or principal of  
4           the first trust to one or more current beneficiaries.

5           (5) "Special-needs trust" means a trust the trustee  
6           believes would not be considered a resource for purposes of  
7           determining whether the beneficiary with a disability is  
8           eligible for governmental benefits.

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

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

16               (2) the special-needs fiduciary determines that  
17               exercise of the decanting power will further the purposes  
18               of the first trust or the best interests of the beneficiary  
19               with a disability.

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

22               (1) If the first trust was created by the beneficiary  
23               with a disability, or to the extent the first trust was  
24               funded by the beneficiary with a disability, then  
25               notwithstanding paragraph (2) of subsection (c) of Section  
26               1211, the interest in the second trust of a beneficiary

1 with a disability may:

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

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

8 (2) Paragraph (3) of subsection (c) of Section 1211  
9 does not apply to the interests of the beneficiary with a  
10 disability.

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

17 Section 1214. Protection of charitable interests.

18 (a) In this Section:

19 (1) "Determinable charitable interest" means a  
20 charitable interest that is a right to a mandatory  
21 distribution currently, periodically, on the occurrence of  
22 a specified event, or after the passage of a specified time  
23 and that is unconditional or that will in all events be  
24 held for charitable purposes.

25 (2) "Unconditional" means not subject to the



1 occurrence of a specified event that is not certain to  
2 occur, other than a requirement in a trust instrument that  
3 a charitable organization be in existence or qualify under  
4 a particular provision of the Internal Revenue Code on the  
5 date of the distribution if the charitable organization  
6 meets the requirement on the date of determination.

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

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

13 (1) diminish the charitable interest;

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

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

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

20 (d) If there are 2 or more second trusts, the second trusts  
21 shall be treated as one trust for purposes of determining  
22 whether the exercise of the decanting power diminishes the  
23 charitable interest or diminishes the interest of an identified  
24 charitable organization for purposes of subsection (c).

25 (e) If a first trust contains a determinable charitable  
26 interest, the second trusts that include charitable interests

1 pursuant to subsection (c) must be administered under the law  
2 of this State unless:

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

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

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

12 (f) This Article does not limit the powers and duties of  
13 the Attorney General's Charitable Trust Bureau under Illinois  
14 law.

15 Section 1215. Trust limitation on decanting.

16 (a) An authorized fiduciary may not exercise the decanting  
17 power to the extent the first-trust instrument expressly  
18 prohibits exercise of:

19 (1) the decanting power; or

20 (2) a power granted by state law to the fiduciary to  
21 distribute part or all of the principal of the trust to  
22 another trust or to modify the trust.

23 (b) Exercise of the decanting power is subject to any  
24 restriction in the first-trust instrument that expressly  
25 applies to exercise of:

1 (1) the decanting power; or

2 (2) a power granted by state law to a fiduciary to  
3 distribute part or all of the principal of the trust to  
4 another trust or to modify the trust.

5 (c) A general prohibition of the amendment or revocation of  
6 a first trust, a spendthrift clause, or a clause restraining  
7 the voluntary or involuntary transfer of a beneficiary's  
8 interest does not preclude exercise of the decanting power.

9 (d) Subject to subsections (a) and (b), an authorized  
10 fiduciary may exercise the decanting power under this Article  
11 even if the first-trust instrument permits the authorized  
12 fiduciary or another person to modify the first-trust  
13 instrument or to distribute part or all of the principal of the  
14 first trust to another trust.

15 (e) If a first-trust instrument contains an express  
16 prohibition described in subsection (a) or an express  
17 restriction described in subsection (b), that provision must be  
18 included in the second-trust instrument.

19 Section 1216. Change in compensation.

20 (a) If a first-trust instrument specifies an authorized  
21 fiduciary's compensation, the fiduciary may not exercise the  
22 decanting power to increase the fiduciary's compensation  
23 beyond the specified compensation unless:

24 (1) all qualified beneficiaries of the second trust  
25 consent to the increase in a signed record; or

1           (2) the increase is approved by the court.

2           (b) If a first-trust instrument does not specify an  
3 authorized fiduciary's compensation, the fiduciary may not  
4 exercise the decanting power to increase the fiduciary's  
5 compensation above the compensation permitted by Section 708  
6 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          (c) A change in an authorized fiduciary's compensation that  
11 is incidental to other changes made by the exercise of the  
12 decanting power is not an increase in the fiduciary's  
13 compensation for purposes of subsections (a) and (b).

14          Section 1217. Relief from liability and indemnification.

15          (a) Except as otherwise provided in this Section, a  
16 second-trust instrument may not relieve an authorized  
17 fiduciary from liability for breach of trust to a greater  
18 extent than the first-trust instrument.

19          (b) A second-trust instrument may provide for  
20 indemnification of an authorized fiduciary of the first trust  
21 or another person acting in a fiduciary capacity under the  
22 first trust for any liability or claim that would have been  
23 payable from the first trust if the decanting power had not  
24 been exercised.

25          (c) A second-trust instrument may not reduce fiduciary

1 liability in the aggregate.

2 (d) Subject to subsection (c), a second-trust instrument  
3 may divide and reallocate fiduciary powers among fiduciaries,  
4 including one or more trustees, distribution advisors,  
5 investment advisors, trust protectors, or other persons, and  
6 relieve a fiduciary from liability for an act or failure to act  
7 of another fiduciary as permitted by law of this State other  
8 than this Article.

9 Section 1218. Removal or replacement of authorized  
10 fiduciary. An authorized fiduciary may not exercise the  
11 decanting power to modify a provision in the first-trust  
12 instrument granting another person power to remove or replace  
13 the fiduciary unless:

14 (1) the person holding the power consents to the  
15 modification in a signed record and the modification  
16 applies only to the person;

17 (2) the person holding the power and the qualified  
18 beneficiaries of the second trust consent to the  
19 modification in a signed record and the modification grants  
20 a substantially similar power to another person; or

21 (3) the court approves the modification and the  
22 modification grants a substantially similar power to  
23 another person.

24 Section 1219. Tax-related limitations.

1 (a) In this Section:

2 (1) "Grantor trust" means a trust as to which a settlor  
3 of a first trust is considered the owner under Sections 671  
4 through 677 of the Internal Revenue Code or Section 679 of  
5 the Internal Revenue Code.

6 (2) "Nongrantor trust" means a trust that is not a  
7 grantor trust.

8 (3) "Qualified benefits property" means property  
9 subject to the minimum distribution requirements of  
10 Section 401(a)(9) of the Internal Revenue Code, and any  
11 applicable regulations, or to any similar requirements  
12 that refer to Section 401(a)(9) of the Internal Revenue  
13 Code or the regulations.

14 (b) An exercise of the decanting power is subject to the  
15 following limitations:

16 (1) If a first trust contains property that qualified,  
17 or would have qualified but for provisions of this Article  
18 other than this Section, for a marital deduction for  
19 purposes of the gift or estate tax under the Internal  
20 Revenue Code or a state gift, estate, or inheritance tax,  
21 the second-trust instrument must not include or omit any  
22 term that, if included in or omitted from the trust  
23 instrument for the trust to which the property was  
24 transferred, would have prevented the transfer from  
25 qualifying for the deduction, or would have reduced the  
26 amount of the deduction, under the same provisions of the

1 Internal Revenue Code or state law under which the transfer  
2 qualified.

3 (2) If the first trust contains property that  
4 qualified, or would have qualified but for provisions of  
5 this Article other than this Section, for a charitable  
6 deduction for purposes of the income, gift, or estate tax  
7 under the Internal Revenue Code or a state income, gift,  
8 estate, or inheritance tax, the second-trust instrument  
9 must not include or omit any term that, if included in or  
10 omitted from the trust instrument for the trust to which  
11 the property was transferred, would have prevented the  
12 transfer from qualifying for the deduction, or would have  
13 reduced the amount of the deduction, under the same  
14 provisions of the Internal Revenue Code or state law under  
15 which the transfer qualified.

16 (3) If the first trust contains property that  
17 qualified, or would have qualified but for provisions of  
18 this Article other than this Section, for the exclusion  
19 from the gift tax described in Section 2503(b) of the  
20 Internal Revenue Code, the second-trust instrument must  
21 not include or omit a term that, if included in or omitted  
22 from the trust instrument for the trust to which the  
23 property was transferred, would have prevented the  
24 transfer from qualifying under the same provision of  
25 Section 2503 of the Internal Revenue Code. If the first  
26 trust contains property that qualified, or would have

1 qualified but for provisions of this Article other than  
2 this Section, for the exclusion from the gift tax described  
3 in Section 2503(b) of the Internal Revenue Code, by  
4 application of Section 2503(c) of the Internal Revenue  
5 Code, the second-trust instrument must not include or omit  
6 a term that, if included or omitted from the trust  
7 instrument for the trust to which the property was  
8 transferred, would have prevented the transfer from  
9 qualifying under Section 2503(c) of the Internal Revenue  
10 Code.

11 (4) If the property of the first trust includes shares  
12 of stock in an S corporation, as defined in Section 1361 of  
13 the Internal Revenue Code and the first trust is, or but  
14 for provisions of this Article other than this Section  
15 would be, a permitted shareholder under any provision of  
16 Section 1361 of the Internal Revenue Code, an authorized  
17 fiduciary may exercise the power with respect to part or  
18 all of the S-corporation stock only if any second trust  
19 receiving the stock is a permitted shareholder under  
20 Section 1361(c)(2) of the Internal Revenue Code. If the  
21 property of the first trust includes shares of stock in an  
22 S corporation and the first trust is, or but for provisions  
23 of this Article other than this Section, would be, a  
24 qualified subchapter-S trust within the meaning of Section  
25 1361(d) of the Internal Revenue Code, the second-trust  
26 instrument must not include or omit a term that prevents



1 the second trust from qualifying as a qualified  
2 subchapter-S trust.

3 (5) If the first trust contains property that  
4 qualified, or would have qualified but for provisions of  
5 this Article other than this Section, for a zero inclusion  
6 ratio for purposes of the generation-skipping transfer tax  
7 under Section 2642(c) of the Internal Revenue Code the  
8 second-trust instrument must not include or omit a term  
9 that, if included in or omitted from the first-trust  
10 instrument, would have prevented the transfer to the first  
11 trust from qualifying for a zero inclusion ratio under  
12 Section 2642(a) of the Internal Revenue Code.

13 (6) If the first trust is directly or indirectly the  
14 beneficiary of qualified benefits property, the  
15 second-trust instrument may not include or omit any term  
16 that, if included in or omitted from the first-trust  
17 instrument, would have increased the minimum distributions  
18 required with respect to the qualified benefits property  
19 under Section 401(a)(9) of the Internal Revenue Code and  
20 any applicable regulations, or any similar requirements  
21 that refer to Section 401(a)(9) of the Internal Revenue  
22 Code or the regulations. If an attempted exercise of the  
23 decanting power violates the preceding sentence, the  
24 trustee is deemed to have held the qualified benefits  
25 property and any reinvested distributions of the property  
26 as a separate share from the date of the exercise of the

1 power and Section 1222 applies to the separate share.

2 (7) If the first trust qualifies as a grantor trust  
3 because of the application of Section 672(f)(2)(A) of the  
4 Internal Revenue Code the second trust may not include or  
5 omit a term that, if included in or omitted from the  
6 first-trust instrument, would have prevented the first  
7 trust from qualifying under Section 672(f)(2)(A) of the  
8 Internal Revenue Code.

9 (8) In this paragraph (8), "tax benefit" means a  
10 federal or state tax deduction, exemption, exclusion, or  
11 other benefit not otherwise listed in this Section, except  
12 for a benefit arising from being a grantor trust. Subject  
13 to paragraph (9) of this subsection (b), a second-trust  
14 instrument may not include or omit a term that, if included  
15 in or omitted from the first-trust instrument, would have  
16 prevented qualification for a tax benefit if:

17 (A) the first-trust instrument expressly indicates  
18 an intent to qualify for the benefit or the first-trust  
19 instrument clearly is designed to enable the first  
20 trust to qualify for the benefit; and

21 (B) the transfer of property held by the first  
22 trust or the first trust qualified, or but for  
23 provisions of this Article other than this Section,  
24 would have qualified for the tax benefit.

25 (9) Subject to paragraph (4) of this subsection (b):

26 (A) except as otherwise provided in paragraph (7)

1 of this subsection (b), the second trust may be a  
2 nongrantor trust, even if the first trust is a grantor  
3 trust; and

4 (B) except as otherwise provided in paragraph (10)  
5 of this subsection (b), the second trust may be a  
6 grantor trust, even if the first trust is a nongrantor  
7 trust.

8 (10) An authorized fiduciary may not exercise the  
9 decanting power if a settlor objects in a signed record  
10 delivered to the fiduciary within the notice period and:

11 (A) the first trust and second trusts are both  
12 grantor trusts, in whole or in part, the first trust  
13 grants the settlor or another person the power to cause  
14 the second trust to cease to be a grantor trust, and  
15 the second trust does not grant an equivalent power to  
16 the settlor or other person; or

17 (B) the first trust is a nongrantor trust and the  
18 second trust is a grantor trust, in whole or in part,  
19 with respect to the settlor, unless:

20 (i) the settlor has the power at all times to  
21 cause the second trust to cease to be a grantor  
22 trust; or

23 (ii) the first-trust instrument contains a  
24 provision granting the settlor or another person a  
25 power that would cause the first trust to cease to  
26 be a grantor trust and the second-trust instrument

1 contains the same provision.

2 Section 1220. Duration of second trust.

3 (a) Subject to subsection (b), a second trust may have a  
4 duration that is the same as or different from the duration of  
5 the first trust.

6 (b) To the extent that property of a second trust is  
7 attributable to property of the first trust, the second trust  
8 is subject to any rules governing maximum perpetuity,  
9 accumulation, or suspension of the power of alienation  
10 applicable to property of the first trust.

11 Section 1221. Need to distribute not required. An  
12 authorized fiduciary may exercise the decanting power whether  
13 or not under the first trust's discretionary distribution  
14 standard the fiduciary would have made or could have been  
15 compelled to make a discretionary distribution of principal at  
16 the time of the exercise.

17 Section 1222. Savings provision.

18 (a) If exercise of the decanting power would be effective  
19 under this Article except that the second-trust instrument in  
20 part does not comply with this Article, the exercise of the  
21 power is effective and the following rules apply to the  
22 principal of the first trust subject to the exercise of the  
23 power:

1           (1) A provision in the second-trust instrument that is  
2           not permitted under this Article is void to the extent  
3           necessary to comply with this Article.

4           (2) A provision required by this Article to be in the  
5           second-trust instrument that is not contained in the  
6           instrument is deemed to be included in the instrument to  
7           the extent necessary to comply with this Article.

8           (b) If a trustee or other fiduciary of a second trust  
9           discovers that subsection (a) applies to a prior exercise of  
10          the decanting power, the fiduciary shall take such appropriate  
11          corrective action as is consistent with the fiduciary's duties.

12          Section 1223. Trust for care of animal.

13          (a) In this Section:

14               (1) "Animal trust" means a trust or an interest in a  
15               trust created to provide for the care of one or more  
16               designated domestic or pet animals.

17               (2) "Protector" means a person described in paragraph  
18               (3) of subsection (b) of Section 408.

19          (b) The decanting power may be exercised over an animal  
20          trust that has a protector to the extent the trust could be  
21          decanted under this Article as if each animal that benefits  
22          from the trust were an individual, if the protector consents in  
23          a signed record to the exercise of the decanting power.

24          (c) A protector for an animal has the rights under this  
25          Article of a qualified beneficiary.

1           (d) Notwithstanding any other provision of this Article, if  
2 a first trust is an animal trust, in an exercise of the  
3 decanting power, the second trust must provide that trust  
4 property may be applied only to its intended purpose for the  
5 period the first trust benefitted the animal.

6           Section 1224. (Reserved).

7           Section 1225. Settlor.

8           (a) For purposes of the laws of this State other than this  
9 Article and subject to subsection (b), a settlor of a first  
10 trust is deemed to be the settlor of the second trust with  
11 respect to the portion of the principal of the first trust  
12 subject to the exercise of the decanting power.

13           (b) In determining settlor intent with respect to a second  
14 trust, the intent of a settlor of the first trust, the intent  
15 of a settlor of the second trust, and the intent of the  
16 authorized fiduciary may be considered.

17           Section 1226. Later-discovered property.

18           (a) Except as otherwise provided in subsection (c), if  
19 exercise of the decanting power was intended to distribute all  
20 the principal of the first trust to one or more second trusts,  
21 later-discovered property otherwise belonging to the first  
22 trust and property paid to or acquired by the first trust after  
23 the exercise of the power is part of the trust estate of the

1 second trust.

2 (b) Except as otherwise provided in subsection (c), if  
3 exercise of the decanting power was intended to distribute less  
4 than all the principal of the first trust to one or more second  
5 trusts, later-discovered property belonging to the first trust  
6 or property paid to or acquired by the first trust after  
7 exercise of the decanting power remains part of the trust  
8 estate of the first trust.

