

AN ACT concerning civil law.

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

Section 5. The Mental Health and Developmental Disabilities Code is amended by changing Sections 3-605, 3-819, and 5-105 as follows:

(405 ILCS 5/3-605) (from Ch. 91 1/2, par. 3-605)

Sec. 3-605. (a) In counties with a population of 3,000,000 or more, upon receipt of a petition and certificate prepared pursuant to this Article, the county sheriff of the county in which a respondent is found shall take a respondent into custody and transport him to a mental health facility, or may make arrangements with another public or private entity including a licensed ambulance service to transport the respondent to the mental health facility. In the event it is determined by such facility that the respondent is in need of commitment or treatment at another mental health facility, the county sheriff shall transport the respondent to the appropriate mental health facility, or the county sheriff may make arrangements with another public or private entity including a licensed ambulance service to transport the respondent to the mental health facility.

(b) The county sheriff may delegate his duties under

subsection (a) to another law enforcement body within that county if that law enforcement body agrees.

(b-5) In counties with a population under 3,000,000, upon receipt of a petition and certificate prepared pursuant to this Article, the Department shall make arrangements to appropriately transport the respondent to a mental health facility. In the event it is determined by the facility that the respondent is in need of commitment or treatment at another mental health facility, the Department shall make arrangements to appropriately transport the respondent to another mental health facility. The making of such arrangements and agreements with public or private entities is independent of the Department's role as a provider of mental health services and does not indicate that the respondent is admitted to any Department facility. In making such arrangements and agreements with other public or private entities, the Department shall include provisions to ensure (i) the provision of trained personnel and the use of an appropriate vehicle for the safe transport of the respondent and (ii) that the respondent's insurance carrier as well as other programs, both public and private, that provide payment for such transportation services are fully utilized to the maximum extent possible.

The Department may not make arrangements with an existing hospital or grant-in-aid or fee-for-service community provider for transportation services under this Section unless the

hospital or provider has voluntarily submitted a proposal for its transportation services. This requirement does not eliminate or reduce any responsibility on the part of a hospital or community provider to ensure transportation that may arise independently through other State or federal law or regulation.

(c) The transporting authority acting in good faith and without negligence in connection with the transportation of respondents shall incur no liability, civil or criminal, by reason of such transportation.

(d) The respondent and the estate of that respondent are liable for the payment of transportation costs for transporting the respondent to a mental health facility. If the respondent is a beneficiary of a trust described in Section 509 ~~4213~~ of the Illinois Trust Code, the trust shall not be considered a part of the respondent's estate and shall not be subject to payment for transportation costs for transporting the respondent to a mental health facility under this Section except to the extent permitted under Section 509 ~~4213~~ of the Illinois Trust Code. If the respondent is unable to pay or if the estate of the respondent is insufficient, the responsible relatives are severally liable for the payment of those sums or for the balance due in case less than the amount owing has been paid. If the respondent is covered by insurance, the insurance carrier shall be liable for payment to the extent authorized by the respondent's insurance policy.

(Source: P.A. 101-48, eff. 1-1-20.)

(405 ILCS 5/3-819) (from Ch. 91 1/2, par. 3-819)

Sec. 3-819. (a) In counties with a population of 3,000,000 or more, when a recipient is hospitalized upon court order, the order may authorize a relative or friend of the recipient to transport the recipient to the facility if such person is able to do so safely and humanely. When the Department indicates that it has transportation to the facility available, the order may authorize the Department to transport the recipient there. The court may order the sheriff of the county in which such proceedings are held to transport the recipient to the facility. When a recipient is hospitalized upon court order, and the recipient has been transported to a mental health facility, other than a state-operated mental health facility, and it is determined by the facility that the recipient is in need of commitment or treatment at another mental health facility, the court shall determine whether a relative or friend of the recipient or the Department is authorized to transport the recipient between facilities, or whether the county sheriff is responsible for transporting the recipient between facilities. The sheriff may make arrangements with another public or private entity including a licensed ambulance service to transport the recipient to the facility. The transporting entity acting in good faith and without negligence in connection with the transportation of

recipients shall incur no liability, civil or criminal, by reason of such transportation.

