

Journal of the Senate

MONDAY, MARCH 23, 2009

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 51. An act relating to Vermont's motor vehicle franchise laws.

S. 77. An act relating to the disposal of electronic waste.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 124.

By Senator White,

An act relating to election day registration.

To the Committee on Government Operations.

Committee Bills Introduced

Senate committee bills of the following titles were severally introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 125.

By the Committee on Judiciary,

An act relating to expanding the sex offender registry.

S. 126.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to digital forensic specialists.

S. 127.

By the Committee on Education,

An act relating to small school districts that pay tuition for their resident students.

S. 128.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to workers' compensation benefits and misclassification.

S. 129.

By the Committee on Health and Welfare,

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 83.

An act relating to underground storage tanks and the petroleum cleanup fund.

To the Committee on Natural Resources and Energy.

H. 135.

An act relating to wireless communication facilities and project approvals for municipal and cooperative utilities.

To the Committee on Finance.

H. 145.

An act relating to composting.

To the Committee on Agriculture.

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and the following bills and Joint resolution, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

S. 5, S. 54, S. 99, and J.R.S. 18.

Third Reading Ordered**S. 109.**

Senate committee bill entitled:

An act relating to brominated flame retardants.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Joint Resolution Adopted on the Part of the Senate**J.R.S. 24.**

Joint Senate resolution entitled:

Joint resolution relating to criminal procedure, the sex offender registry, and the Adam Walsh Child Protection and Safety Act of 2006 .

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 3. An act relating to prohibiting retaliation for legislative testimony.

S. 25. An act relating to the repeal or revision of certain state agency reporting requirements.

S. 85. An act relating to the patient's privilege.

Third Reading Ordered**S. 69.**

Senator Brock, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to digital campaign finance filings.

Reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 86.

Senator McCormack, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the administration of trusts.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Title 14A is added to read:

TITLE 14A. TRUSTS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

§ 101. SHORT TITLE

This title may be cited as the Vermont Trust Code.

§ 102. SCOPE

This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, chapters 5 and 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30.

§ 103. DEFINITIONS

In this title:

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

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

(3) "Beneficiary" means a person that:

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

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

(4) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection 405(a) of this title.

(5) “Conservator” shall have the same meaning as “Guardian of the property” under subdivision 7(A)(ii) of this section.

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

(7)(A) “Guardian.”

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

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

(B) Neither term includes a guardian ad litem.

(8) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

(9) “Jurisdiction,” with respect to a geographic area, includes a state or country.

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

(11) “Power of withdrawal” means a presently exercisable general power of appointment other than a power:

(A) exercisable by a trustee and limited by an ascertainable standard;
or

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

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

(13)(A) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined, is:

(i) a “first tier” beneficiary as a distributee or permissible distributee of trust income or principal;

(ii) a “second tier” beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision (13) terminated on that date without causing the trust to terminate; or

(iii) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(B) Notwithstanding subdivisions (i) and (ii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary whose interest in the trust:

(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or

(ii) may be eliminated by an amendment to the trust, shall not be a “qualified beneficiary.”

(14) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

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

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

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

(18) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(19) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

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

§ 104. KNOWLEDGE

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

(1) has actual knowledge of it;

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

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

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

§ 105. DEFAULT AND MANDATORY RULES

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

(b) The terms of a trust prevail over any provision of this title except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

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

(4) the power of the probate court to modify or terminate a trust under sections 410 through 416 of this title;

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

(6) the power of the probate court under section 702 of this title to require, dispense with, or modify or terminate a bond;

(7) the power of the probate court under subsection 708(b) of this title to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under section 1008 of this title;

(9) the rights under sections 1010 through 1013 of this title of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding;

(11) the power of the probate court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the subject matter jurisdiction of the probate court and venue for commencing a proceeding as provided in sections 203 and 204 of this title.

§ 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

The common law of trusts and principles of equity supplement this title, except to the extent modified by this title or another statute of this state.

§ 107. GOVERNING LAW

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

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

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

§ 108. PRINCIPAL PLACE OF ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

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

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704 of this title.

§ 109. METHODS AND WAIVER OF NOTICE

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

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

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

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

§ 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES

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

(b)(1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this title if the charitable organization, on the date the charitable organization's qualification is being determined, is:

(A) a "first tier" beneficiary as a distributee or permissible distributee of trust income or principal;

(B) a "second tier" beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (1)(A) of this subsection (b) terminated on that date without causing the trust to terminate; or

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

(2) Notwithstanding subdivision (1) of this subsection (b), a second tier beneficiary or a final beneficiary whose interest in the trust is created by the exercise of a power of appointment, and the exercise of the power of appointment is not irrevocable, shall not have the rights of a "qualified beneficiary."