9 (c) An authorized fiduciary may provide in an exercise of  
10 the decanting power or by the terms of a second trust for  
11 disposition of later-discovered property belonging to the  
12 first trust or property paid to or acquired by the first trust  
13 after exercise of the decanting power.

14 Section 1227. Obligations. A debt, liability, or other  
15 obligation enforceable against property of a first trust is  
16 enforceable to the same extent against that property when held  
17 by the second trust after exercise of the decanting power.

18 Article 13. Uniform Powers of Appointment Act.

19 Section 1301. Article title. This Article may be referred  
20 to as the Uniform Powers of Appointment Act.

21 Section 1302. Definitions. In this Article:

22 (1) "Appointee" means a person to which a powerholder makes

1 an appointment of appointive property.

2 (2) "Appointive property" means the property or property  
3 interest subject to a power of appointment.

4 (3) "Blanket-exercise clause" means a clause in an  
5 instrument that exercises a power of appointment and is not a  
6 specific-exercise clause. The term includes a clause that:

7 (A) expressly uses the words "any power" in exercising  
8 any power of appointment the powerholder has;

9 (B) expressly uses the words "any property" in  
10 appointing any property over which the powerholder has a  
11 power of appointment; or

12 (C) disposes of all property subject to disposition by  
13 the powerholder.

14 (4) "Exclusionary power of appointment" means a power of  
15 appointment exercisable in favor of any one or more of the  
16 permissible appointees to the exclusion of the other  
17 permissible appointees.

18 (5) "Gift-in-default clause" means a clause identifying a  
19 taker in default of appointment.

20 (6) "Impermissible appointee" means a person that is not a  
21 permissible appointee.

22 (7) "Instrument" means a writing.

23 (8) "Permissible appointee" means a person in whose favor a  
24 powerholder may exercise a power of appointment.

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



1           (10) "Specific-exercise clause" means a clause in an  
2 instrument that specifically refers to and exercises a  
3 particular power of appointment.

4           (11) "Taker in default of appointment" means a person that  
5 takes part or all of the appointive property to the extent the  
6 powerholder does not effectively exercise the power of  
7 appointment.

8           Section 1303. Governing law. Unless the terms of the  
9 instrument creating a power of appointment manifest a contrary  
10 intent:

11           (1) the creation, revocation, or amendment of the power is  
12 governed by the law of the donor's domicile at the relevant  
13 time; and

14           (2) the exercise, release, or disclaimer of the power, or  
15 the revocation or amendment of the exercise, release, or  
16 disclaimer of the power, is governed by the law of the  
17 powerholder's domicile at the relevant time.

18           Section 1304. Common law and principles of equity. The  
19 common law and principles of equity supplement this Article,  
20 except to the extent modified by this Article or law of this  
21 State other than this Article.

22           Section 1305. Creation of power of appointment.

23           (a) A power of appointment is created only if:

1           (1) the instrument creating the power:  
2                 (A) is valid under applicable law; and  
3                 (B) except as otherwise provided in subsection  
4           (b), transfers the appointive property; and  
5           (2) the terms of the instrument creating the power  
6           manifest the donor's intent to create, in a powerholder, a  
7           power of appointment over the appointive property  
8           exercisable in favor of a permissible appointee.

9           (b) Subdivision (a) (1) (B) of this Section does not apply to  
10          the creation of a power of appointment by the exercise of a  
11          power of appointment.

12          (c) A power of appointment may not be created in a deceased  
13          individual.

14          (d) Subject to an applicable rule against perpetuities, a  
15          power of appointment may be created in an unborn or  
16          unascertained powerholder.

17          Section 1306. Nontransferability. A powerholder may not  
18          transfer a power of appointment. If the powerholder dies  
19          without exercising or releasing the power, the power lapses.

20          Section 1307. Presumption of unlimited authority. Subject  
21          to Section 1309, and unless the terms of the instrument  
22          creating a power of appointment manifest a contrary intent, the  
23          power is:

24                 (1) presently exercisable;

- 1           (2) exclusionary; and  
2           (3) except as otherwise provided in Section 1308,  
3           general.

4           Section 1308. Exception to presumption of unlimited  
5           authority. Unless the terms of the instrument creating a power  
6           of appointment manifest a contrary intent, the power is  
7           nongeneral if:

8           (1) the power is exercisable only at the powerholder's  
9           death; and

10          (2) the permissible appointees of the power are a  
11          defined and limited class that does not include the  
12          powerholder's estate, the powerholder's creditors, or the  
13          creditors of the powerholder's estate.

14          Section 1309. Rules of classification.

15          (a) In this Section, "adverse party" means a person with a  
16          substantial beneficial interest in property that would be  
17          affected adversely by a powerholder's exercise or nonexercise  
18          of a power of appointment in favor of the powerholder, the  
19          powerholder's estate, a creditor of the powerholder, or a  
20          creditor of the powerholder's estate.

21          (b) If a powerholder may exercise a power of appointment  
22          only with the consent or joinder of an adverse party, the power  
23          is nongeneral.

24          (c) If the permissible appointees of a power of appointment

1 are not defined and limited, the power is exclusionary.

2 Section 1310. Power to revoke or amend. A donor may revoke  
3 or amend a power of appointment only to the extent that:

4 (1) the instrument creating the power is revocable by  
5 the donor; or

6 (2) the donor reserves a power of revocation or  
7 amendment in the instrument creating the power of  
8 appointment.

9 Section 1311. Requisites for exercise of power of  
10 appointment. A power of appointment is exercised only:

11 (1) if the instrument exercising the power is valid  
12 under applicable law;

13 (2) if the terms of the instrument exercising the  
14 power:

15 (A) manifest the powerholder's intent to exercise  
16 the power; and

17 (B) subject to Section 1314, satisfy the  
18 requirements of exercise, if any, imposed by the donor;  
19 and

20 (3) to the extent the appointment is a permissible  
21 exercise of the power.

22 Section 1312. Intent to exercise: determining intent from  
23 residuary clause.

1 (a) In this Section:

2 (1) "Residuary clause" does not include a residuary  
3 clause containing a blanket-exercise clause or a  
4 specific-exercise clause.

5 (2) "Will" includes a codicil and a testamentary  
6 instrument that revises another will.

7 (b) A residuary clause in a powerholder's will, or a  
8 comparable clause in the powerholder's revocable trust,  
9 manifests the powerholder's intent to exercise a power of  
10 appointment only if:

11 (1) the terms of the instrument containing the  
12 residuary clause do not manifest a contrary intent;

13 (2) the power is a general power exercisable in favor  
14 of the powerholder's estate;

15 (3) there is no gift-in-default clause or it is  
16 ineffective; and

17 (4) the powerholder did not release the power.

18 Section 1313. Intent to exercise: after-acquired power.  
19 Unless the terms of the instrument exercising a power of  
20 appointment manifest a contrary intent:

21 (1) except as otherwise provided in paragraph (2), a  
22 blanket-exercise clause extends to a power acquired by the  
23 powerholder after executing the instrument containing the  
24 clause; and

25 (2) if the powerholder is also the donor of the power,

1           the clause does not extend to the power unless there is no  
2           gift-in-default clause or it is ineffective.

3           Section 1314. Substantial compliance with donor-imposed  
4           formal requirement. A powerholder's substantial compliance  
5           with a formal requirement of an appointment imposed by the  
6           donor, including a requirement that the instrument exercising  
7           the power of appointment make reference or specific reference  
8           to the power, is sufficient if:

9                   (1) the powerholder knows of and intends to exercise  
10                  the power; and

11                   (2) the powerholder's manner of attempted exercise of  
12                  the power does not impair a material purpose of the donor  
13                  in imposing the requirement.

14           Section 1315. Permissible appointment.

15                   (a) A powerholder of a general power of appointment that  
16                  permits appointment to the powerholder or the powerholder's  
17                  estate may make any appointment, including an appointment in  
18                  trust or creating a new power of appointment, that the  
19                  powerholder could make in disposing of the powerholder's own  
20                  property.

21                   (b) A powerholder of a general power of appointment that  
22                  permits appointment only to the creditors of the powerholder or  
23                  of the powerholder's estate is restricted to appointing to  
24                  those creditors.

1 (c) Unless the terms of the instrument creating a power of  
2 appointment manifest a contrary intent, the powerholder of a  
3 nongeneral power may:

4 (1) make an appointment in any form, with any  
5 conditions and limitations, including an appointment in  
6 trust to any trustee, in favor of a permissible appointee;

7 (2) create a general or nongeneral power in a  
8 permissible appointee that may be exercisable in favor of  
9 persons other than permissible appointees of the original  
10 nongeneral power; or

11 (3) create a nongeneral power in any person to appoint  
12 to one or more of the permissible appointees of the  
13 original nongeneral power.

14 Section 1316. Appointment to deceased appointee. Subject  
15 to Section 4-11 of the Probate Act of 1975, an appointment to a  
16 deceased appointee is ineffective.

17 Section 1317. Impermissible appointment.

18 (a) Except as otherwise provided in Section 1316, an  
19 exercise of a power of appointment in favor of an impermissible  
20 appointee is ineffective.

21 (b) An exercise of a power of appointment in favor of a  
22 permissible appointee is ineffective to the extent the  
23 appointment is a fraud on the power.

1           Section 1318. Selective allocation doctrine. If a  
2 powerholder exercises a power of appointment in a disposition  
3 that also disposes of property the powerholder owns, the owned  
4 property and the appointive property must be allocated in the  
5 permissible manner that best carries out the powerholder's  
6 intent.

7           Section 1319. Capture doctrine: disposition of  
8 ineffectively appointed property under general power. To the  
9 extent a powerholder of a general power of appointment, other  
10 than a power to revoke, amend, or withdraw property from a  
11 trust, makes an ineffective appointment:

12           (1) the gift-in-default clause controls the  
13 disposition of the ineffectively appointed property; or

14           (2) if there is no gift-in-default clause or to the  
15 extent the clause is ineffective, the ineffectively  
16 appointed property:

17           (A) passes to:

18           (i) the powerholder if the powerholder is a  
19 permissible appointee and living; or

20           (ii) if the powerholder is an impermissible  
21 appointee or not living, the powerholder's estate  
22 if the estate is a permissible appointee; or

23           (B) if there is no taker under subparagraph (A),  
24 passes under a reversionary interest to the donor or  
25 the donor's transferee or successor in interest.



1           Section 1320. Disposition of unappointed property under  
2 released or unexercised general power. To the extent a  
3 powerholder releases or fails to exercise a general power of  
4 appointment other than a power to revoke, amend, or withdraw  
5 property from a trust:

6           (1) the gift-in-default clause controls the  
7 disposition of the unappointed property; or

8           (2) if there is no gift-in-default clause or to the  
9 extent the clause is ineffective:

10           (A) except as otherwise provided in subparagraph

11           (B), the unappointed property passes to:

12           (i) the powerholder if the powerholder is a  
13 permissible appointee and living; or

14           (ii) if the powerholder is an impermissible  
15 appointee or not living, the powerholder's estate  
16 if the estate is a permissible appointee; or

17           (B) to the extent the powerholder released the  
18 power, or if there is no taker under subparagraph (A),  
19 the unappointed property passes under a reversionary  
20 interest to the donor or the donor's transferee or  
21 successor in interest.

22           Section 1321. Disposition of unappointed property under  
23 released or unexercised nongeneral power. To the extent a  
24 powerholder releases, ineffectively exercises, or fails to

1 exercise a nongeneral power of appointment:

2 (1) the gift-in-default clause controls the disposition of  
3 the unappointed property; or

4 (2) if there is no gift-in-default clause or to the extent  
5 the clause is ineffective, the unappointed property:

6 (A) passes to the permissible appointees if:

7 (i) the permissible appointees are defined and  
8 limited; and

9 (ii) the terms of the instrument creating the power  
10 do not manifest a contrary intent; or

11 (B) if there is no taker under subparagraph (A), passes  
12 under a reversionary interest to the donor or the donor's  
13 transferee or successor in interest.

14 Section 1322. Disposition of unappointed property if  
15 partial appointment to taker in default. Unless the terms of  
16 the instrument creating or exercising a power of appointment  
17 manifest a contrary intent, if the powerholder makes a valid  
18 partial appointment to a taker in default of appointment, the  
19 taker in default of appointment may share fully in unappointed  
20 property.

21 Section 1323. Appointment to taker in default. If a  
22 powerholder of a general power makes an appointment to a taker  
23 in default of appointment and the appointee would have taken  
24 the property under a gift-in-default clause had the property

1 not been appointed, the power of appointment is deemed not to  
2 have been exercised, and the appointee takes under the  
3 gift-in-default clause.

4 Section 1324. Powerholder's authority to revoke or amend  
5 exercise. A powerholder may revoke or amend an exercise of a  
6 power of appointment only to the extent that:

7 (1) the powerholder reserves a power of revocation or  
8 amendment in the instrument exercising the power of  
9 appointment and, if the power is nongeneral, the terms of  
10 the instrument creating the power of appointment do not  
11 prohibit the reservation; or

12 (2) the terms of the instrument creating the power of  
13 appointment provide that the exercise is revocable or  
14 amendable.

15 Section 1325. Disposition of trust property subject to  
16 power. In disposing of trust property subject to a power of  
17 appointment exercisable by an instrument other than a will, a  
18 trustee acting in good faith shall have no liability to any  
19 appointee or taker in default of appointment for relying upon  
20 an instrument believed to be genuine purporting to exercise a  
21 power of appointment or for assuming that there is no  
22 instrument exercising the power of appointment in the absence  
23 of actual knowledge thereof within 3 months of the last date on  
24 which the power of appointment may be exercised.

1           Section 1326. Disclaimer. As provided by Section 2-7 of the  
2 Probate Act of 1975:

3           (1) A powerholder may disclaim all or part of a power  
4 of appointment.

5           (2) A permissible appointee, appointee, or taker in  
6 default of appointment may disclaim all or part of an  
7 interest in appointive property.

8           Section 1327. Authority to release. A powerholder may  
9 release a power of appointment, in whole or in part, except to  
10 the extent the terms of the instrument creating the power  
11 prevent the release.

12           Section 1328. Method of release. A powerholder of a  
13 releasable power of appointment may release the power in whole  
14 or in part:

15           (1) by substantial compliance with a method provided in  
16 the terms of the instrument creating the power; or

17           (2) if the terms of the instrument creating the power  
18 do not provide a method or the method provided in the terms  
19 of the instrument is not expressly made exclusive, by an  
20 instrument manifesting the powerholder's intent by clear  
21 and convincing evidence.

22           Section 1329. Revocation or amendment of release. A

1 powerholder may revoke or amend a release of a power of  
2 appointment only to the extent that:

3 (1) the instrument of release is revocable by the  
4 powerholder; or

5 (2) the powerholder reserves a power of revocation or  
6 amendment in the instrument of release.

7 Section 1330. Power to contract: presently exercisable  
8 power of appointment. A powerholder of a presently exercisable  
9 power of appointment may contract:

10 (1) not to exercise the power; or

11 (2) to exercise the power if the contract when made  
12 does not confer a benefit on an impermissible appointee.

13 Section 1331. Power to contract: power of appointment not  
14 presently exercisable. A powerholder of a power of appointment  
15 that is not presently exercisable may contract to exercise or  
16 not to exercise the power only if the powerholder:

17 (1) is also the donor of the power; and

18 (2) has reserved the power in a revocable trust.

19 Section 1332. Remedy for breach of contract to appoint or  
20 not to appoint. The remedy for a powerholder's breach of a  
21 contract to appoint or not to appoint is limited to damages  
22 payable out of the appointive property or, if appropriate,  
23 specific performance of the contract.

1           Section 1333. Creditor claim: general power created by  
2 powerholder.

3           (a) In this Section, "power of appointment created by the  
4 powerholder" includes a power of appointment created in a  
5 transfer by another person to the extent the powerholder  
6 contributed value to the transfer.

7           (b) Appointive property subject to a general power of  
8 appointment created by the powerholder is subject to a claim of  
9 a creditor of the powerholder or of the powerholder's estate to  
10 the extent provided in the Uniform Fraudulent Transfer Act.

11           (c) Subject to subsection (b), appointive property subject  
12 to a general power of appointment created by the powerholder is  
13 not subject to a claim of a creditor of the powerholder or the  
14 powerholder's estate to the extent the powerholder irrevocably  
15 appointed the property in favor of a person other than the  
16 powerholder or the powerholder's estate.

17           (d) Subject to subsections (b) and (c), and notwithstanding  
18 the presence of a spendthrift provision or whether the claim  
19 arose before or after the creation of the power of appointment,  
20 appointive property subject to a general power of appointment  
21 created by the powerholder is subject to a claim of a creditor  
22 of:

23           (1) the powerholder, to the same extent as if the  
24 powerholder owned the appointive property, if the power is  
25 presently exercisable; and

1           (2) the powerholder's estate, to the extent the estate  
2           is insufficient to satisfy the claim and subject to the  
3           right of a decedent to direct the source from which  
4           liabilities are paid, if the power is exercisable at the  
5           powerholder's death.