(a-5) In counties with a population under 3,000,000, when a recipient is hospitalized upon court order, the order may authorize a relative or friend of the recipient to transport the recipient to the facility if the person is able to do so safely and humanely. The court may order the Department to transport the recipient to the facility. When a recipient is hospitalized upon court order, and the recipient has been transported to a mental health facility other than a State-operated mental health facility, and it is determined by the facility that the recipient is in need of commitment or treatment at another mental health facility, the court shall determine whether a relative or friend of the recipient is authorized to transport the recipient between facilities, or whether the Department is responsible for transporting the recipient between facilities. If the court determines that the Department is responsible for the transportation, the Department shall make arrangements either directly or through agreements with another public or private entity, including a licensed ambulance service, to appropriately transport the recipient to the facility. The making of such arrangements and agreements with public or private entities is independent of the Department's role as a provider of mental health services and does not indicate that the recipient is admitted to any Department facility. In making such arrangements and

agreements with other public or private entities, the Department shall include provisions to ensure (i) the provision of trained personnel and the use of an appropriate vehicle for the safe transport of the recipient and (ii) that the recipient's insurance carrier as well as other programs, both public and private, that provide payment for such transportation services are fully utilized to the maximum extent possible.

The Department may not make arrangements with an existing hospital or grant-in-aid or fee-for-service community provider for transportation services under this Section unless the hospital or provider has voluntarily submitted a proposal for its transportation services. This requirement does not eliminate or reduce any responsibility on the part of a hospital or community provider to ensure transportation that may arise independently through other State or federal law or regulation.

A transporting entity acting in good faith and without negligence in connection with the transportation of a recipient incurs no liability, civil or criminal, by reason of that transportation.

(b) The transporting entity may bill the recipient, the estate of the recipient, legally responsible relatives, or insurance carrier for the cost of providing transportation of the recipient to a mental health facility. The recipient and the estate of the recipient are liable for the payment of

transportation costs for transporting the recipient to a mental health facility. If the recipient is a beneficiary of a trust described in Section 509 ~~1213~~ of the Illinois Trust Code, the trust shall not be considered a part of the recipient's estate and shall not be subject to payment for transportation costs for transporting the recipient to a mental health facility under this section, except to the extent permitted under Section 509 ~~1213~~ of the Illinois Trust Code. If the recipient is unable to pay or if the estate of the recipient is insufficient, the responsible relatives are severally liable for the payment of those sums or for the balance due in case less than the amount owing has been paid. If the recipient is covered by insurance, the insurance carrier shall be liable for payment to the extent authorized by the recipient's insurance policy.

(c) Upon the delivery of a recipient to a facility, in accordance with the procedure set forth in this Article, the facility director of the facility shall sign a receipt acknowledging custody of the recipient and for any personal property belonging to him, which receipt shall be filed with the clerk of the court entering the hospitalization order.

(Source: P.A. 101-48, eff. 1-1-20.)

(405 ILCS 5/5-105) (from Ch. 91 1/2, par. 5-105)

Sec. 5-105. Each recipient of services provided directly or funded by the Department and the estate of that recipient is

liable for the payment of sums representing charges for services to the recipient at a rate to be determined by the Department in accordance with this Act. If a recipient is a beneficiary of a trust described in Section 509 ~~1213~~ of the Illinois Trust Code, the trust shall not be considered a part of the recipient's estate and shall not be subject to payment for services to the recipient under this Section except to the extent permitted under Section 509 ~~1213~~ of the Illinois Trust Code. If the recipient is unable to pay or if the estate of the recipient is insufficient, the responsible relatives are severally liable for the payment of those sums or for the balance due in case less than the amount prescribed under this Act has been paid. If the recipient is under the age of 18, the recipient and responsible relative shall be liable for medical costs on a case-by-case basis for services for the diagnosis and treatment of conditions other than that child's disabling condition. The liability shall be the lesser of the cost of medical care or the amount of responsible relative liability established by the Department under Section 5-116. Any person 18 through 21 years of age who is receiving services under the Education for All Handicapped Children Act of 1975 (Public Law 94-142) or that person's responsible relative shall only be liable for medical costs on a case-by-case basis for services for the diagnosis and treatment of conditions other than the person's disabling condition. The liability shall be the lesser of the cost of medical care or the amount of responsible