6           Section 1334. Creditor claim: general power not created by  
7           powerholder.

8           (a) Except as otherwise provided in subsection (b),  
9           appointive property subject to a general power of appointment  
10          created by a person other than the powerholder is subject to a  
11          claim of a creditor of:

12           (1) the powerholder, to the extent the powerholder's  
13          property is insufficient, if the power is presently  
14          exercisable; and

15           (2) the powerholder's estate if the power is exercised  
16          at the powerholder's death, to the extent the estate is  
17          insufficient, subject to the right of the deceased  
18          powerholder to direct the source from which liabilities are  
19          paid.

20          (b) Subject to subsection (c) of Section 1336, a power of  
21          appointment created by a person other than the powerholder that  
22          is subject to an ascertainable standard relating to an  
23          individual's health, education, support, or maintenance within  
24          the meaning of Section 2041(b)(1)(A) of the Internal Revenue  
25          Code or Section 2514(c)(1) of the Internal Revenue Code, as

1 amended, is treated for purposes of this Article as a  
2 nongeneral power.

3 Section 1335. Power to withdraw.

4 (a) For purposes of Sections 1333 through 1336, and except  
5 as otherwise provided in subsection (b), a power to withdraw  
6 property from a trust is treated, during the time the power may  
7 be exercised, as a presently exercisable general power of  
8 appointment to the extent of the property subject to the power  
9 to withdraw.

10 (b) A power to withdraw property from a trust ceases to be  
11 treated as a presently exercisable general power of appointment  
12 upon its lapse, release or waiver.

13 Section 1336. Creditor claim: nongeneral power.

14 (a) Except as otherwise provided in subsections (b) and  
15 (c), appointive property subject to a nongeneral power of  
16 appointment is exempt from a claim of a creditor of the  
17 powerholder or the powerholder's estate.

18 (b) Appointive property subject to a nongeneral power of  
19 appointment is subject to a claim of a creditor of the  
20 powerholder or the powerholder's estate to the extent that the  
21 powerholder owned the property and, reserving the nongeneral  
22 power, transferred the property in violation of the Uniform  
23 Fraudulent Transfer Act.

24 (c) If the initial gift in default of appointment is to the



1 powerholder or the powerholder's estate, a nongeneral power of  
2 appointment is treated for purposes of this Section as a  
3 general power.

4 Section 1337. Uniformity of application and construction.  
5 In applying and construing this Article, consideration must be  
6 given to the need to promote uniformity of the law with respect  
7 to its subject matter among states that enact it.

8 Section 1338. Application to existing relationships.

9 (a) Except as otherwise provided in this Article, on and  
10 after the effective date of this Code:

11 (1) this Article applies to a power of appointment  
12 created before, on, or after its effective date;

13 (2) this Article applies to a judicial proceeding  
14 concerning a power of appointment commenced on or after its  
15 effective date;

16 (3) this Article applies to a judicial proceeding  
17 concerning a power of appointment commenced before its  
18 effective date unless the court finds that application of a  
19 particular provision of this Article would substantially  
20 interfere with the effective conduct of the judicial  
21 proceeding or prejudice a right of a party, in which case  
22 the particular provision of this Article does not apply and  
23 the superseded law applies;

24 (4) a rule of construction or presumption provided in

1           this Article applies to an instrument executed before the  
2           effective date of the Article unless there is a clear  
3           indication of a contrary intent in the terms of the  
4           instrument; and

5                   (5) an act done before the effective date of this Code  
6           is not affected by this Article.

7           (b) If a right is acquired, extinguished, or barred on the  
8           expiration of a prescribed period that commenced under law of  
9           this State other than this Article before the effective date of  
10          this Code, the law continues to apply to the right.

11          (c) No trustee is liable to any person in whose favor a  
12          power of appointment may have been exercised for any  
13          distribution of property made to persons entitled to take in  
14          default of the effective exercise of the power of appointment  
15          to the extent that the distribution shall have been completed  
16          prior to the effective date of this Code.

17                                   Article 14. Perpetuities.

18          Section 1401. Article title. Except for Section 1407, this  
19          Article may be referred to as the Act Concerning Perpetuities.

20          Section 1402. Purpose. This Article modifies the common law  
21          rule of property known as the rule against perpetuities, that,  
22          except as modified by statutes in force at the effective date  
23          of this Article and by this Article, shall remain in full force

1 and effect.

2 Section 1403. Definitions and terms. As used in this  
3 Article unless the context otherwise requires:

4 (a) Any reference in this Article to income to be "paid" or  
5 to income "payments" or to "receiving" income includes income  
6 payable or distributable to or applicable for the benefit of a  
7 beneficiary.

8 (b) "Instrument" means any writing pursuant to which any  
9 legal or equitable interest in property or in the income  
10 therefrom is affected, disposed of or created.

11 (c) "Qualified perpetual trust" means any trust created by  
12 any written instrument executed on or after January 1, 1998,  
13 including an amendment to an instrument in existence prior to  
14 that date and the exercise of a power of appointment granted by  
15 an instrument executed or amended on or after that date:

16 (1) to which, by the specific terms governing the  
17 trust, the rule against perpetuities does not apply; and

18 (2) the power of the trustee (or other person to whom  
19 the power is properly granted or delegated) to sell  
20 property of which is not limited by the trust instrument or  
21 any provision of law for any period of time beyond the  
22 period of the rule against perpetuities.

23 Section 1404. Application of rule against perpetuities.

24 (a) The rule against perpetuities does not apply:

1           (1) to any disposition of property or interest therein  
2           that, at the effective date of this Code, does not violate,  
3           or is exempted by statute from the operation of, the common  
4           law rule against perpetuities;

5           (2) to powers of a trustee to sell, lease or mortgage  
6           property or to powers that relate to the administration or  
7           management of trust assets, including, without limitation,  
8           discretionary powers of a trustee to determine what  
9           receipts constitute principal and what receipts constitute  
10          income and powers to appoint a successor trustee;

11          (3) to mandatory powers of a trustee to distribute  
12          income, or to discretionary powers of a trustee to  
13          distribute principal prior to termination of a trust, to a  
14          beneficiary having an interest in the principal that is  
15          irrevocably vested in quality and quantity;

16          (4) to discretionary powers of a trustee to allocate  
17          income and principal among beneficiaries, but no exercise  
18          of any such power after the expiration of the period of the  
19          rule against perpetuities is valid;

20          (5) to leases to commence in the future or upon the  
21          happening of a future event, but no such lease is valid  
22          unless the term of the lease actually commences in  
23          possession within 40 years from the date of execution of  
24          the lease;

25          (6) to commitments (A) by a lessor to enter into a  
26          lease with a subtenant or with the holder of a leasehold

1 mortgage or (B) by a lessee or sublessee to enter into a  
2 lease with the holder of a mortgage;

3 (7) to options in gross or to preemptive rights in the  
4 nature of a right of first refusal, but no option in gross  
5 shall be valid for more than 40 years from the date of its  
6 creation; or

7 (8) to qualified perpetual trusts as defined in Section  
8 1403.

9 (b) The period of the rule against perpetuities shall not  
10 commence to run in connection with any disposition of property  
11 or interest therein, and no instrument shall be regarded as  
12 becoming effective for purposes of the rule against  
13 perpetuities, and no interest or power shall be deemed to be  
14 created for purposes of the rule against perpetuities as long  
15 as, by the terms of the instrument, the maker of the instrument  
16 has the power to revoke the instrument or to transfer or direct  
17 to be transferred to himself the entire legal and equitable  
18 ownership of the property or interest therein.

19 (c) In determining whether an interest violates the rule  
20 against perpetuities:

21 (1) it is presumed:

22 (A) that the interest was intended to be valid;

23 (B) in the case of an interest conditioned upon the  
24 probate of a will, the appointment of an executor,  
25 administrator or trustee, the completion of the  
26 administration of an estate, the payment of debts, the

1 sale or distribution of property, the determination of  
2 federal or state tax liabilities or the happening of  
3 any administrative contingency, that the contingency  
4 must occur, if at all, within the period of the rule  
5 against perpetuities; and

6 (C) if the instrument creates an interest in the  
7 "widow", "widower", or "spouse" of another person,  
8 that the maker of the instrument intended to refer to a  
9 person who was living at the date that the period of  
10 the rule against perpetuities commences to run;

11 (2) if any interest, but for this subsection, would be  
12 invalid because it is made to depend upon any person  
13 attaining or failing to attain an age in excess of 21  
14 years, the age specified shall be reduced to 21 years as to  
15 every person to whom the age contingency applies;

16 (3) notwithstanding the provisions of paragraphs (1)  
17 and (2) of this subsection (c), if the validity of any  
18 interest depends upon the possibility of the birth or  
19 adoption of a child, the following apply:

20 (A) no person shall be deemed capable of having a  
21 child until he has attained the age of 13 years;

22 (B) any person who has attained the age of 65 years  
23 shall be deemed incapable of having a child;

24 (C) evidence is admissible as to the incapacity of  
25 having a child by a living person who has not attained  
26 the age of 65 years; and

1 (D) the possibility of having a child or more  
2 remote descendant by adoption shall be disregarded.

3 (d) Paragraphs (2), (3), and (6) of subsection (a) and  
4 subsection (b) of this Section are declaratory of existing law.

5 Section 1405. Trusts.

6 (a) Subject to the provisions of subsections (e) and (f) of  
7 this Section, a trust containing any limitation that, but for  
8 this subsection, would violate the rule against perpetuities as  
9 modified by Section 1404 shall terminate at the expiration of a  
10 period of:

11 (1) 21 years after the death of the last to die of all  
12 of the beneficiaries of the instrument who were living at  
13 the date when the period of the rule against perpetuities  
14 commenced to run; or

15 (2) 21 years after that date if no beneficiary of the  
16 instrument was then living, unless events occur that cause  
17 an earlier termination in accordance with the terms of the  
18 instrument and then the principal shall be distributed as  
19 provided by the instrument.

20 (b) Subject to the provisions of subsections (c), (d) and  
21 (e) of this Section, when a trust terminates because of the  
22 application of subsection (a) of this Section, the trustee  
23 shall distribute the principal to those persons who would be  
24 the heirs at law of the maker of the instrument if he or she  
25 died at the expiration of the period specified in subsection

1 (a) of this Section and in the proportions then specified by  
2 statute, unless the trust was created by the exercise of a  
3 power of appointment and then the principal shall be  
4 distributed to the person who would have received it if the  
5 power had not been exercised.

6 (c) Before any distribution of principal is made pursuant  
7 to subsection (b) of this Section, the trustee shall  
8 distribute, out of principal, to each living beneficiary who,  
9 but for termination of the trust because of the application of  
10 subsection (a) of this Section, would have been entitled to be  
11 paid income after the expiration of the period specified in  
12 subsection (a) of this Section, an amount equal to the present  
13 value (determined as provided in subsection (d) of this Section  
14 of the income that the beneficiary would have been entitled to  
15 be paid after the expiration of that period.

16 (d) In determining the present value of income for purposes  
17 of any distribution to a beneficiary pursuant to subsection (c)  
18 of this Section:

19 (1) when income payments would have been subject in  
20 whole or in part to any discretionary power, it shall be  
21 assumed:

22 (A) that the income that would have been paid to an  
23 individual income beneficiary would have been the  
24 maximum amount of income that could have been paid to  
25 him or her in the exercise of the power;

26 (B) if the income would or might have been payable



1 to more than one beneficiary, that (except as  
2 hereinafter provided) each beneficiary would have  
3 received an equal share of the income, unless the  
4 instrument specifies less than an equal share as the  
5 maximum amount or proportion of income that would have  
6 been paid to any beneficiary in the exercise of the  
7 power, in which event the maximum specified shall  
8 control; and

9 (C) if the income would or might have been payable  
10 to the descendants of the maker of the instrument or of  
11 another person, that, unless the instrument provides  
12 otherwise, the descendants would have received the  
13 income per stirpes;

14 (2) (A) present value shall be computed on an actuarial  
15 basis and there shall be assumed a return of 5%, at simple  
16 interest, on the value of the principal from which the  
17 beneficiary would have been entitled to receive income; and

18 (B) if the interest in income was to be for the life of  
19 the beneficiary or for the life of another, the computation  
20 shall be made on the expectancy set forth in the most  
21 recently published American Experience Tables of Mortality  
22 and no other evidence of duration or expectancy shall be  
23 considered;

24 (3) if the trustee cannot determine the present value  
25 of any income interest in accordance with the provisions of  
26 the instrument and the foregoing rules concerning income

1           payments, the present value of the interest shall be deemed  
2           to be zero.

3           (e) This Section applies only when a trust would violate  
4           the rule against perpetuities as modified by Section 1404 and  
5           does not apply to any trust that would have been valid apart  
6           from this Article.

7           (f) This Section does not apply when a trust violates the  
8           rule against perpetuities because the trust estate may not vest  
9           in the trustee within the period of the rule.

10           Section 1406. Applicability. Sections 1401 through 1405  
11           apply only to instruments, including instruments that exercise  
12           a power of appointment, that become effective after September  
13           22, 1969.

14           Section 1407. Vesting of any limitation of property.

15           (a) This Section may be referred to as the Perpetuities  
16           Vesting Law.

17           (b) The vesting of any limitation of property, whether  
18           created in the exercise of a power of appointment or in any  
19           other manner, shall not be regarded as deferred for purposes of  
20           the rule against perpetuities merely because the limitation is  
21           made to the estate of a person or to a personal representative,  
22           or to a trustee under a will, or to take effect on the probate  
23           of a will.

24           (c) This Section applies only to limitations created after

1 July 1, 1952.

2 Article 15. Miscellaneous provisions.

3 Section 1501. Uniformity of application and construction.  
4 In applying and construing this Code, consideration must be  
5 given to the need to promote uniformity of the law with respect  
6 to its subject matter among states that enact comparable  
7 provisions of the Uniform Trust Code.

8 Section 1502. Severability. If any provision of this Code  
9 or its application to any person or circumstances is held  
10 invalid, the invalidity does not affect other provisions or  
11 applications of this Code which can be given effect without the  
12 invalid provision or application, and to this end the  
13 provisions of this Code are severable.

14 Section 1503. (Reserved).

15 Section 1504. (See Section 9999 for effective date.)

16 (755 ILCS 5/4-2 rep.)

17 Section 1505. The Probate Act of 1975 is amended by  
18 repealing Section 4-2.

19 (760 ILCS 5/Act rep.)

1 Section 1505.1. The Trusts and Trustees Act is repealed.

2 (760 ILCS 35/Act rep.)

3 Section 1505.2. The Trusts and Dissolutions of Marriage Act  
4 is repealed.

5 (765 ILCS 305/Act rep.)

6 Section 1505.3. The Statute Concerning Perpetuities is  
7 repealed.

8 (765 ILCS 310/Act rep.)

9 Section 1505.4. The Perpetuities Vesting Act is repealed.

10 (765 ILCS 315/Act rep.)

11 Section 1505.5. The Trust Accumulation Act is repealed.

12 (765 ILCS 320/Act rep.)

13 Section 1505.6. The Power of Appointment Exercise Act is  
14 repealed.

15 (765 ILCS 325/Act rep.)

16 Section 1505.7. The Termination of Powers Act is repealed.

17 Section 1506. Application to existing relationships.  
18 Except as otherwise provided in this Code, on the effective  
19 date of this Code:

1           (1) This Code applies to all trusts created before, on,  
2 or after its effective date.

3           (2) This Code applies to all judicial proceedings  
4 concerning trusts commenced on or after its effective date.  
5 As used in this Section, "judicial proceedings" includes  
6 any proceeding before a court or administrative tribunal of  
7 this State and any arbitration or mediation proceedings.

8           (3) this Code applies to all nonjudicial matters  
9 concerning trusts commenced before, on, or after its  
10 effective date. As used in this Section, "nonjudicial  
11 matters" includes, but is not limited to, nonjudicial  
12 settlement agreements entered into under Section 111 and  
13 the grant of any consent, release, ratification, or  
14 indemnification.

15           (4) This Code applies to judicial proceedings  
16 concerning trusts commenced before its effective date  
17 unless the court finds that application of a particular  
18 provision of this Code would substantially interfere with  
19 the effective conduct of the judicial proceedings or  
20 prejudice the rights of the parties, in which case the  
21 particular provision of this Code does not apply and the  
22 superseded law applies.

23           (5) Any rule of construction or presumption provided in  
24 this Code applies to trust instruments executed before the  
25 effective date of this Code unless there is a clear  
26 indication of a contrary intent in the trust instrument.

1           (6) An act done before the effective date of this Code  
2 is not affected by this Code.

3           (7) If a right is acquired, extinguished, or barred  
4 upon the expiration of a prescribed period that has  
5 commenced to run under any other statute before the  
6 effective date of this Code, that statute continues to  
7 apply to the right even if it has been repealed or  
8 superseded.

9           (8) This Code shall be construed as pertaining to  
10 administration of a trust and applies to any trust that is  
11 administered in Illinois under Illinois law or that is  
12 governed by Illinois law with respect to the meaning and  
13 effect of its terms, except to the extent the trust  
14 instrument expressly prohibits use of this Code by specific  
15 reference to this Code.

16                           Article 16. Amendatory provisions.

17           Section 1601. The Public Use Trust Act is amended by  
18 changing Section 2 as follows:

19                   (30 ILCS 160/2) (from Ch. 127, par. 4002)

20           Sec. 2. (a) The Department of Agriculture, the Department  
21 of Natural Resources, and the Historic Preservation Agency have  
22 the power to enter into a trust agreement with a person or  
23 group of persons under which the State agency may receive or

1 collect money or other property from the person or group of  
2 persons and may expend such money or property solely for a  
3 public purpose within the powers and duties of that State  
4 agency and stated in the trust agreement. The State agency  
5 shall be the trustee under any such trust agreement.

6 (b) Money or property received under a trust agreement  
7 shall not be deposited in the State treasury and is not subject  
8 to appropriation by the General Assembly, but shall be held and  
9 invested by the trustee separate and apart from the State  
10 treasury. The trustee shall invest money or property received  
11 under a trust agreement as provided for trustees under the  
12 Illinois Trust Code ~~Trusts and Trustees Act~~ or as otherwise  
13 provided in the trust agreement.

14 (c) The trustee shall maintain detailed records of all  
15 receipts and disbursements in the same manner as required for  
16 trustees under the Illinois Trust Code ~~Trusts and Trustees Act~~.  
17 The trustee shall provide an annual accounting of all receipts,  
18 disbursements, and inventory to all donors to the trust and the  
19 Auditor General. The annual accounting shall be made available  
20 to any member of the public upon request.

21 (Source: P.A. 89-445, eff. 2-7-96.)

22 Section 1602. The Township Code is amended by changing  
23 Section 135-20 as follows:

24 (60 ILCS 1/135-20)

1           Sec. 135-20. Powers of board of managers. The board of  
2 managers shall control and manage the cemeteries jointly  
3 acquired by the townships or road districts. The board of  
4 managers may receive in trust from the proprietors or owners of  
5 any lot in the cemeteries, or any person, corporation,  
6 association, or society interested in the maintenance of those  
7 cemeteries, any gift or legacy of money or real, personal, or  
8 mixed property that is donated or bequeathed to the board of  
9 managers for the use and maintenance of the lot or cemeteries.  
10 The board of managers may convert the property into money, may  
11 invest the money in securities in which trust funds may be  
12 invested under the Illinois Trust Code ~~Trusts and Trustees Act~~,  
13 and may apply the income perpetually for the care of the lot or  
14 the care and maintenance of the cemeteries as specified in the  
15 gift or legacy or as provided by the board of managers if the  
16 gift or legacy does not specify the manner in which the income  
17 is to be expended.

18           (Source: P.A. 83-1362; 88-62.)

19           Section 1603. The Corporate Fiduciary Act is amended by  
20 changing Sections 1-6, 6-10, and 9-5 as follows:

21           (205 ILCS 620/1-6) (from Ch. 17, par. 1551-6)

22           Sec. 1-6. General Corporate Powers. A corporate fiduciary  
23 shall have the powers:

24           (a) if it is a State bank, those powers granted under



1 Sections 3 and 5 of the Illinois Banking Act; and

2 (b) if it is a State savings and loan association,  
3 those powers granted under Sections 1-6 through 1-8 of the  
4 Illinois Savings and Loan Act of 1985; and

5 (c) if it is a State savings bank, those powers granted  
6 under the Savings Bank Act; and

7 (d) if it is a corporation organized under the Business  
8 Corporation Act of 1983, as now or hereafter amended, or a  
9 limited liability company organized under the Limited  
10 Liability Company Act, those powers granted in Article 8  
11 ~~Sections 4.01 through 4.24~~ of the Illinois Trust Code  
12 ~~Trusts and Trustees Act~~, as now or hereafter amended, to  
13 the extent the exercise of such powers by the corporate  
14 fiduciary are not contrary to the instrument containing the  
15 appointment of the corporate fiduciary, the court order  
16 appointing the corporate fiduciary or any other statute  
17 specifically limiting the power of the corporate fiduciary  
18 under the circumstances; and

19 (e) subject to Article XLIV of the Illinois Insurance  
20 Code, to act as the agent for any fire, life, or other  
21 insurance company authorized by the State of Illinois, by  
22 soliciting and selling insurance and collecting premiums  
23 on policies issued by such company; and may receive for  
24 services so rendered such fees or commissions as may be  
25 agreed upon between the said corporate fiduciary and the  
26 insurance company for which it may act as agent; provided,

1           however, that no such corporate fiduciary shall in any case  
2           assume or guarantee the payment of any premium on insurance  
3           policies issued through its agency by its principal; and  
4           provided further, that the corporate fiduciary shall not  
5           guarantee the truth of any statement made by an assured in  
6           filing his application for insurance.

7           The Commissioner may specify powers of corporate  
8           fiduciaries generally or of a particular corporate fiduciary  
9           and by rule or order limit or restrict such powers of corporate  
10          fiduciaries or a particular corporate fiduciary if he finds the  
11          exercise of such power by corporate fiduciaries generally or of  
12          the corporate fiduciary in particular may tend to be an unsafe  
13          or unsound practice, or if such power is otherwise not in the  
14          interest of beneficiaries of any fiduciary appointment.

15          (Source: P.A. 90-41, eff. 10-1-97; 90-424, eff. 1-1-98; 90-655,  
16          eff. 7-30-98; 91-97, eff. 7-9-99.)

17                 (205 ILCS 620/6-10) (from Ch. 17, par. 1556-10)

18          Sec. 6-10. The receiver for a corporate fiduciary, under  
19          the direction of the Commissioner, shall have the power and  
20          authority and is charged with the duties and responsibilities  
21          as follows:

22                 (1) To take possession of, and for the purpose of the  
23          receivership, the title to the books, records and assets of  
24          every description of the corporate fiduciary.

25                 (2) To proceed to collect all debts, dues and claims

1 belonging to the corporate fiduciary.

2 (3) To file with the Commissioner a copy of each report  
3 which he makes to the court, together with such other reports  
4 and records as the Commissioner may require.

5 (4) The receiver shall have authority to sue and defend in  
6 the receiver's own name and with respect to the affairs,  
7 assets, claims, debts and chooses in action of the corporate  
8 fiduciary.

9 (5) The receiver shall have authority, and it shall be the  
10 receiver's duty, to surrender to the customers of such  
11 corporate fiduciary, when requested in writing directed to the  
12 receiver by such customers, the assets, private papers and  
13 valuables left with the corporate fiduciary for safekeeping,  
14 under a custodial or agency agreement, upon satisfactory proof  
15 of ownership.

16 (6) As soon as can reasonably be done, the receiver shall  
17 resign on behalf of the corporate fiduciary, all trusteeships,  
18 guardianships, and all appointments as executor and  
19 administrator, or as custodian under the Illinois Uniform  
20 Transfers to Minors Act, as now or hereafter amended, or as  
21 fiduciary under custodial or agency agreements or under the  
22 terms of any other written agreement or court order whereunder  
23 the corporate fiduciary is holding property in a fiduciary  
24 capacity for the benefit of another person, making in each  
25 case, from the records and documents available to the receiver,  
26 a proper accounting, in the manner and scope as determined by

1 the Commissioner to be practical and advisable under the  
2 circumstances, on behalf of the corporate fiduciary. The  
3 receiver, prior to resigning, shall cause a successor trustee  
4 or fiduciary to be appointed pursuant to the terms set forth in  
5 the governing instrument or pursuant to the provisions of the  
6 Illinois Trust Code ~~Trusts and Trustees Act~~, as now or  
7 hereafter amended, if applicable, then the receiver shall make  
8 application to the court having jurisdiction over the  
9 liquidation or winding up of the corporate fiduciary, for the  
10 appointment of a successor. The receiver, if a corporate  
11 fiduciary, shall not be disqualified from acting as successor  
12 trustee or fiduciary if appointed under the terms of the  
13 governing instrument, by court order or by the customer of the  
14 corporate fiduciary whose affairs are being liquidated or wound  
15 up and, in such case, no guardian ad litem need be appointed to  
16 review the accounting of the receiver unless the beneficiaries  
17 or customers of the corporate fiduciary so request in writing.

18 (7) The receiver shall have authority to redeem or take  
19 down collateral hypothecated by the corporate fiduciary to  
20 secure its notes and other evidence of indebtedness whenever  
21 the Commissioner deems it to be in the best interest of the  
22 creditors of the corporate fiduciary and directs the receiver  
23 so to do.

24 (8) Whenever the receiver shall find it necessary in the  
25 receiver's opinion to use and employ money of the corporate  
26 fiduciary, in order to protect fully and benefit the corporate

1 fiduciary, by the purchase or redemption of any property, real  
2 or personal, in which the corporate fiduciary may have any  
3 rights by reason of any bond, mortgage, assignment, or other  
4 claim thereto, the receiver may certify the facts together with  
5 the receiver's opinions as to the value of the property  
6 involved, and the value of the equity the corporate fiduciary  
7 may have in the property to the Commissioner, together with a  
8 request for the right and authority to use and employ so much  
9 of the money of the corporate fiduciary as may be necessary to  
10 purchase the property, or to redeem the same from a sale if  
11 there was a sale, and if such request is granted, the receiver  
12 may use so much of the money of the corporate fiduciary as the  
13 Commissioner may have authorized to purchase said property at  
14 such sale.

15 (9) The receiver shall deposit daily all monies collected  
16 by the receiver in any State or national bank selected by the  
17 Commissioner, who may require (and the bank so selected may  
18 furnish) of such depository satisfactory securities or  
19 satisfactory surety bond for the safekeeping and prompt payment  
20 of the money so deposited. The deposits shall be made in the  
21 name of the Commissioner in trust for the receiver and be  
22 subject to withdrawal upon the receiver's order or upon the  
23 order of such persons as the Commissioner may designate. Such  
24 monies may be deposited without interest, unless otherwise  
25 agreed. However, if any interest was paid by such depository,  
26 it shall accrue to the benefit of the particular trust or

1 fiduciary account to which the deposit belongs. Except as  
2 otherwise directed by the Commissioner, notwithstanding any  
3 other provision of this paragraph, the receiver's investment  
4 and other powers shall be those under the governing instrument  
5 or under the Illinois Trust Code ~~Trusts and Trustees Act, as~~  
6 ~~now or hereafter amended~~, and shall include the power to pay  
7 out income and principal in accordance with the terms of the  
8 governing instrument.

9 (10) The receiver shall do such things and take such steps  
10 from time to time under the direction and approval of the  
11 Commissioner as may reasonably appear to be necessary to  
12 conserve the corporate fiduciary's assets and secure the best  
13 interests of the creditors of the corporate fiduciary.

14 (11) The receiver shall record any judgment of dissolution  
15 entered in a dissolution proceeding and thereupon turn over to  
16 the Commissioner a certified copy thereof, together with all  
17 books of accounts and ledgers of such corporate fiduciary for  
18 preservation, as distinguished from the books of accounts and  
19 ledgers of the corporate fiduciary relating to the assets of  
20 the beneficiaries of such fiduciary relations, all of which  
21 books of accounts and ledgers shall be turned over by the  
22 receiver to the successor trustee or fiduciary.

23 (12) The receiver may cause all assets of the beneficiaries  
24 of such fiduciary relations to be registered in the name of the  
25 receiver or in the name of the receiver's nominee.

26 (13) The receiver shall have a reasonable period of time in

1 which to review all of the trust accounts, executorships,  
2 administrationships, guardianships, or other fiduciary  
3 relationships, in order to ascertain that the investments by  
4 the corporate fiduciary of the assets of such trust accounts,  
5 executorships, administrationships, guardianships or other  
6 fiduciary relationships comply with the terms of the governing  
7 instrument, the prudent person rule governing the investment of  
8 such funds, or any other law regulating the investment of such  
9 funds.

10 (14) For its services in administering the trusts and other  
11 fiduciary accounts of the corporate fiduciary during the period  
12 of winding up the affairs of the corporate fiduciary, the  
13 receiver shall be entitled to be reimbursed for all costs and  
14 expenses incurred by the receiver and shall also be entitled to  
15 receive out of the assets of the individual fiduciary accounts  
16 being administered by the receiver during the period of winding  
17 up the affairs of the corporate fiduciary and prior to the  
18 appointment of a successor trustee or fiduciary, the usual and  
19 customary fees charged by the receiver in the administration of  
20 its own fiduciary accounts or reasonable fees approved by the  
21 Commissioner.

22 (15) The receiver, during its administration of the trusts  
23 and other fiduciary accounts of the corporate fiduciary during  
24 the winding up of the affairs of the corporate fiduciary, shall  
25 have all of the powers which are vested in trustees under the  
26 terms and provisions of the Illinois Trust Code ~~Trusts and~~

1 ~~Trustees Act, as now or hereafter amended.~~

2 (16) Upon the appointment of a successor trustee or  
3 fiduciary, the receiver shall deliver to such successor trustee  
4 or fiduciary all of the assets belonging to the individual  
5 trust or fiduciary account as to which the successor trustee or  
6 fiduciary succeeds, and the receiver shall thereupon be  
7 relieved of any further duties or obligations with respect  
8 thereto.

9 (Source: P.A. 90-655, eff. 7-30-98.)

10 (205 ILCS 620/9-5) (from Ch. 17, par. 1559-5)

11 Sec. 9-5. Applicability of other Acts by reference.  
12 Corporate fiduciaries subject to the provisions of this Act  
13 shall continue to be subject to the provisions of other Acts  
14 which govern actions of trustees including, but not limited to:

15 (a) "An Act to provide for the appointment of successor  
16 trustees in land trust agreements", approved August 13, 1965,  
17 as amended.

18 (b) "An Act to require disclosure, under certification of  
19 perjury, of all beneficial interests in real property held in a  
20 land trust, in certain cases", approved September 21, 1973, as  
21 amended.

22 (c) "An Act in relation to land trusts and the power and  
23 authority of trustees of land trusts to deal with trust  
24 property", approved August 6, 1982, as amended.

25 (d) "An Act concerning the powers of corporations



1 authorized to accept and execute trusts, to register and hold  
2 securities of fiduciary accounts in bulk and to deposit same  
3 with a depository", approved September 1, 1972, as amended.

4 (e) the "Common Trust Fund Act", approved July 29, 1943, as  
5 amended.

6 (f) the Illinois Trust Code ~~"Trusts and Trustees Act",~~  
7 ~~approved September 10, 1973, as amended.~~

8 (g) "An Act concerning liability for participation in  
9 breaches of fiduciary obligations", approved July 7, 1931, as  
10 amended.

11 (Source: P.A. 85-858.)

12 Section 1604. The Community-Integrated Living Arrangements  
13 Licensure and Certification Act is amended by changing Section  
14 3 as follows:

15 (210 ILCS 135/3) (from Ch. 91 1/2, par. 1703)

16 Sec. 3. As used in this Act, unless the context requires  
17 otherwise:

18 (a) "Applicant" means a person, group of persons,  
19 association, partnership or corporation that applies for a  
20 license as a community mental health or developmental services  
21 agency under this Act.

22 (b) "Community mental health or developmental services  
23 agency" or "agency" means a public or private agency,  
24 association, partnership, corporation or organization which,

1 pursuant to this Act, certifies community-integrated living  
2 arrangements for persons with mental illness or persons with a  
3 developmental disability.

4 (c) "Department" means the Department of Human Services (as  
5 successor to the Department of Mental Health and Developmental  
6 Disabilities).

7 (d) "Community-integrated living arrangement" means a  
8 living arrangement certified by a community mental health or  
9 developmental services agency under this Act where 8 or fewer  
10 recipients with mental illness or recipients with a  
11 developmental disability who reside under the supervision of  
12 the agency. Examples of community integrated living  
13 arrangements include but are not limited to the following:

14 (1) "Adult foster care", a living arrangement for  
15 recipients in residences of families unrelated to them, for  
16 the purpose of providing family care for the recipients on  
17 a full-time basis;

18 (2) "Assisted residential care", an independent living  
19 arrangement where recipients are intermittently supervised  
20 by off-site staff;

21 (3) "Crisis residential care", a non-medical living  
22 arrangement where recipients in need of non-medical,  
23 crisis services are supervised by on-site staff 24 hours a  
24 day;

25 (4) "Home individual programs", living arrangements  
26 for 2 unrelated adults outside the family home;

1           (5) "Supported residential care", a living arrangement  
2 where recipients are supervised by on-site staff and such  
3 supervision is provided less than 24 hours a day;

4           (6) "Community residential alternatives", as defined  
5 in the Community Residential Alternatives Licensing Act;  
6 and

7           (7) "Special needs trust-supported residential care",  
8 a living arrangement where recipients are supervised by  
9 on-site staff and that supervision is provided 24 hours per  
10 day or less, as dictated by the needs of the recipients,  
11 and determined by service providers. As used in this item

12           (7), "special needs trust" means a trust for the benefit of  
13 a beneficiary with a disability as described in Section  
14 1213 15.1 of the Illinois Trust Code ~~Trusts and Trustees~~  
15 ~~Act~~.