relative liability established by the Department under Section 5-116. In the case of any person who has received residential services from the Department, whether directly from the Department or through a public or private agency or entity funded by the Department, the liability shall be the same regardless of the source of services. The maximum services charges for each recipient assessed against responsible relatives collectively may not exceed financial liability determined from income in accordance with Section 5-116. Where the recipient is placed in a nursing home or other facility outside the Department, the Department may pay the actual cost of services in that facility and may collect reimbursement for the entire amount paid from the recipient or an amount not to exceed those amounts determined under Section 5-116 from responsible relatives according to their proportionate ability to contribute to those charges. The liability of each responsible relative for payment of services charges ceases when payments on the basis of financial ability have been made for a total of 12 years for any recipient, and any portion of that 12 year period during which a responsible relative has been determined by the Department to be financially unable to pay any services charges must be included in fixing the total period of liability. No child is liable under this Act for services to a parent. No spouse is liable under this Act for the services to the other spouse who willfully failed to contribute to the spouse's support for a period of 5 years

immediately preceding his or her admission. Any spouse claiming exemption because of willful failure to support during any such 5 year period must furnish the Department with clear and convincing evidence substantiating the claim. No parent is liable under this Act for the services charges incurred by a child after the child reaches the age of majority. Nothing in this Section shall preclude the Department from applying federal benefits that are specifically provided for the care and treatment of a person with a disability toward the cost of care provided by a State facility or private agency.

(Source: P.A. 101-48, eff. 1-1-20.)

Section 7. The Illinois Marriage and Dissolution of Marriage Act is amended by changing Section 513.5 as follows:

(750 ILCS 5/513.5)

Sec. 513.5. Support for a non-minor child with a disability.

(a) The court may award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the support of a child of the parties who has attained majority when the child is mentally or physically disabled and not otherwise emancipated. The sums awarded may be paid to one of the parents, to a trust created by the parties for the benefit of

the non-minor child with a disability, or irrevocably to a trust for a beneficiary with a disability ~~special needs trust~~, established by the parties and for the sole benefit of the non-minor child with a disability, pursuant to subdivisions (d) (4) (A) or (d) (4) (C) of 42 U.S.C. 1396p, Section 509 ~~1213~~ of the Illinois Trust Code, and applicable provisions of the Social Security Administration Program Operating Manual System. An application for support for a non-minor disabled child may be made before or after the child has attained majority. Unless an application for educational expenses is made for a mentally or physically disabled child under Section 513, the disability that is the basis for the application for support must have arisen while the child was eligible for support under Section 505 or 513 of this Act.

(b) In making awards under this Section, or pursuant to a petition or motion to decrease, modify, or terminate any such award, the court shall consider all relevant factors that appear reasonable and necessary, including:

(1) the present and future financial resources of both parties to meet their needs, including, but not limited to, savings for retirement;

(2) the standard of living the child would have enjoyed had the marriage not been dissolved. The court may consider factors that are just and equitable;

(3) the financial resources of the child; and

(4) any financial or other resource provided to or for

the child including, but not limited to, any Supplemental Security Income, any home-based support provided pursuant to the Home-Based Support Services Law for Mentally Disabled Adults, and any other State, federal, or local benefit available to the non-minor disabled child.

(c) As used in this Section:

A "disabled" individual means an individual who has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment.

"Disability" means a mental or physical impairment that substantially limits a major life activity.