16           (e) "Recipient" means a person who has received, is  
17 receiving, or is in need of treatment or habilitation as those  
18 terms are defined in the Mental Health and Developmental  
19 Disabilities Code.

20           (f) "Unrelated" means that persons residing together in  
21 programs or placements certified by a community mental health  
22 or developmental services agency under this Act do not have any  
23 of the following relationships by blood, marriage or adoption:  
24 parent, son, daughter, brother, sister, grandparent, uncle,  
25 aunt, nephew, niece, great grandparent, great uncle, great  
26 aunt, stepbrother, stepsister, stepson, stepdaughter,

1 stepparent or first cousin.

2 (Source: P.A. 99-143, eff. 7-27-15.)

3 Section 1605. The Title Insurance Act is amended by  
4 changing Section 21.1 as follows:

5 (215 ILCS 155/21.1)

6 Sec. 21.1. Receiver and involuntary liquidation.

7 (a) The Secretary's proceedings under this Section shall be  
8 the exclusive remedy and the only proceedings commenced in any  
9 court for the dissolution of, the winding up of the affairs of,  
10 or the appointment of a receiver for a title insurance company.

11 (b) If the Secretary, with respect to a title insurance  
12 company, finds that (i) its capital is impaired or it is  
13 otherwise in an unsound condition, (ii) its business is being  
14 conducted in an unlawful, fraudulent, or unsafe manner, (iii)  
15 it is unable to continue operations, or (iv) its examination  
16 has been obstructed or impeded, the Secretary may give notice  
17 to the board of directors of the title insurance company of his  
18 or her finding or findings. If the Secretary's findings are not  
19 corrected to his or her satisfaction within 60 days after the  
20 company receives the notice, the Secretary shall take  
21 possession and control of the title insurance company, its  
22 assets, and assets held by it for any person for the purpose of  
23 examination, reorganization, or liquidation through  
24 receivership.

1           If, in addition to making a finding as provided in this  
2 subsection (b), the Secretary is of the opinion and finds that  
3 an emergency that may result in serious losses to any person  
4 exists, the Secretary may, in his or her discretion, without  
5 having given the notice provided for in this subsection, and  
6 whether or not proceedings under subsection (a) of this Section  
7 have been instituted or are then pending, take possession and  
8 control of the title insurance company and its assets for the  
9 purpose of examination, reorganization, or liquidation through  
10 receivership.

11           (c) The Secretary may take possession and control of a  
12 title insurance company, its assets, and assets held by it for  
13 any person by posting upon the premises of each office located  
14 in the State of Illinois at which it transacts its business as  
15 a title insurance company a notice reciting that the Secretary  
16 is assuming possession pursuant to this Act and the time when  
17 the possession shall be deemed to commence.

18           (d) Promptly after taking possession and control of a title  
19 insurance company the Secretary, represented by the Attorney  
20 General, shall file a copy of the notice posted upon the  
21 premises in the Circuit Court of either Cook County or Sangamon  
22 County, which cause shall be entered as a court action upon the  
23 dockets of the court under the name and style of "In the matter  
24 of the possession and control by the Secretary of the  
25 Department of Financial and Professional Regulation of (insert  
26 the name of the title insurance company)". If the Secretary

1 determines (which determination may be made at the time of, or  
2 at any time subsequent to, taking possession and control of a  
3 title insurance company) that no practical possibility exists  
4 to reorganize the title insurance company after reasonable  
5 efforts have been made, the Secretary, represented by the  
6 Attorney General, shall also file a complaint, if it has not  
7 already been done, for the appointment of a receiver or other  
8 proceeding as is appropriate under the circumstances. The court  
9 where the cause is docketed shall be vested with the exclusive  
10 jurisdiction to hear and determine all issues and matters  
11 pertaining to or connected with the Secretary's possession and  
12 control of the title insurance company as provided in this Act,  
13 and any further issues and matters pertaining to or connected  
14 with the Secretary's possession and control as may be submitted  
15 to the court for its adjudication.

16 The Secretary, upon taking possession and control of a  
17 title insurance company, may, and if not previously done shall,  
18 immediately upon filing a complaint for dissolution make an  
19 examination of the affairs of the title insurance company or  
20 appoint a suitable person to make the examination as the  
21 Secretary's agent. The examination shall be conducted in  
22 accordance with and pursuant to the authority granted under  
23 Section 12 of this Act. The person conducting the examination  
24 shall have and may exercise on behalf of the Secretary all of  
25 the powers and authority granted to the Secretary under Section  
26 12. A copy of the report shall be filed in any dissolution

1 proceeding filed by the Secretary. The reasonable fees and  
2 necessary expenses of the examining person, as approved by the  
3 Secretary or as recommended by the Secretary and approved by  
4 the court if a dissolution proceeding has been filed, shall be  
5 borne by the subject title insurance company and shall have the  
6 same priority for payment as the reasonable and necessary  
7 expenses of the Secretary in conducting an examination. The  
8 person appointed to make the examination shall make a proper  
9 accounting, in the manner and scope as determined by the  
10 Secretary to be practical and advisable under the  
11 circumstances, on behalf of the title insurance company and no  
12 guardian ad litem need be appointed to review the accounting.

13 (e) The Secretary, upon taking possession and control of a  
14 title insurance company and its assets, shall be vested with  
15 the full powers of management and control including, but not  
16 limited to, the following:

17 (1) the power to continue or to discontinue the  
18 business;

19 (2) the power to stop or to limit the payment of its  
20 obligations;

21 (3) the power to collect and to use its assets and to  
22 give valid receipts and acquittances therefor;

23 (4) the power to transfer title and liquidate any bond  
24 or deposit made under Section 4 of this Act;

25 (5) the power to employ and to pay any necessary  
26 assistants;

1           (6) the power to execute any instrument in the name of  
2 the title insurance company;

3           (7) the power to commence, defend, and conduct in the  
4 title insurance company's name any action or proceeding in  
5 which it may be a party;

6           (8) the power, upon the order of the court, to sell and  
7 convey the title insurance company's assets, in whole or in  
8 part, and to sell or compound bad or doubtful debts upon  
9 such terms and conditions as may be fixed in that order;

10          (9) the power, upon the order of the court, to make and  
11 to carry out agreements with other title insurance  
12 companies, financial institutions, or with the United  
13 States or any agency of the United States for the payment  
14 or assumption of the title insurance company's  
15 liabilities, in whole or in part, and to transfer assets  
16 and to make guaranties, in whole or in part, in connection  
17 therewith;

18          (10) the power, upon the order of the court, to borrow  
19 money in the name of the title insurance company and to  
20 pledge its assets as security for the loan;

21          (11) the power to terminate his or her possession and  
22 control by restoring the title insurance company to its  
23 board of directors;

24          (12) the power to appoint a receiver which may be the  
25 Secretary of the Department of Financial and Professional  
26 Regulation, another title insurance company, or another



1           suitable person and to order liquidation of the title  
2           insurance company as provided in this Act; and

3           (13) the power, upon the order of the court and without  
4           the appointment of a receiver, to determine that the title  
5           insurance company has been closed for the purpose of  
6           liquidation without adequate provision being made for  
7           payment of its obligations, and thereupon the title  
8           insurance company shall be deemed to have been closed on  
9           account of inability to meet its obligations to its  
10          insureds or escrow depositors.

11          (f) Upon taking possession, the Secretary shall make an  
12          examination of the condition of the title insurance company, an  
13          inventory of the assets and, unless the time shall be extended  
14          by order of the court or unless the Secretary shall have  
15          otherwise settled the affairs of the title insurance company  
16          pursuant to the provisions of this Act, within 90 days after  
17          the time of taking possession and control of the title  
18          insurance company, the Secretary shall either terminate his or  
19          her possession and control by restoring the title insurance  
20          company to its board of directors or appoint a receiver, which  
21          may be the Secretary of the Department of Financial and  
22          Professional Regulation, another title insurance company, or  
23          another suitable person and order the liquidation of the title  
24          insurance company as provided in this Act. All necessary and  
25          reasonable expenses of the Secretary's possession and control  
26          shall be a priority claim and shall be borne by the title

1 insurance company and may be paid by the Secretary from the  
2 title insurance company's own assets as distinguished from  
3 assets held for any other person.

4 (g) If the Secretary takes possession and control of a  
5 title insurance company and its assets, any period of  
6 limitation fixed by a statute or agreement that would otherwise  
7 expire on a claim or right of action of the title insurance  
8 company, on its own behalf or on behalf of its insureds or  
9 escrow depositors, or upon which an appeal must be taken or a  
10 pleading or other document filed by the title insurance company  
11 in any pending action or proceeding, shall be tolled until 6  
12 months after the commencement of the possession, and no  
13 judgment, lien, levy, attachment, or other similar legal  
14 process may be enforced upon or satisfied, in whole or in part,  
15 from any asset of the title insurance company or from any asset  
16 of an insured or escrow depositor while it is in the possession  
17 of the Secretary.

18 (h) If the Secretary appoints a receiver to take possession  
19 and control of the assets of insureds or escrow depositors for  
20 the purpose of holding those assets as fiduciary for the  
21 benefit of the insureds or escrow depositors pending the  
22 winding up of the affairs of the title insurance company being  
23 liquidated and the appointment of a successor escrowee for  
24 those assets, any period of limitation fixed by statute, rule  
25 of court, or agreement that would otherwise expire on a claim  
26 or right of action in favor of or against the insureds or

1 escrow depositors of those assets or upon which an appeal must  
2 be taken or a pleading or other document filed by a title  
3 insurance company on behalf of an insured or escrow depositor  
4 in any pending action or proceeding shall be tolled for a  
5 period of 6 months after the appointment of a receiver, and no  
6 judgment, lien, levy, attachment, or other similar legal  
7 process shall be enforced upon or satisfied, in whole or in  
8 part, from any asset of the insured or escrow depositor while  
9 it is in the possession of the receiver.

10 (i) If the Secretary determines at any time that no  
11 reasonable possibility exists for the title insurance company  
12 to be operated by its board of directors in accordance with the  
13 provisions of this Act after reasonable efforts have been made  
14 and that it should be liquidated through receivership, he or  
15 she shall appoint a receiver. The Secretary may require of the  
16 receiver such bond and security as the Secretary deems proper.  
17 The Secretary, represented by the Attorney General, shall file  
18 a complaint for the dissolution or winding up of the affairs of  
19 the title insurance company in a court of the county in which  
20 the principal office of the title insurance company is located  
21 and shall cause notice to be given in a newspaper of general  
22 circulation once each week for 4 consecutive weeks so that  
23 persons who may have claims against the title insurance company  
24 may present them to the receiver and make legal proof thereof  
25 and notifying those persons and all to whom it may concern of  
26 the filing of a complaint for the dissolution or winding up of

1 the affairs of the title insurance company and stating the name  
2 and location of the court. All persons who may have claims  
3 against the assets of the title insurance company, as  
4 distinguished from the assets of insureds and escrow depositors  
5 held by the title insurance company, and the receiver to whom  
6 those persons have presented their claims may present the  
7 claims to the clerk of the court, and the allowance or  
8 disallowance of the claims by the court in connection with the  
9 proceedings shall be deemed an adjudication in a court of  
10 competent jurisdiction. Within a reasonable time after  
11 completion of publication, the receiver shall file with the  
12 court a correct list of all creditors of the title insurance  
13 company as shown by its books, who have not presented their  
14 claims and the amount of their respective claims after allowing  
15 adjusted credit, deductions, and set-offs as shown by the books  
16 of the title insurance company. The claims so filed shall be  
17 deemed proven unless objections are filed thereto by a party or  
18 parties interested therein within the time fixed by the court.

19 (j) The receiver for a title insurance company has the  
20 power and authority and is charged with the duties and  
21 responsibilities as follows:

22 (1) To take possession of and, for the purpose of the  
23 receivership, title to the books, records, and assets of  
24 every description of the title insurance company.

25 (2) To proceed to collect all debts, dues, and claims  
26 belonging to the title insurance company.

1           (3) To sell and compound all bad and doubtful debts on  
2 such terms as the court shall direct.

3           (4) To sell the real and personal property of the title  
4 insurance company, as distinguished from the real and  
5 personal property of the insureds or escrow depositors, on  
6 such terms as the court shall direct.

7           (5) To file with the Secretary a copy of each report  
8 that he or she makes to the court, together with such other  
9 reports and records as the Secretary may require.

10          (6) To sue and defend in his or her own name and with  
11 respect to the affairs, assets, claims, debts, and choses  
12 in action of the title insurance company.

13          (7) To surrender to the insureds and escrow depositors  
14 of the title insurance company, when requested in writing  
15 directed to the receiver by them, the escrowed funds (on a  
16 pro rata basis), and escrowed documents in the receiver's  
17 possession upon satisfactory proof of ownership and  
18 determination by the receiver of available escrow funds.

19          (8) To redeem or take down collateral hypothecated by  
20 the title insurance company to secure its notes and other  
21 evidence of indebtedness whenever the court deems it to be  
22 in the best interest of the creditors of the title  
23 insurance company and directs the receiver so to do.

24          (k) Whenever the receiver finds it necessary in his or her  
25 opinion to use and employ money of the title insurance company  
26 in order to protect fully and benefit the title insurance

1 company by the purchase or redemption of property, real or  
2 personal, in which the title insurance company may have any  
3 rights by reason of any bond, mortgage, assignment, or other  
4 claim thereto, the receiver may certify the facts together with  
5 the receiver's opinions as to the value of the property  
6 involved and the value of the equity the title insurance  
7 company may have in the property to the court, together with a  
8 request for the right and authority to use and employ so much  
9 of the money of the title insurance company as may be necessary  
10 to purchase the property, or to redeem the property from a sale  
11 if there was a sale, and if the request is granted, the  
12 receiver may use so much of the money of the title insurance  
13 company as the court may have authorized to purchase the  
14 property at the sale.

15 The receiver shall deposit daily all moneys collected by  
16 him or her in any State or national bank approved by the court.  
17 The deposits shall be made in the name of the Secretary, in  
18 trust for the receiver, and be subject to withdrawal upon the  
19 receiver's order or upon the order of those persons the  
20 Secretary may designate. The moneys may be deposited without  
21 interest, unless otherwise agreed. The receiver shall do the  
22 things and take the steps from time to time under the direction  
23 and approval of the court that may reasonably appear to be  
24 necessary to conserve the title insurance company's assets and  
25 secure the best interests of the creditors, insureds, and  
26 escrow depositors of the title insurance company. The receiver

1 shall record any judgment of dissolution entered in a  
2 dissolution proceeding and thereupon turn over to the Secretary  
3 a certified copy of the judgment.

4 The receiver may cause all assets of the insureds and  
5 escrow depositors of the title insurance company to be  
6 registered in the name of the receiver or in the name of the  
7 receiver's nominee.

8 For its services in administering the escrows held by the  
9 title insurance company during the period of winding up the  
10 affairs of the title insurance company, the receiver is  
11 entitled to be reimbursed for all costs and expenses incurred  
12 by the receiver and shall also be entitled to receive out of  
13 the assets of the individual escrows being administered by the  
14 receiver during the period of winding up the affairs of the  
15 title insurance company and prior to the appointment of a  
16 successor escrowee the usual and customary fees charged by an  
17 escrowee for escrows or reasonable fees approved by the court.

18 The receiver, during its administration of the escrows of  
19 the title insurance company during the winding up of the  
20 affairs of the title insurance company, shall have all of the  
21 powers that are vested in trustees under the terms and  
22 provisions of the Illinois Trust Code ~~Trusts and Trustees Act~~.

23 Upon the appointment of a successor escrowee, the receiver  
24 shall deliver to the successor escrowee all of the assets  
25 belonging to each individual escrow to which the successor  
26 escrowee succeeds, and the receiver shall thereupon be relieved

1 of any further duties or obligations with respect thereto.

2 (1) The receiver shall, upon approval by the court, pay all  
3 claims against the assets of the title insurance company  
4 allowed by the court pursuant to subsection (i) of this  
5 Section, as well as claims against the assets of insureds and  
6 escrow depositors of the title insurance company in accordance  
7 with the following priority:

8 (1) All necessary and reasonable expenses of the  
9 Secretary's possession and control and of its receivership  
10 shall be paid from the assets of the title insurance  
11 company.

12 (2) All usual and customary fees charged for services  
13 in administering escrows shall be paid from the assets of  
14 the individual escrows being administered. If the assets of  
15 the individual escrows being administered are  
16 insufficient, the fees shall be paid from the assets of the  
17 title insurance company.

18 (3) Secured claims, including claims for taxes and  
19 debts due the federal or any state or local government,  
20 that are secured by liens perfected prior to the date of  
21 filing of the complaint for dissolution, shall be paid from  
22 the assets of the title insurance company.

23 (4) Claims by policyholders, beneficiaries, insureds,  
24 and escrow depositors of the title insurance company shall  
25 be paid from the assets of the insureds and escrow  
26 depositors. If there are insufficient assets of the



1 insureds and escrow depositors, claims shall be paid from  
2 the assets of the title insurance company.

3 (5) Any other claims due the federal government shall  
4 be paid from the assets of the title insurance company.

5 (6) Claims for wages or salaries, excluding vacation,  
6 severance, and sick leave pay earned by employees for  
7 services rendered within 90 days prior to the date of  
8 filing of the complaint for dissolution, shall be paid from  
9 the assets of the title insurance company.

10 (7) All other claims of general creditors not falling  
11 within any priority under this subsection (1) including  
12 claims for taxes and debts due any state or local  
13 government which are not secured claims and claims for  
14 attorney's fees incurred by the title insurance company in  
15 contesting the dissolution shall be paid from the assets of  
16 the title insurance company.

17 (8) Proprietary claims asserted by an owner, member, or  
18 stockholder of the title insurance company in receivership  
19 shall be paid from the assets of the title insurance  
20 company.

21 The receiver shall pay all claims of equal priority  
22 according to the schedule set out in this subsection, and shall  
23 not pay claims of lower priority until all higher priority  
24 claims are satisfied. If insufficient assets are available to  
25 meet all claims of equal priority, those assets shall be  
26 distributed pro rata among those claims. All unclaimed assets

1 of the title insurance company shall be deposited with the  
2 receiver to be paid out by him or her when such claims are  
3 submitted and allowed by the court.

4 (m) At the termination of the receiver's administration,  
5 the receiver shall petition the court for the entry of a  
6 judgment of dissolution. After a hearing upon the notice as the  
7 court may prescribe, the court may enter a judgment of  
8 dissolution whereupon the title insurance company's corporate  
9 existence shall be terminated and the receivership concluded.

10 (n) The receiver shall serve at the pleasure of the  
11 Secretary and upon the death, inability to act, resignation, or  
12 removal by the Secretary of a receiver, the Secretary may  
13 appoint a successor, and upon the appointment, all rights and  
14 duties of the predecessor shall at once devolve upon the  
15 appointee.

16 (o) Whenever the Secretary shall have taken possession and  
17 control of a title insurance company or a title insurance agent  
18 and its assets for the purpose of examination, reorganization  
19 or liquidation through receivership, or whenever the Secretary  
20 shall have appointed a receiver for a title insurance company  
21 or title insurance agent and filed a complaint for the  
22 dissolution or winding up of its affairs, and the title  
23 insurance company or title insurance agent denies the grounds  
24 for such actions, it may at any time within 10 days apply to  
25 the Circuit Court of Cook or Sangamon County to enjoin further  
26 proceedings in the premises; and the Court shall cite the

1 Secretary to show cause why further proceedings should not be  
2 enjoined, and if the Court shall find that grounds do not  
3 exist, the Court shall make an order enjoining the Secretary or  
4 any receiver acting under his direction from all further  
5 proceedings on account of the alleged grounds.

6 (Source: P.A. 94-893, eff. 6-20-06.)

7 Section 1606. The Illinois Funeral or Burial Funds Act is  
8 amended by changing Sections 4a and 5 as follows:

9 (225 ILCS 45/4a)

10 Sec. 4a. Investment of funds.

11 (a) A trustee has a duty to invest and manage the trust  
12 assets pursuant to the Illinois Uniform Prudent Investor Act  
13 ~~Rule~~ under Article 9 of the Illinois Trust Code ~~Trusts and~~  
14 ~~Trustees Act.~~

15 (b) The trust shall be a single-purpose trust fund. In the  
16 event of the seller's bankruptcy, insolvency or assignment for  
17 the benefit of creditors, or an adverse judgment, the trust  
18 funds shall not be available to any creditor as assets of the  
19 seller or to pay any expenses of any bankruptcy or similar  
20 proceeding, but shall be distributed to the purchasers or  
21 managed for their benefit by the trustee holding the funds.  
22 Except in an action by the Comptroller to revoke a license  
23 issued pursuant to this Act and for creation of a receivership  
24 as provided in this Act, the trust shall not be subject to

1 judgment, execution, garnishment, attachment, or other seizure  
2 by process in bankruptcy or otherwise, nor to sale, pledge,  
3 mortgage, or other alienation, and shall not be assignable  
4 except as approved by the Comptroller. The changes made by  
5 Public Act 91-7 are intended to clarify existing law regarding  
6 the inability of licensees to pledge the trust.

7 (c) Because it is not known at the time of deposit or at  
8 the time that income is earned on the trust account to whom the  
9 principal and the accumulated earnings will be distributed for  
10 the purpose of determining the Illinois income tax due on these  
11 trust funds, the principal and any accrued earnings or losses  
12 related to each individual account shall be held in suspense  
13 until the final determination is made as to whom the account  
14 shall be paid. The beneficiary's estate shall not be  
15 responsible for any funeral and burial purchases listed in a  
16 pre-need contract if the pre-need contract is entered into on a  
17 guaranteed price basis.

18 If a pre-need contract is not a guaranteed price contract,  
19 then to the extent the proceeds of a non-guaranteed price  
20 pre-need contract cover the funeral and burial expenses for the  
21 beneficiary, no claim may be made against the estate of the  
22 beneficiary. A claim may be made against the beneficiary's  
23 estate if the charges for the funeral services and merchandise  
24 at the time of use exceed the amount of the amount in trust  
25 plus the percentage of the sale proceeds initially retained by  
26 the seller or the face value of the life insurance policy or

1 tax-deferred annuity.

2 (Source: P.A. 96-879, eff. 2-2-10.)

3 (225 ILCS 45/5) (from Ch. 111 1/2, par. 73.105)

4 Sec. 5. This Act shall not be construed to prohibit the  
5 trustee and trustee's depository from being reimbursed and  
6 receiving from such funds their reasonable compensation and  
7 expenses in the custody and administration of such funds  
8 pursuant to the Illinois Trust Code ~~Trusts and Trustees Act~~.

9 (Source: P.A. 96-879, eff. 2-2-10.)

10 Section 1607. The Mental Health and Developmental  
11 Disabilities Code is amended by changing Sections 3-605, 5-105,  
12 and 3-819 as follows:

13 (405 ILCS 5/3-605) (from Ch. 91 1/2, par. 3-605)

14 Sec. 3-605. (a) In counties with a population of 3,000,000  
15 or more, upon receipt of a petition and certificate prepared  
16 pursuant to this Article, the county sheriff of the county in  
17 which a respondent is found shall take a respondent into  
18 custody and transport him to a mental health facility, or may  
19 make arrangements with another public or private entity  
20 including a licensed ambulance service to transport the  
21 respondent to the mental health facility. In the event it is  
22 determined by such facility that the respondent is in need of  
23 commitment or treatment at another mental health facility, the

1 county sheriff shall transport the respondent to the  
2 appropriate mental health facility, or the county sheriff may  
3 make arrangements with another public or private entity  
4 including a licensed ambulance service to transport the  
5 respondent to the mental health facility.

6 (b) The county sheriff may delegate his duties under  
7 subsection (a) to another law enforcement body within that  
8 county if that law enforcement body agrees.

9 (b-5) In counties with a population under 3,000,000, upon  
10 receipt of a petition and certificate prepared pursuant to this  
11 Article, the Department shall make arrangements to  
12 appropriately transport the respondent to a mental health  
13 facility. In the event it is determined by the facility that  
14 the respondent is in need of commitment or treatment at another  
15 mental health facility, the Department shall make arrangements  
16 to appropriately transport the respondent to another mental  
17 health facility. The making of such arrangements and agreements  
18 with public or private entities is independent of the  
19 Department's role as a provider of mental health services and  
20 does not indicate that the respondent is admitted to any  
21 Department facility. In making such arrangements and  
22 agreements with other public or private entities, the  
23 Department shall include provisions to ensure (i) the provision  
24 of trained personnel and the use of an appropriate vehicle for  
25 the safe transport of the respondent and (ii) that the  
26 respondent's insurance carrier as well as other programs, both

1 public and private, that provide payment for such  
2 transportation services are fully utilized to the maximum  
3 extent possible.

4 The Department may not make arrangements with an existing  
5 hospital or grant-in-aid or fee-for-service community provider  
6 for transportation services under this Section unless the  
7 hospital or provider has voluntarily submitted a proposal for  
8 its transportation services. This requirement does not  
9 eliminate or reduce any responsibility on the part of a  
10 hospital or community provider to ensure transportation that  
11 may arise independently through other State or federal law or  
12 regulation.

13 (c) The transporting authority acting in good faith and  
14 without negligence in connection with the transportation of  
15 respondents shall incur no liability, civil or criminal, by  
16 reason of such transportation.

17 (d) The respondent and the estate of that respondent are  
18 liable for the payment of transportation costs for transporting  
19 the respondent to a mental health facility. If the respondent  
20 is a beneficiary of a trust described in Section 1213 ~~15.1~~ of  
21 the Illinois Trust Code ~~Trusts and Trustees Act~~, the trust  
22 shall not be considered a part of the respondent's estate and  
23 shall not be subject to payment for transportation costs for  
24 transporting the respondent to a mental health facility under  
25 this Section except to the extent permitted under Section 1213  
26 ~~15.1~~ of the Illinois Trust Code ~~Trusts and Trustees Act~~. If the

1 respondent is unable to pay or if the estate of the respondent  
2 is insufficient, the responsible relatives are severally  
3 liable for the payment of those sums or for the balance due in  
4 case less than the amount owing has been paid. If the  
5 respondent is covered by insurance, the insurance carrier shall  
6 be liable for payment to the extent authorized by the  
7 respondent's insurance policy.

8 (Source: P.A. 93-770, eff. 1-1-05.)

9 (405 ILCS 5/3-819) (from Ch. 91 1/2, par. 3-819)

10 Sec. 3-819. (a) In counties with a population of 3,000,000  
11 or more, when a recipient is hospitalized upon court order, the  
12 order may authorize a relative or friend of the recipient to  
13 transport the recipient to the facility if such person is able  
14 to do so safely and humanely. When the Department indicates  
15 that it has transportation to the facility available, the order  
16 may authorize the Department to transport the recipient there.  
17 The court may order the sheriff of the county in which such  
18 proceedings are held to transport the recipient to the  
19 facility. When a recipient is hospitalized upon court order,  
20 and the recipient has been transported to a mental health  
21 facility, other than a state-operated mental health facility,  
22 and it is determined by the facility that the recipient is in  
23 need of commitment or treatment at another mental health  
24 facility, the court shall determine whether a relative or  
25 friend of the recipient or the Department is authorized to



1 transport the recipient between facilities, or whether the  
2 county sheriff is responsible for transporting the recipient  
3 between facilities. The sheriff may make arrangements with  
4 another public or private entity including a licensed ambulance  
5 service to transport the recipient to the facility. The  
6 transporting entity acting in good faith and without negligence  
7 in connection with the transportation of recipients shall incur  
8 no liability, civil or criminal, by reason of such  
9 transportation.

10 (a-5) In counties with a population under 3,000,000, when a  
11 recipient is hospitalized upon court order, the order may  
12 authorize a relative or friend of the recipient to transport  
13 the recipient to the facility if the person is able to do so  
14 safely and humanely. The court may order the Department to  
15 transport the recipient to the facility. When a recipient is  
16 hospitalized upon court order, and the recipient has been  
17 transported to a mental health facility other than a  
18 State-operated mental health facility, and it is determined by  
19 the facility that the recipient is in need of commitment or  
20 treatment at another mental health facility, the court shall  
21 determine whether a relative or friend of the recipient is  
22 authorized to transport the recipient between facilities, or  
23 whether the Department is responsible for transporting the  
24 recipient between facilities. If the court determines that the  
25 Department is responsible for the transportation, the  
26 Department shall make arrangements either directly or through

1 agreements with another public or private entity, including a  
2 licensed ambulance service, to appropriately transport the  
3 recipient to the facility. The making of such arrangements and  
4 agreements with public or private entities is independent of  
5 the Department's role as a provider of mental health services  
6 and does not indicate that the recipient is admitted to any  
7 Department facility. In making such arrangements and  
8 agreements with other public or private entities, the  
9 Department shall include provisions to ensure (i) the provision  
10 of trained personnel and the use of an appropriate vehicle for  
11 the safe transport of the recipient and (ii) that the  
12 recipient's insurance carrier as well as other programs, both  
13 public and private, that provide payment for such  
14 transportation services are fully utilized to the maximum  
15 extent possible.

16 The Department may not make arrangements with an existing  
17 hospital or grant-in-aid or fee-for-service community provider  
18 for transportation services under this Section unless the  
19 hospital or provider has voluntarily submitted a proposal for  
20 its transportation services. This requirement does not  
21 eliminate or reduce any responsibility on the part of a  
22 hospital or community provider to ensure transportation that  
23 may arise independently through other State or federal law or  
24 regulation.

25 A transporting entity acting in good faith and without  
26 negligence in connection with the transportation of a recipient

1 incurs no liability, civil or criminal, by reason of that  
2 transportation.

3 (b) The transporting entity may bill the recipient, the  
4 estate of the recipient, legally responsible relatives, or  
5 insurance carrier for the cost of providing transportation of  
6 the recipient to a mental health facility. The recipient and  
7 the estate of the recipient are liable for the payment of  
8 transportation costs for transporting the recipient to a mental  
9 health facility. If the recipient is a beneficiary of a trust  
10 described in Section 1213 ~~15.1~~ of the Illinois Trust Code  
11 ~~Trusts and Trustees Act~~, the trust shall not be considered a  
12 part of the recipient's estate and shall not be subject to  
13 payment for transportation costs for transporting the  
14 recipient to a mental health facility under this section,  
15 except to the extent permitted under Section 1213 ~~15.1~~ of the  
16 Illinois Trust Code ~~Trusts and Trustees Act~~. If the recipient  
17 is unable to pay or if the estate of the recipient is  
18 insufficient, the responsible relatives are severally liable  
19 for the payment of those sums or for the balance due in case  
20 less than the amount owing has been paid. If the recipient is  
21 covered by insurance, the insurance carrier shall be liable for  
22 payment to the extent authorized by the recipient's insurance  
23 policy.

24 (c) Upon the delivery of a recipient to a facility, in  
25 accordance with the procedure set forth in this Article, the  
26 facility director of the facility shall sign a receipt

1 acknowledging custody of the recipient and for any personal  
2 property belonging to him, which receipt shall be filed with  
3 the clerk of the court entering the hospitalization order.

4 (Source: P.A. 93-770, eff. 1-1-05.)

5 (405 ILCS 5/5-105) (from Ch. 91 1/2, par. 5-105)

6 Sec. 5-105. Each recipient of services provided directly or  
7 funded by the Department and the estate of that recipient is  
8 liable for the payment of sums representing charges for  
9 services to the recipient at a rate to be determined by the  
10 Department in accordance with this Act. If a recipient is a  
11 beneficiary of a trust described in Section 1213 15.1 of the  
12 Illinois Trust Code ~~Trusts and Trustees Act~~, the trust shall  
13 not be considered a part of the recipient's estate and shall  
14 not be subject to payment for services to the recipient under  
15 this Section except to the extent permitted under Section 1213  
16 15.1 of the Illinois Trust Code ~~Trusts and Trustees Act~~. If the  
17 recipient is unable to pay or if the estate of the recipient is  
18 insufficient, the responsible relatives are severally liable  
19 for the payment of those sums or for the balance due in case  
20 less than the amount prescribed under this Act has been paid.  
21 If the recipient is under the age of 18, the recipient and  
22 responsible relative shall be liable for medical costs on a  
23 case-by-case basis for services for the diagnosis and treatment  
24 of conditions other than that child's disabling condition. The  
25 liability shall be the lesser of the cost of medical care or

1 the amount of responsible relative liability established by the  
2 Department under Section 5-116. Any person 18 through 21 years  
3 of age who is receiving services under the Education for All  
4 Handicapped Children Act of 1975 (Public Law 94-142) or that  
5 person's responsible relative shall only be liable for medical  
6 costs on a case-by-case basis for services for the diagnosis  
7 and treatment of conditions other than the person's disabling  
8 condition. The liability shall be the lesser of the cost of  
9 medical care or the amount of responsible relative liability  
10 established by the Department under Section 5-116. In the case  
11 of any person who has received residential services from the  
12 Department, whether directly from the Department or through a  
13 public or private agency or entity funded by the Department,  
14 the liability shall be the same regardless of the source of  
15 services. The maximum services charges for each recipient  
16 assessed against responsible relatives collectively may not  
17 exceed financial liability determined from income in  
18 accordance with Section 5-116. Where the recipient is placed in  
19 a nursing home or other facility outside the Department, the  
20 Department may pay the actual cost of services in that facility  
21 and may collect reimbursement for the entire amount paid from  
22 the recipient or an amount not to exceed those amounts  
23 determined under Section 5-116 from responsible relatives  
24 according to their proportionate ability to contribute to those  
25 charges. The liability of each responsible relative for payment  
26 of services charges ceases when payments on the basis of

1 financial ability have been made for a total of 12 years for  
2 any recipient, and any portion of that 12 year period during  
3 which a responsible relative has been determined by the  
4 Department to be financially unable to pay any services charges  
5 must be included in fixing the total period of liability. No  
6 child is liable under this Act for services to a parent. No  
7 spouse is liable under this Act for the services to the other  
8 spouse who wilfully failed to contribute to the spouse's  
9 support for a period of 5 years immediately preceding his or  
10 her admission. Any spouse claiming exemption because of wilful  
11 failure to support during any such 5 year period must furnish  
12 the Department with clear and convincing evidence  
13 substantiating the claim. No parent is liable under this Act  
14 for the services charges incurred by a child after the child  
15 reaches the age of majority. Nothing in this Section shall  
16 preclude the Department from applying federal benefits that are  
17 specifically provided for the care and treatment of a person  
18 with a disability toward the cost of care provided by a State  
19 facility or private agency.