(Source: P.A. 101-48, eff. 1-1-20.)

Section 10. The Illinois Trust Code is amended by changing Sections 103, 105, 107, 111, 301, 302, 401, 402, 403, 408, 416, 505, 605, 808, 813.1, 813.2, 817, 913, 1103, 1202, 1211, 1215, 1302, 1324, and 1506 as follows:

(760 ILCS 3/103)

Sec. 103. Definitions. In this Code:

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

(1.5) "Appointive property" means the property or property interest subject to a power of appointment.

(2) "Ascertainable standard" means a standard relating to

an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code and any applicable regulations.

(3) "Beneficiary" means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent, assuming nonexercise of powers of appointment, excluding the right of a settlor to be reimbursed for tax obligations as provided in paragraph (3) of subsection (a) of Section 505;

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

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

"Beneficiary" does not include a permissible appointee of power of appointment, other than the holder of a presently exercisable general power of appointment, until the power is exercised in favor of such appointee.

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

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

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

(C) is held solely for charitable purposes and, if the

interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(5) "Charitable organization" means:

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

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

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

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

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

(9) "Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term "current beneficiary" includes the holder of a presently exercisable general power of appointment but

does not include a person who is a beneficiary only because the person holds any other power of appointment. In a revocable trust, "current beneficiary" does not include a person who may receive trust assets only through the exercise of a power to make a gift on behalf of the settlor.

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

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

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

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

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

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

(16) "Incapacitated" or "incapacity" means the inability of an individual to manage property or business affairs because the individual is a minor, adjudicated incompetent, has an impairment in the ability to receive and evaluate

information or make or communicate decisions even with the use of technological assistance; or is at a location that is unknown and not reasonably ascertainable. Without limiting the ways in which incapacity may be established, an individual is incapacitated if:

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

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

(iii) the individual was examined by a licensed physician who determined that the individual was incapacitated and the physician made a signed written record of the physician's determination within 90 days after the examination and no licensed physician subsequently made a signed written record of the physician's determination that the individual was not incapacitated within 90 days after examining the individual.

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

(18) "Interested persons" means: (A) the trustee; and (B) all beneficiaries, or their respective representatives



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

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

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

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

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

(22.5) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

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

(24) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a

recipient of an ownership interest in or another power of appointment over the appointive property. The term "power of appointment" does not include a power of attorney.

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

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

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

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

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

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

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

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

(28) "Presumptive remainder beneficiary" means a

beneficiary of a trust, as of the date of determination and assuming nonexercise of all powers of appointment, who either: (A) would be a distributee or permissible distributee ~~eligible to receive a distribution~~ of trust income or principal if the trust terminated on that date; or (B) would be a distributee or permissible distributee ~~eligible to receive a distribution~~ of trust income or principal if the interests of all distributees ~~beneficiaries~~ currently eligible to receive income or principal from the trust terminated ~~ended~~ on that date without causing the trust to terminate.

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

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

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

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

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

~~that date.~~

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

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

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

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

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

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

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

(36) "Terms of the trust" means:

(A) except as otherwise provided in paragraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or modified by:

(i) a trustee or other person in accordance with applicable law;

(ii) a court order; or

(iii) a nonjudicial settlement agreement under Section 111.

(37) "Trust" means (A) a trust created by will, deed, agreement, declaration, or other written instrument, or (B) an oral trust under Section 407.

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

(39) "Trust instrument" means the written instrument

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

(40) "Trustee" includes an original, additional, and successor trustee, and a co-trustee.

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/105)

Sec. 105. Default and mandatory rules.

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

(b) Terms ~~Specific terms~~ of the trust prevail over any provision of Articles 1 through 10 of this Code except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith;

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

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

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

(6) the power of the court to modify or terminate a trust under Sections 411 through 416 ~~417~~;

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

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

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

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

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

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

(12.5) for trusts becoming irrevocable after the effective date of this Code, the right of a qualified beneficiary under paragraph (6) of subsection (b) of Section 813.1 to request the portions of the trust instrument that set forth the terms of the trust in which the qualified beneficiary has an interest as a qualified beneficiary;

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/107)

Sec. 107. Governing law.