20 (Source: P.A. 99-143, eff. 7-27-15.)

21 Section 1608. The Illinois Marriage and Dissolution of  
22 Marriage Act is amended by changing Section 513.5 as follows:

23 (750 ILCS 5/513.5)

24 Sec. 513.5. Support for a non-minor child with a

1 disability.

2 (a) The court may award sums of money out of the property  
3 and income of either or both parties or the estate of a  
4 deceased parent, as equity may require, for the support of a  
5 child of the parties who has attained majority when the child  
6 is mentally or physically disabled and not otherwise  
7 emancipated. The sums awarded may be paid to one of the  
8 parents, to a trust created by the parties for the benefit of  
9 the non-minor child with a disability, or irrevocably to a  
10 special needs trust, established by the parties and for the  
11 sole benefit of the non-minor child with a disability, pursuant  
12 to subdivisions (d)(4)(A) or (d)(4)(C) of 42 U.S.C. 1396p,  
13 Section 1213 ~~15.1~~ of the Illinois Trust Code ~~Trusts and~~  
14 ~~Trustees Act~~, and applicable provisions of the Social Security  
15 Administration Program Operating Manual System. An application  
16 for support for a non-minor disabled child may be made before  
17 or after the child has attained majority. Unless an application  
18 for educational expenses is made for a mentally or physically  
19 disabled child under Section 513, the disability that is the  
20 basis for the application for support must have arisen while  
21 the child was eligible for support under Section 505 or 513 of  
22 this Act.

23 (b) In making awards under this Section, or pursuant to a  
24 petition or motion to decrease, modify, or terminate any such  
25 award, the court shall consider all relevant factors that  
26 appear reasonable and necessary, including:

1           (1) the present and future financial resources of both  
2 parties to meet their needs, including, but not limited to,  
3 savings for retirement;

4           (2) the standard of living the child would have enjoyed  
5 had the marriage not been dissolved. The court may consider  
6 factors that are just and equitable;

7           (3) the financial resources of the child; and

8           (4) any financial or other resource provided to or for  
9 the child including, but not limited to, any Supplemental  
10 Security Income, any home-based support provided pursuant  
11 to the Home-Based Support Services Law for Mentally  
12 Disabled Adults, and any other State, federal, or local  
13 benefit available to the non-minor disabled child.

14           (c) As used in this Section:

15           A "disabled" individual means an individual who has a  
16 physical or mental impairment that substantially limits a major  
17 life activity, has a record of such an impairment, or is  
18 regarded as having such an impairment.

19           "Disability" means a mental or physical impairment that  
20 substantially limits a major life activity.

21           (Source: P.A. 99-90, eff. 1-1-16.)

22           Section 1609. The Probate Act of 1975 is amended by  
23 changing Section 28-8 as follows:

24           (755 ILCS 5/28-8) (from Ch. 110 1/2, par. 28-8)



1           Sec. 28-8. Administrative powers. An independent  
2 representative acting reasonably for the best interests of the  
3 estate has the powers granted in the will and the following  
4 powers, all exercisable without court order, except to the  
5 extent that the following powers are inconsistent with the  
6 will:

7           (a) To lease, sell at public or private sale, for cash or  
8 on credit, mortgage or pledge the personal estate of the  
9 decedent and to distribute in kind any personal estate the sale  
10 of which is not necessary;

11           (b) To borrow money with or without security;

12           (c) To mortgage or pledge agricultural commodities as  
13 provided in Section 19-3;

14           (d) To continue the decedent's unincorporated business  
15 without personal liability except for malfeasance or  
16 misfeasance for losses incurred; and obligations incurred or  
17 contracts entered into by the independent representative with  
18 respect to the business are entitled to priority of payment out  
19 of the assets of the business but, without approval of the  
20 court first obtained, do not involve the estate beyond those  
21 assets;

22           (e) To settle, compound or compromise any claim or interest  
23 of the decedent in any property or exchange any such claim or  
24 interest for other claims or property; and to settle compound  
25 or compromise and pay all claims against the estate as provided  
26 in Sections 18-11 and 18-13, but claims of the independent

1 representative or his attorney shall be subject to Section  
2 18-8;

3 (f) To perform any contract of the decedent;

4 (g) To employ agents, accountants and counsel, including  
5 legal and investment counsel; to delegate to them the  
6 performance of any act of administration, whether or not  
7 discretionary; and to pay them reasonable compensation;

8 (h) To hold stocks, bonds and other personal property in  
9 the name of a nominee as provided in Section 19-12;

10 (i) To take possession, administer and grant possession of  
11 the decedent's real estate, which term in this subsection  
12 includes oil, gas, coal and other mineral interests therein; to  
13 pay taxes on decedent's real estate whether or not in  
14 possession of the representative; to lease the decedent's real  
15 estate upon such terms and for such length of time as he deems  
16 advisable; to sell at public or private sale, for cash or on  
17 credit, or mortgage any real estate or interest therein to  
18 which the decedent had claim or title, but real estate  
19 specifically bequeathed shall not be leased, sold or mortgaged  
20 without the written consent of the legatee; and to confirm the  
21 title of any heir or legatee to real estate by recording and  
22 delivering to the heir or legatee an instrument releasing the  
23 estate's interest; and

24 (j) To retain property properly acquired, without regard to  
25 its suitability for original purchase; and to invest money of  
26 the estate (1) in any one or more of the investments described

1 in Section 21-1 or (2) if the independent representative  
2 determines that the estate is solvent and all interested  
3 persons other than creditors approve, in any investments  
4 authorized for trustees under the prudent investor ~~man~~ rule  
5 stated in Article 9 Section 5 of the Illinois Trust Code  
6 ~~"Trusts and Trustees Act", as now or hereafter amended.~~

7 (Source: P.A. 81-213.)

8 Section 1610. The Illinois Power of Attorney Act is amended  
9 by changing Section 3-4 as follows:

10 (755 ILCS 45/3-4) (from Ch. 110 1/2, par. 803-4)

11 Sec. 3-4. Explanation of powers granted in the statutory  
12 short form power of attorney for property. This Section defines  
13 each category of powers listed in the statutory short form  
14 power of attorney for property and the effect of granting  
15 powers to an agent, and is incorporated by reference into the  
16 statutory short form. Incorporation by reference does not  
17 require physical attachment of a copy of this Section 3-4 to  
18 the statutory short form power of attorney for property. When  
19 the title of any of the following categories is retained (not  
20 struck out) in a statutory property power form, the effect will  
21 be to grant the agent all of the principal's rights, powers and  
22 discretions with respect to the types of property and  
23 transactions covered by the retained category, subject to any  
24 limitations on the granted powers that appear on the face of

1 the form. The agent will have authority to exercise each  
2 granted power for and in the name of the principal with respect  
3 to all of the principal's interests in every type of property  
4 or transaction covered by the granted power at the time of  
5 exercise, whether the principal's interests are direct or  
6 indirect, whole or fractional, legal, equitable or  
7 contractual, as a joint tenant or tenant in common or held in  
8 any other form; but the agent will not have power under any of  
9 the statutory categories (a) through (o) to make gifts of the  
10 principal's property, to exercise powers to appoint to others  
11 or to change any beneficiary whom the principal has designated  
12 to take the principal's interests at death under any will,  
13 trust, joint tenancy, beneficiary form or contractual  
14 arrangement. The agent will be under no duty to exercise  
15 granted powers or to assume control of or responsibility for  
16 the principal's property or affairs; but when granted powers  
17 are exercised, the agent will be required to act in good faith  
18 for the benefit of the principal using due care, competence,  
19 and diligence in accordance with the terms of the statutory  
20 property power and will be liable for negligent exercise. The  
21 agent may act in person or through others reasonably employed  
22 by the agent for that purpose and will have authority to sign  
23 and deliver all instruments, negotiate and enter into all  
24 agreements and do all other acts reasonably necessary to  
25 implement the exercise of the powers granted to the agent.

26 (a) Real estate transactions. The agent is authorized to:

1 buy, sell, exchange, rent and lease real estate (which term  
2 includes, without limitation, real estate subject to a land  
3 trust and all beneficial interests in and powers of direction  
4 under any land trust); collect all rent, sale proceeds and  
5 earnings from real estate; convey, assign and accept title to  
6 real estate; grant easements, create conditions and release  
7 rights of homestead with respect to real estate; create land  
8 trusts and exercise all powers under land trusts; hold,  
9 possess, maintain, repair, improve, subdivide, manage, operate  
10 and insure real estate; pay, contest, protest and compromise  
11 real estate taxes and assessments; and, in general, exercise  
12 all powers with respect to real estate which the principal  
13 could if present and under no disability.

14 (b) Financial institution transactions. The agent is  
15 authorized to: open, close, continue and control all accounts  
16 and deposits in any type of financial institution (which term  
17 includes, without limitation, banks, trust companies, savings  
18 and building and loan associations, credit unions and brokerage  
19 firms); deposit in and withdraw from and write checks on any  
20 financial institution account or deposit; and, in general,  
21 exercise all powers with respect to financial institution  
22 transactions which the principal could if present and under no  
23 disability. This authorization shall also apply to any Totten  
24 Trust, Payable on Death Account, or comparable trust account  
25 arrangement where the terms of such trust are contained  
26 entirely on the financial institution's signature card,

1 insofar as an agent shall be permitted to withdraw income or  
2 principal from such account, unless this authorization is  
3 expressly limited or withheld under paragraph 2 of the form  
4 prescribed under Section 3-3. This authorization shall not  
5 apply to accounts titled in the name of any trust subject to  
6 the provisions of the Illinois Trust Code ~~Trusts and Trustees~~  
7 ~~Act~~, for which specific reference to the trust and a specific  
8 grant of authority to the agent to withdraw income or principal  
9 from such trust is required pursuant to Section 2-9 of the  
10 Illinois Power of Attorney Act and subsection (n) of this  
11 Section.

12 (c) Stock and bond transactions. The agent is authorized  
13 to: buy and sell all types of securities (which term includes,  
14 without limitation, stocks, bonds, mutual funds and all other  
15 types of investment securities and financial instruments);  
16 collect, hold and safekeep all dividends, interest, earnings,  
17 proceeds of sale, distributions, shares, certificates and  
18 other evidences of ownership paid or distributed with respect  
19 to securities; exercise all voting rights with respect to  
20 securities in person or by proxy, enter into voting trusts and  
21 consent to limitations on the right to vote; and, in general,  
22 exercise all powers with respect to securities which the  
23 principal could if present and under no disability.

24 (d) Tangible personal property transactions. The agent is  
25 authorized to: buy and sell, lease, exchange, collect, possess  
26 and take title to all tangible personal property; move, store,

1 ship, restore, maintain, repair, improve, manage, preserve,  
2 insure and safekeep tangible personal property; and, in  
3 general, exercise all powers with respect to tangible personal  
4 property which the principal could if present and under no  
5 disability.

6 (e) Safe deposit box transactions. The agent is authorized  
7 to: open, continue and have access to all safe deposit boxes;  
8 sign, renew, release or terminate any safe deposit contract;  
9 drill or surrender any safe deposit box; and, in general,  
10 exercise all powers with respect to safe deposit matters which  
11 the principal could if present and under no disability.

12 (f) Insurance and annuity transactions. The agent is  
13 authorized to: procure, acquire, continue, renew, terminate or  
14 otherwise deal with any type of insurance or annuity contract  
15 (which terms include, without limitation, life, accident,  
16 health, disability, automobile casualty, property or liability  
17 insurance); pay premiums or assessments on or surrender and  
18 collect all distributions, proceeds or benefits payable under  
19 any insurance or annuity contract; and, in general, exercise  
20 all powers with respect to insurance and annuity contracts  
21 which the principal could if present and under no disability.

22 (g) Retirement plan transactions. The agent is authorized  
23 to: contribute to, withdraw from and deposit funds in any type  
24 of retirement plan (which term includes, without limitation,  
25 any tax qualified or nonqualified pension, profit sharing,  
26 stock bonus, employee savings and other retirement plan,

1 individual retirement account, deferred compensation plan and  
2 any other type of employee benefit plan); select and change  
3 payment options for the principal under any retirement plan;  
4 make rollover contributions from any retirement plan to other  
5 retirement plans or individual retirement accounts; exercise  
6 all investment powers available under any type of self-directed  
7 retirement plan; and, in general, exercise all powers with  
8 respect to retirement plans and retirement plan account  
9 balances which the principal could if present and under no  
10 disability.

11 (h) Social Security, unemployment and military service  
12 benefits. The agent is authorized to: prepare, sign and file  
13 any claim or application for Social Security, unemployment or  
14 military service benefits; sue for, settle or abandon any  
15 claims to any benefit or assistance under any federal, state,  
16 local or foreign statute or regulation; control, deposit to any  
17 account, collect, receipt for, and take title to and hold all  
18 benefits under any Social Security, unemployment, military  
19 service or other state, federal, local or foreign statute or  
20 regulation; and, in general, exercise all powers with respect  
21 to Social Security, unemployment, military service and  
22 governmental benefits which the principal could if present and  
23 under no disability.

24 (i) Tax matters. The agent is authorized to: sign, verify  
25 and file all the principal's federal, state and local income,  
26 gift, estate, property and other tax returns, including joint



1 returns and declarations of estimated tax; pay all taxes;  
2 claim, sue for and receive all tax refunds; examine and copy  
3 all the principal's tax returns and records; represent the  
4 principal before any federal, state or local revenue agency or  
5 taxing body and sign and deliver all tax powers of attorney on  
6 behalf of the principal that may be necessary for such  
7 purposes; waive rights and sign all documents on behalf of the  
8 principal as required to settle, pay and determine all tax  
9 liabilities; and, in general, exercise all powers with respect  
10 to tax matters which the principal could if present and under  
11 no disability.

12 (j) Claims and litigation. The agent is authorized to:  
13 institute, prosecute, defend, abandon, compromise, arbitrate,  
14 settle and dispose of any claim in favor of or against the  
15 principal or any property interests of the principal; collect  
16 and receipt for any claim or settlement proceeds and waive or  
17 release all rights of the principal; employ attorneys and  
18 others and enter into contingency agreements and other  
19 contracts as necessary in connection with litigation; and, in  
20 general, exercise all powers with respect to claims and  
21 litigation which the principal could if present and under no  
22 disability. The statutory short form power of attorney for  
23 property does not authorize the agent to appear in court or any  
24 tribunal as an attorney-at-law for the principal or otherwise  
25 to engage in the practice of law without being a licensed  
26 attorney who is authorized to practice law in Illinois under

1 applicable Illinois Supreme Court Rules.

2 (k) Commodity and option transactions. The agent is  
3 authorized to: buy, sell, exchange, assign, convey, settle and  
4 exercise commodities futures contracts and call and put options  
5 on stocks and stock indices traded on a regulated options  
6 exchange and collect and receipt for all proceeds of any such  
7 transactions; establish or continue option accounts for the  
8 principal with any securities or futures broker; and, in  
9 general, exercise all powers with respect to commodities and  
10 options which the principal could if present and under no  
11 disability.

12 (l) Business operations. The agent is authorized to:  
13 organize or continue and conduct any business (which term  
14 includes, without limitation, any farming, manufacturing,  
15 service, mining, retailing or other type of business operation)  
16 in any form, whether as a proprietorship, joint venture,  
17 partnership, corporation, trust or other legal entity;  
18 operate, buy, sell, expand, contract, terminate or liquidate  
19 any business; direct, control, supervise, manage or  
20 participate in the operation of any business and engage,  
21 compensate and discharge business managers, employees, agents,  
22 attorneys, accountants and consultants; and, in general,  
23 exercise all powers with respect to business interests and  
24 operations which the principal could if present and under no  
25 disability.

26 (m) Borrowing transactions. The agent is authorized to:

1 borrow money; mortgage or pledge any real estate or tangible or  
2 intangible personal property as security for such purposes;  
3 sign, renew, extend, pay and satisfy any notes or other forms  
4 of obligation; and, in general, exercise all powers with  
5 respect to secured and unsecured borrowing which the principal  
6 could if present and under no disability.

7 (n) Estate transactions. The agent is authorized to:  
8 accept, receipt for, exercise, release, reject, renounce,  
9 assign, disclaim, demand, sue for, claim and recover any  
10 legacy, bequest, devise, gift or other property interest or  
11 payment due or payable to or for the principal; assert any  
12 interest in and exercise any power over any trust, estate or  
13 property subject to fiduciary control; establish a revocable  
14 trust solely for the benefit of the principal that terminates  
15 at the death of the principal and is then distributable to the  
16 legal representative of the estate of the principal; and, in  
17 general, exercise all powers with respect to estates and trusts  
18 which the principal could if present and under no disability;  
19 provided, however, that the agent may not make or change a will  
20 and may not revoke or amend a trust revocable or amendable by  
21 the principal or require the trustee of any trust for the  
22 benefit of the principal to pay income or principal to the  
23 agent unless specific authority to that end is given, and  
24 specific reference to the trust is made, in the statutory  
25 property power form.

26 (o) All other property transactions. The agent is

1 authorized to: exercise all possible authority of the principal  
2 with respect to all possible types of property and interests in  
3 property, except to the extent limited in subsections (a)  
4 through (n) of this Section 3-4 and to the extent that the  
5 principal otherwise limits the generality of this category (o)  
6 by striking out one or more of categories (a) through (n) or by  
7 specifying other limitations in the statutory property power  
8 form.

9 (Source: P.A. 96-1195, eff. 7-1-11.)

10 Section 1611. The Common Trust Fund Act is amended by  
11 changing Section 3 as follows:

12 (760 ILCS 45/3) (from Ch. 17, par. 2103)

13 Sec. 3. Establishment of common trust fund. Any bank or  
14 trust company may, at and during such time as it is qualified  
15 to act as a fiduciary in this State, establish, maintain, and  
16 administer one or more common trust funds for the purpose of  
17 furnishing investments to itself as a fiduciary, or to itself  
18 and another or others as co-fiduciaries. An investment in a  
19 common trust fund does not constitute an investment in the  
20 various securities composing the common trust fund, but is an  
21 investment in the fund as an entity. A bank or trust company,  
22 in its capacity as a fiduciary or co-fiduciary, whether that  
23 fiduciary capacity arose before or is created after this Act  
24 takes effect, may invest funds that it holds for investment in

1 that capacity in interests in one or more common trust funds,  
2 subject to the following limitations:

3 (1) In the case of a fiduciary other than an  
4 administrator, the investment may be made in a common trust  
5 fund if such an investment is not expressly prohibited by  
6 the instrument, judgment, or order creating the fiduciary  
7 relationship, or by an amendment thereof, and if, under the  
8 instrument, judgment, or order creating the fiduciary  
9 relationship, or an amendment thereof, the funds so held  
10 for investment might properly be invested in an investment  
11 with the overall investment characteristics of the common  
12 trust fund, considered as an entity, and if, in the case of  
13 co-fiduciaries, the bank or trust company procures the  
14 consent of its co-fiduciary or co-fiduciaries to the  
15 investment in those interests. If the instrument creating  
16 the fiduciary relationship gives to the bank or trust  
17 company the exclusive right to select investments, the  
18 consent of the co-fiduciary shall not be required. Any  
19 person acting as co-fiduciary with any such bank or trust  
20 company is hereby authorized to consent to the investment  
21 in those interests.

22 (2) In the case of an administrator, the investment may  
23 be made upon approval by the court.

24 (3) A bank or trust company in establishing,  
25 maintaining and administering one or more common trust  
26 funds for the purpose of furnishing investments to itself

1 as fiduciary shall have a duty to invest and manage such  
2 common trust fund assets as follows:

3 (A) The bank or trust company has a duty to invest  
4 and manage common trust fund assets as a prudent  
5 investor would considering the purposes, terms,  
6 distribution requirements, and other circumstances of  
7 the common trust fund. This standard requires the  
8 exercise of reasonable care, skill, and caution and is  
9 to be applied to investments not in isolation, but in  
10 the context of the common trust fund portfolio as a  
11 whole and as a part of an overall investment strategy  
12 that should incorporate risk and return objectives  
13 reasonably suitable to the common trust fund.

14 (B) No specific investment or course of action is,  
15 taken alone, prudent or imprudent. The bank or trust  
16 company may invest in every kind of property and type  
17 of investment, subject to this Section. The bank or  
18 trust company's investment decisions and actions are  
19 to be judged in terms of the bank or trust company's  
20 reasonable business judgment regarding the anticipated  
21 effect on the common trust fund portfolio as a whole  
22 under the facts and circumstances prevailing at the  
23 time of the decision or action. The standard set forth  
24 in this paragraph (3) is a test of conduct and not of  
25 resulting performance.

26 (C) The circumstances that the bank or trust

1 company may consider in making investment decisions  
2 include, without limitation, the general economic  
3 conditions, the possible effect of inflation, the role  
4 each investment or course of action plays within the  
5 overall portfolio, and the expected total return.

6 (D) The bank or trust company may invest and  
7 reinvest common trust fund assets in interests in any  
8 open-end or closed-end management type investment  
9 company or investment trust (hereafter referred to as a  
10 "mutual fund") registered under the Investment Company  
11 Act of 1940 or may retain, sell, or exchange those  
12 interests, provided that the portfolio of the mutual  
13 fund, as an entity, is appropriate under the provisions  
14 of this Act. The bank or trust company is not  
15 prohibited from investing, reinvesting, retaining, or  
16 exchanging as common fund assets any interests in any  
17 mutual fund for which the bank or trust company or an  
18 affiliate acts as advisor or manager solely on the  
19 basis that the bank or trust company (or its affiliate)  
20 provides services to the mutual fund and receives  
21 reasonable remuneration for those services. A bank or  
22 trust company or its affiliate is not required to  
23 reduce or waive its compensation for services provided  
24 in connection with the administration, investment, and  
25 management of the common trust fund or a participant in  
26 the common trust fund because the bank or trust company

1 invests, reinvests, or retains common trust fund  
2 assets in a mutual fund, if the total compensation paid  
3 by a participant to the bank or trust company and its  
4 affiliates, directly or indirectly, including any  
5 common trust fund fees, mutual fund fees, advisory  
6 fees, and management fees, is reasonable. However, a  
7 bank or trust company may receive fees equal to the  
8 amount of those fees that would be paid to any other  
9 party under Securities and Exchange Commission Rule  
10 12b-1.

11 (4) A bank or trust company may not delegate the  
12 investment functions of a common trust fund established or  
13 operating under Section 584 of the Internal Revenue Code  
14 pursuant to Section 807 5.1 of the Illinois Trust Code  
15 ~~Trusts and Trustees Act~~ except as authorized by the Bureau  
16 of the Comptroller of the Currency of the U. S. Department  
17 of the Treasury. A bank or trust company may hire one or  
18 more agents to give the trustee advice with respect to  
19 investments of a common trust fund and pay reasonable and  
20 appropriate compensation to the agent provided that the  
21 final investment decisions and the exclusive management of  
22 the common trust fund remain with the bank or trust  
23 company.

24 (5) On or after the effective date of this amendatory  
25 Act of 1991, this Section applies to all existing and  
26 future common trust funds, but only as to actions or



1           inactions occurring after that effective date.

2           (Source: P.A. 89-344, eff. 8-17-95.)

3           Section 1612. The Religious Corporation Act is amended by  
4           changing Section 46j as follows:

5           (805 ILCS 110/46j) (from Ch. 32, par. 185)

6           Sec. 46j. Any church, congregation, society or  
7           corporation, heretofore or hereafter formed for religious  
8           purposes or for the purpose of religious worship under any of  
9           the provisions of this Act or under any law of this State  
10          incorporating or for the incorporation of religious  
11          corporations or societies, may receive land by gift, legacy or  
12          purchase and make, erect, and build thereon such houses,  
13          buildings, or other improvements as may be necessary for the  
14          convenience, comfort and welfare of such church, congregation,  
15          society or corporation, and may lay out and maintain thereon a  
16          cemetery or cemeteries, or a burying ground or grounds and may  
17          maintain and build thereon schools, orphan asylums, or such  
18          other improvements or buildings as may be necessary for the  
19          educational, eleemosynary, cemetery and religious purposes of  
20          such congregation, church, society or corporation; but no such  
21          property shall be used except in the manner expressed in the  
22          gift, grant or legacy. However, this limitation on the  
23          disposition of real property does not apply to the extent that  
24          a restriction imposed by a donor on the use of an institutional

1 fund may be released by the governing board of an institution  
2 under the Uniform Prudent Management of Institutional Funds  
3 Act. Or if no use or trust is so expressed, no such property  
4 shall be used except for the benefit of the congregation,  
5 corporation, church or society, for which it was intended, or  
6 for such religious, educational or eleemosynary purpose as may  
7 be approved by such congregation, church, society or  
8 corporation or the ecclesiastical body having jurisdiction or  
9 patronage of or charge over such congregation, corporation,  
10 church or society.

11 Any corporation, heretofore or hereafter formed for  
12 religious purposes under any of the provisions of this Act or  
13 under any other law of this State incorporating or for the  
14 incorporation of religious corporations or societies, which  
15 now or hereafter owns, operates, maintains or controls a  
16 cemetery or cemeteries, or a burial ground or grounds, is  
17 hereby authorized and empowered to accept by gift, grant,  
18 contribution, payment, or legacy, or pursuant to contract, any  
19 sum of money, funds, securities or property of any kind, or the  
20 income or avails thereof, and to hold the same in trust in  
21 perpetuity for the care of such cemetery or cemeteries, burial  
22 ground or grounds, or for the care of any lot, grave or crypt  
23 therein; or for the special care of any lot, grave or crypt or  
24 of any family mausoleum or memorial, marker, or monument in  
25 such cemetery or cemeteries, burial ground or grounds. No gift,  
26 grant, legacy, payment or other contribution shall be invalid

1 by reason of any indefiniteness or uncertainty as to the  
2 beneficiary designated in the instrument creating the gift,  
3 grant, legacy, payment or other contribution. If any gift,  
4 grant, legacy, payment or other contribution consists of  
5 non-income producing property, such corporation is authorized  
6 and empowered to sell such property and to invest the funds  
7 obtained in accordance with the provisions of the Uniform  
8 Prudent Management of Institutional Funds Act, or the  
9 provisions of the next succeeding paragraph.

10 The trust funds authorized by this Section shall be held  
11 intact and, unless otherwise restricted by the terms of the  
12 gift, grant, legacy, contribution, payment, contract or other  
13 payment shall be invested, from time to time reinvested, and  
14 kept invested by such corporation in such investments as are  
15 authorized by the Uniform Prudent Management of Institutional  
16 Funds Act, and according to such standards as are prescribed,  
17 for trustees under that Act and the Illinois Trust Code ~~"Trusts  
18 and Trustees Act"~~, approved September 10, 1973, as amended, and  
19 the net income only from such investments shall be allocated  
20 and used for the purposes set forth in the paragraph  
21 immediately preceding; but the trust funds authorized by this  
22 Section may be commingled and may also be commingled with any  
23 other trust funds received by such corporation for the care of  
24 the cemetery or cemeteries, or burial ground or grounds, or for  
25 the care or special care of any lot, grave, crypt, private  
26 mausoleum, memorial, marker, or monument whether received by

1 gift, grant, legacy, contribution, payment, contract or other  
2 conveyance heretofore or hereafter made to such corporation.

3 The trust funds authorized by this Section, and the income  
4 therefrom, shall be exempt from taxation and exempt from the  
5 operation of the laws against perpetuities and accumulations.

6 (Source: P.A. 96-29, eff. 6-30-09.)

7 Section 1613. The Illinois Pre-Need Cemetery Sales Act is  
8 amended by changing Section 16 as follows:

9 (815 ILCS 390/16) (from Ch. 21, par. 216)

10 Sec. 16. Trust funds; disbursements.

11 (a) A trustee shall make no disbursements from the trust  
12 fund except as provided in this Act.

13 (b) A trustee has a duty to invest and manage the trust  
14 assets pursuant to the Illinois Uniform Prudent Investor Act  
15 ~~Rule~~ under Article 9 of the Illinois Trust Code ~~Trusts and~~  
16 ~~Trustees Act~~. Whenever the seller changes trustees pursuant to  
17 this Act, the trustee must provide written notice of the change  
18 in trustees to the Comptroller no less than 28 days prior to  
19 the effective date of such a change in trustee. The trustee has  
20 an ongoing duty to provide the Comptroller with a current and  
21 true copy of the trust agreement under which the trust funds  
22 are held pursuant to this Act.

23 (c) The trustee may rely upon certifications and affidavits  
24 made to it under the provisions of this Act, and shall not be

1 liable to any person for such reliance.

2 (d) A trustee shall be allowed to withdraw from the trust  
3 funds maintained pursuant to this Act a reasonable fee pursuant  
4 to the Illinois Trust Code ~~Trusts and Trustees Act~~.

5 (e) The trust shall be a single-purpose trust fund. In the  
6 event of the seller's bankruptcy, insolvency or assignment for  
7 the benefit of creditors, or an adverse judgment, the trust  
8 funds shall not be available to any creditor as assets of the  
9 seller or to pay any expenses of any bankruptcy or similar  
10 proceeding, but shall be distributed to the purchasers or  
11 managed for their benefit by the trustee holding the funds.  
12 Except in an action by the Comptroller to revoke a license  
13 issued pursuant to this Act and for creation of a receivership  
14 as provided in this Act, the trust shall not be subject to  
15 judgment, execution, garnishment, attachment, or other seizure  
16 by process in bankruptcy or otherwise, nor to sale, pledge,  
17 mortgage, or other alienation, and shall not be assignable  
18 except as approved by the Comptroller. The changes made by this  
19 amendatory Act of the 91st General Assembly are intended to  
20 clarify existing law regarding the inability of licensees to  
21 pledge the trust.

22 (f) 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 purposes of determining the Illinois Income Tax due on these  
26 trust funds, the principal and any accrued earnings or losses

1 relating 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.

4 (g) A trustee shall at least annually furnish to each  
5 purchaser a statement identifying: (1) the receipts,  
6 disbursements, and inventory of the trust, including an  
7 explanation of any fees or expenses charged by the trustee  
8 under paragraph (d) of this Section or otherwise, (2) an  
9 explanation of the purchaser's right to a refund, if any, under  
10 this Act, and (3) the primary regulator of the trust as a  
11 corporate fiduciary under state or federal law.

12 (Source: P.A. 96-879, eff. 2-2-10.)

13 Article 99. Effective date.

14 Section 9999. Effective date. This Act takes effect January  
15 1, 2017.

1 INDEX  
2 Statutes amended in order of appearance

3 New Act

4	755 ILCS 5/4-2 rep.	
5	760 ILCS 5/Act rep.	
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8	765 ILCS 310/Act rep.	
9	765 ILCS 315/Act rep.	
10	765 ILCS 320/Act rep.	
11	765 ILCS 325/Act rep.	
12	30 ILCS 160/2	from Ch. 127, par. 4002
13	60 ILCS 1/135-20	
14	205 ILCS 620/1-6	from Ch. 17, par. 1551-6
15	205 ILCS 620/6-10	from Ch. 17, par. 1556-10
16	205 ILCS 620/9-5	from Ch. 17, par. 1559-5
17	210 ILCS 135/3	from Ch. 91 1/2, par. 1703
18	215 ILCS 155/21.1	
19	225 ILCS 45/4a	
20	225 ILCS 45/5	from Ch. 111 1/2, par. 73.105
21	405 ILCS 5/3-605	from Ch. 91 1/2, par. 3-605
22	405 ILCS 5/3-819	from Ch. 91 1/2, par. 3-819
23	405 ILCS 5/5-105	from Ch. 91 1/2, par. 5-105
24	750 ILCS 5/513.5	
25	755 ILCS 5/28-8	from Ch. 110 1/2, par. 28-8

- 1 755 ILCS 45/3-4 from Ch. 110 1/2, par. 803-4
- 2 760 ILCS 45/3 from Ch. 17, par. 2103
- 3 805 ILCS 110/46j from Ch. 32, par. 185
- 4 815 ILCS 390/16 from Ch. 21, par. 216