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

(1) the law of the jurisdiction designated in the



trust instrument; or

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/111)

Sec. 111. Nonjudicial settlement agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If a trust contains a charitable interest, the parties to any proposed nonjudicial settlement agreement affecting the trust shall deliver to the Attorney General written notice of the proposed agreement at least 60 days before its effective date. The Bureau is not required to take action, but if it objects in a writing delivered to one or more of the parties before the proposed effective date, the agreement shall not take effect unless the parties obtain court approval.

(d) Any beneficiary or other interested person may request the court to approve any part or all of a nonjudicial settlement agreement, including, without limitation, whether

any representation is adequate and without material conflict of interest, if the petition for approval is filed within 60 days after the effective date of the agreement.

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

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

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

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

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/301)

Sec. 301. Representation: basic effect.

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

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

(2) Actions, including, but not limited to, the

execution of an agreement, taken by a person who may represent and bind another person under this Article are binding on the person represented to the same extent as if the actions had been taken by the person represented.

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

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

(d) If pursuant to this Article a person may be represented by 2 or more representatives, then the first of the following ~~representative~~ who has legal capacity and is willing to act as representative, ~~in the following order of priority~~, shall represent and bind the person:

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

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

(3) a designated representative under Section 307;

(4) a court-appointed guardian of the estate, or, if none, a court-appointed guardian of the person under

subsection (b) of Section 303;

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

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

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/302)

Sec. 302. Representation by holders of certain powers.

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

powerholder's estate, may represent and bind all persons, including ~~permissible appointees and~~ takers in default, whose interests may be eliminated by the exercise ~~or nonexercise~~ of the power.

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

(c) Subsection (a), except with respect to a presently exercisable general power of appointment, and subsection (b) do not apply to:

- (1) any matter determined by the court to involve fraud or bad faith by the trustee; or
- (2) a power of appointment held by a person while the person is the sole trustee.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/401)

Sec. 401. Methods of creating trust. A trust may be created by:

- (1) transfer of property to another person as trustee during the settlor's lifetime or by will or other



disposition taking effect upon the settlor's death;

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

(3) exercise of a power of appointment in favor of a trustee;

(4) order of a court; or

(5) exercise by an authorized fiduciary of the powers granted in Article 12.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/402)

Sec. 402. Requirements for creation.

(a) A trust is created only if:

(1) the settlor or other person creating the trust has capacity to create a trust;

(2) the settlor or other person creating the trust indicates an intention to create the trust;

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

(A) a charitable trust;

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

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

(4) the trustee has duties to perform; and

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/403)

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

(1) the person creating the trust ~~settlor~~ was domiciled, had a place of abode, or was a national;

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

(3) any trust property was located.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/408)

Sec. 408. Trusts for domestic or pet animals.

(a) A trust for the care of one or more designated domestic

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

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

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

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

(A) as directed in the trust instrument;

(B) to the settlor, if then living;

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

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

(3) The intended use of the principal or income may be enforced by an individual designated for that purpose in

the trust instrument or, if none, by an individual appointed by a court having jurisdiction of the matter and parties, upon petition to it by an individual.

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

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/416)

Sec. 416. Modification to achieve settlor's ~~tax~~ objectives. To achieve the settlor's tax objectives or objective to qualify for government benefits, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/505)

Sec. 505. Creditor's claim against settlor.

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

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

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

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

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

(5) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory awards ~~allowances~~ to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and awards ~~allowances~~. Distributees of the trust take property distributed after payment of such claims; subject to the following

conditions:

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

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

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

revocable trust.

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

(A) the trustee made the distribution 9 ~~6~~ months or later after the settlor's death; and

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

(b) For purposes of this Section:

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

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



(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/605)

Sec. 605. Revocation of provisions in revocable trust by divorce or annulment.

(a) As used in this Section:

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

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

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

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

(b) Unless the trust instrument or the judgment of judicial termination of marriage expressly provides otherwise, judicial termination of marriage of the settlor of a trust revokes every provision that is revocable by the settlor

pertaining to the settlor's former spouse in a trust instrument or amendment executed by the settlor before the entry of the judgment of judicial termination of marriage of the settlor and any such trust shall be administered and construed as if the settlor's former spouse had died upon entry of the judgment of judicial termination of marriage.

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/808)

Sec. 808. Directed trusts.

(a) In this Section:

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

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

or existing trust.

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

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

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

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

(b) An investment trust advisor may be designated in the trust instrument of a trust. The powers of an investment trust advisor may be exercised or not exercised in the sole and absolute discretion of the investment trust advisor, and are binding on all other persons, including, but not limited to, each beneficiary, fiduciary, excluded fiduciary, and any other party having an interest in the trust. The trust instrument may use the title "investment trust advisor" or any similar

name or description demonstrating the intent to provide for the office and function of an investment trust advisor. Unless the terms of the trust provide otherwise, the investment trust advisor has the authority to:

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

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

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

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

(c) A distribution trust advisor may be designated in the trust instrument of a trust. The powers of a distribution trust advisor may be exercised or not exercised in the sole and absolute discretion of the distribution trust advisor, and are binding on all other persons, including, but not limited to, each beneficiary, fiduciary, excluded fiduciary, and any other

party having an interest in the trust. The trust instrument may use the title "distribution trust advisor" or any similar name or description demonstrating the intent to provide for the office and function of a distribution trust advisor. Unless the terms of the trust provide otherwise, the distribution trust advisor has authority to direct the trustee with regard to all decisions relating directly or indirectly to discretionary distributions to or for one or more beneficiaries.

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

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

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

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

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

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

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

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

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

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

(10) amend or modify the trust instrument to take advantage of laws governing restraints on alienation,

distribution of trust property, or to improve the administration of the trust.

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

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

(f) The excluded fiduciary shall act in accordance with the trust instrument and comply with the directing party's exercise of the powers granted to the directing party by the trust instrument. Unless otherwise provided in the trust instrument, an excluded fiduciary has no duty to monitor, review, inquire, investigate, recommend, evaluate, or warn with respect to a directing party's exercise or failure to exercise any power granted to the directing party by the trust instrument, including, but not limited to, any power related to the acquisition, disposition, retention, management, or



valuation of any asset or investment. Except as otherwise provided in this Section or the trust instrument, an excluded fiduciary is not liable, either individually or as a fiduciary, for any action, inaction, consent, or failure to consent by a directing party, including, but not limited to, any of the following:

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

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

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

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

(h) Each directing party shall keep the excluded fiduciary and any other directing party reasonably informed regarding the administration of the trust with respect to any specific duty or function being performed by the directing party to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary or other directing party is reasonably necessary for the excluded fiduciary or other directing party to perform its duties, and the directing party shall provide such information as reasonably requested by the

excluded fiduciary or other directing party. Neither the performance nor the failure to perform of a directing party's duty to inform as provided in this subsection affects whatsoever the limitation on the liability of the excluded fiduciary as provided in this Section.

(i) Other required notices.

(1) A directing party shall:

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

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

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

(2) In the event of the incapacity, death, disqualification, or removal of any directing party, a

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

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

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

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

(2) any existing or future trust that:

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

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

order, agreement, or second-trust instrument specifies that this Section governs the responsibilities, actions, and liabilities of a person designated as a directing party or excluded fiduciary.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/813.1)

Sec. 813.1. Duty to inform and account; trusts irrevocable and trustees accepting appointment after effective date of Code.

(a) This Section applies to all trusts created under a trust instrument that became irrevocable after the effective date of this Code and, subject to Section 603, to all revocable trusts except with respect to a trustee of a revocable trust who accepted such trustee's trusteeship before the effective date of this Code. This Section is prospective only and does not apply to any trust created under a trust instrument that became ~~was~~ irrevocable before the effective date of this Code, ~~or to a trustee who accepts a trusteeship before the effective date of this Code.~~ Subject to Section 105, this Section supplants any common law duty of a trustee to inform and account to trust beneficiaries. ~~This Section does not apply to trusts that became irrevocable before the effective date of this Code.~~

(b) General principles.

(1) The trustee shall notify each qualified

beneficiary:

(A) of the trust's existence;

(B) of the beneficiary's right to request a complete copy of the trust instrument or, if the trust instrument so provides, only the portion of the trust instrument that set forth the terms of the trust in which the qualified beneficiary has an interest as a qualified beneficiary, as applicable; and

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

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

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

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

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

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

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

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

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

nominal carrying value for such an asset, how to estimate the value of such an asset, and whether and how often to engage a professional appraiser to value such an asset.

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

(d) Other required notices.

(1) A trustee shall:

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

(B) notify each qualified beneficiary in advance of any change in the rate of or the method of



determining the trustee's compensation; and

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

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

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

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

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

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

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

Article 3 for the qualified beneficiary.

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

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

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

(i) A trustee may request approval of the trustee's

current or final trust accounting in a judicial proceeding at the trustee's election, with all reasonable and necessary costs of the proceeding payable by the trust and allocated between income and principal in accordance with the Principal and Income Act.

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/813.2)

Sec. 813.2. Duty to inform and account for pre-2020 trusts; ~~trusts irrevocable and trustees accepting appointment before the effective date of Code.~~

(a) This Section applies to all trusts created under a trust instrument that became ~~were~~ irrevocable before the effective date of this Code and to a trustee of a revocable trust who accepted the trustee's ~~accepts a~~ trusteeship before the effective date of this Code.

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

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/817)

Sec. 817. Distribution upon termination. Upon the occurrence of an event terminating a trust in whole or in part,

or upon the exercise by a beneficiary of a right to withdraw trust principal, the trustee shall proceed expeditiously to make the distribution to the beneficiary. The trustee has the right to require from the beneficiary a written approval of the trust accounting ~~trustee's accountings~~ provided to the beneficiary and, at the trustee's election, a refunding agreement from the beneficiary for liabilities that would otherwise be payable from trust property to the extent of the beneficiary's share of the distribution. A trust ~~An~~ accounting approved under this Section is binding on the beneficiary providing the approval and on the beneficiary's successors, heirs, representatives, and assigns. A trustee may elect to withhold a reasonable amount of a distribution or require a reasonable reserve for the payment of debts, expenses, and taxes payable from the trust pending the receipt of a written approval of the trust accounting ~~trustee's accountings~~ provided to the beneficiary and refunding agreement from a beneficiary or a judicial settlement of accounts.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/913)

Sec. 913. Life insurance.

(a) Notwithstanding any other provision, the duties of a trustee with respect to acquiring or retaining as a trust asset a contract of insurance upon the life of the settlor, upon the lives of the settlor and the settlor's spouse, or upon

the life of any person for which the trustee has an insurable interest in accordance with Section 113, do not include any of the following duties:

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

(A) the type of insurance contract;

(B) the quality of the insurance contract;

(C) the quality of the insurance company; or

(D) the investments held within the insurance contract;

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

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

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

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

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

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

(Source: P.A. 101-48, eff. 1-1-20; revised 8-6-19.)

(760 ILCS 3/1103)

Sec. 1103. Conversion by agreement. Conversion to a total

return trust may be made by agreement between a trustee and all qualified beneficiaries. The agreement may include any actions a court could properly order under Section 1104 ~~1108~~; however, any distribution percentage determined by the agreement may not be less than 3% nor greater than 5%.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/1202)

Sec. 1202. Definitions. In this Article:

(1) (Blank). ~~"Appointive property" means the property or property interest subject to a power of appointment.~~

(2) "Authorized fiduciary" means:

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

(B) a special fiduciary appointed under Section 1209;

or

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

(3) "Court" means the court in this State having jurisdiction in matters relating to trusts.

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

(5) "Expanded distributive discretion" means a



discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

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

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

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

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

(10) "Second trust" means:

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/1211)

Sec. 1211. Decanting power under expanded distributive discretion.

(a) In this Section:

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

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

(3) "Vested interest" means:

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

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

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

(D) a presently exercisable general power of

appointment; or

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

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

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

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

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

(3) reduce or eliminate a vested interest.

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

any jurisdiction and may:

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

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

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

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

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

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

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/1215)

Sec. 1215. Trust limitation on decanting.

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) the decanting power; or

(2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) the decanting power; or

(2) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift provision ~~clause~~, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b), an authorized fiduciary may exercise the decanting power under this Article even if the first-trust instrument permits the authorized

fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) or an express restriction described in subsection (b), that provision must be included in the second-trust instrument.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/1302)

Sec. 1302. Definitions. In this Article:

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) (Blank). ~~"Appointive property" means the property or property interest subject to a power of appointment.~~

(3) "Blanket-exercise clause" means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(A) expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(B) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(C) disposes of all property subject to disposition by the powerholder.

(4) "Exclusionary power of appointment" means a power of

appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(5) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(6) "Impermissible appointee" means a person that is not a permissible appointee.

(7) "Instrument" means a writing.

(8) (Blank). ~~"Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.~~

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

(10) "Specific-exercise clause" means a clause in an instrument that specifically refers to and exercises a particular power of appointment.

(11) "Taker in default of appointment" means a person that takes part or all of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(12) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/1324)

Sec. 1324. Disposition of trust property subject to power. In disposing of trust property subject to a power of appointment, whether exercisable by a will or an instrument other than a will, a trustee acting in good faith shall have no liability to any appointee or taker in default of appointment for relying upon a will, regardless of whether it was admitted to probate, or an instrument believed to be genuine purporting to exercise a power of appointment or for assuming that there is no will or instrument exercising the power of appointment in the absence of actual knowledge thereof within 3 months of the death of the powerholder, in the case of a will, or 3 months of the last date on which the power of appointment may be exercised, in the case of any other instrument. Nothing in this Section precludes a donor of a power or a trustee from requiring that a will be admitted to probate.

(Source: P.A. 101-48, eff. 1-1-20.)

(760 ILCS 3/1506)

Sec. 1506. Application to existing relationships. Except as otherwise provided in this Code, on the effective date of this Code:

(1) This Code applies to all trusts created before, on, or after its effective date.

(2) This Code applies to all judicial proceedings



concerning trusts commenced on or after its effective date. As used in this Section, "judicial proceedings" includes any proceeding before a court or administrative tribunal of this State and any arbitration or mediation proceedings.

(3) This Code applies to all nonjudicial matters concerning trusts commenced before, on, or after its effective date. As used in this Section, "nonjudicial matters" includes, but is not limited to, nonjudicial settlement agreements entered into under Section 111 and the grant of any consent, release, ratification, or indemnification.

(4) This Code applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this Code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this Code does not apply and the superseded law applies.

(5) Any rule of construction or presumption provided in this Code applies to trust instruments executed before the effective date of this Code unless there is a clear indication of a contrary intent in the trust instrument.

(6) An act done before the effective date of this Code is not affected by this Code.

(7) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this Code, that statute continues to apply to the right even if it has been repealed or superseded.

(8) (Blank). ~~This Code shall be construed as pertaining to administration of a trust and applies to any trust that is administered in Illinois under Illinois law or that is governed by Illinois law with respect to the meaning and effect of its terms, except to the extent the trust instrument expressly prohibits use of this Code by specific reference to this Code.~~

(Source: P.A. 101-48, eff. 1-1-20.)

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