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

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

§ 111. NONJUDICIAL SETTLEMENT AGREEMENTS

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

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

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

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

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

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

(3) direction to a trustee to perform or to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

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

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

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

(e) Any interested person may request the probate court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 3 of this title was adequate, and to determine whether the agreement contains terms and conditions the probate court could have properly approved.

§ 112. RULES OF CONSTRUCTION

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

CHAPTER 2. JUDICIAL PROCEEDINGS

§ 201. ROLE OF COURT IN ADMINISTRATION OF TRUST

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

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

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

(d) Upon motion of any party in a probate action concerning the administration of a trust under the provisions of this title, the presiding probate judge shall permit an appeal to be taken to the superior court from any interlocutory order or ruling if the judge finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

§ 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY

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

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

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

§ 203. SUBJECT MATTER JURISDICTION

(a) The probate court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) The probate court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

§ 204. VENUE

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

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

§ 205. MATTERS IN EQUITY

The probate court may hear and determine in equity all matters relating to trusts in this title.

CHAPTER 3. REPRESENTATION§ 301. REPRESENTATION; BASIC EFFECT

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

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

(c) Except as otherwise provided in sections 411 and 602 of this title, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

§ 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT

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

§ 303. REPRESENTATION BY FIDUCIARIES AND PARENTS

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

(1) a guardian of the property may represent and bind the estate that the guardian controls;

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

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

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

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

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

§ 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST

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

§ 305. APPOINTMENT OF REPRESENTATIVE

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

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

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

CHAPTER 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

§ 401. METHODS OF CREATING TRUST

A trust may be created:

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

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

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

(4) pursuant to a statute or judgment or decree that requires property to be administered in the manner of an express trust;

(5) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust.

§ 402. REQUIREMENTS FOR CREATION

(a) A trust is created only if:

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

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

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

(A) a charitable trust;

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

(C) a trust for a noncharitable purpose, as provided in section 409 of this title;

(4) the trustee has duties to perform; and

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

(b) a settlor has capacity to create a trust if:

(1) the trust is created by an agent of the settlor under a power of attorney that expressly grants authority to create the trust; and

(2) the principal had capacity to create a trust at the time the power of attorney was executed.

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

(d) 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.

§ 403. TRUSTS CREATED IN OTHER JURISDICTIONS

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

(1) the settlor was domiciled, had a place of abode, or was a citizen;

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

(3) any trust property was located.

§ 404. TRUST PURPOSES

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

§ 405. CHARITABLE PURPOSES; ENFORCEMENT

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

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary or if the designated charitable purpose cannot be completed or no longer exists, the trustee, if authorized by the terms of the trust, or if not, the probate court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, the attorney general, a cotrustee, or a person with a special interest in the charitable trust may maintain a proceeding to enforce the trust.

§ 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE

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

§ 407. EVIDENCE OF ORAL TRUST

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

§ 408. TRUST FOR CARE OF ANIMAL

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

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

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

§ 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Except as otherwise provided in section 408 of this title or by another statute, the following rules apply:

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

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

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

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

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

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

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

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. If, upon petition, the probate court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the probate court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's guardian of the property with the approval of the probate court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the probate court supervising the guardianship if an agent is not so authorized and a guardian of the property has not been appointed.

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

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

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

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

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

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

§ 412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY

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

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

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

§ 413. CY PRES

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

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

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

(3) the probate court, on motion of any trustee, or any interested person, or the attorney general, may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

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

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

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

§ 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

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

§ 415. REFORMATION TO CORRECT MISTAKES

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

§ 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

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

§ 417. COMBINATION AND DIVISION OF TRUSTS

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

CHAPTER 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§ 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

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

§ 502. SPENDTHRIFT PROVISION

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

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

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

§ 503. EXCEPTIONS TO SPENDTHRIFT PROVISION

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

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary’s child who has a judgment or court order against the beneficiary for support or maintenance;

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

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

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

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

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

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

(2) the trustee has abused the discretion.

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

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

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

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

§ 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.

(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. This subdivision shall not apply to an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. Section 1396p(d)(4) or similar federal law governing the transfer to such a trust.

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

(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 of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this title.

§ 506. OVERDUE DISTRIBUTION

(a) In this section, “mandatory distribution” means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee’s discretion even if:

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

(2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

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

§ 507. PERSONAL OBLIGATION OF TRUSTEE

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

CHAPTER 6. REVOCABLE TRUSTS§ 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST

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

§ 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST

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

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

(1) to the extent the trust consists of community property or property held by tenants by the entirety when added to the trust, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property or property held by tenants by the entirety when added to the trust, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor’s contribution; and

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

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

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

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

(A) executing a later will or codicil that expressly refers to and revokes or amends the trust or specifically devises or bequeaths specific property that would otherwise have passed according to the terms of the trust, or

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

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs, but with respect to community property or property held by tenants by the entirety when added to the trust under subdivision (b)(1) of this section, the trustee shall deliver one-half of the property to each spouse unless the governing instrument specifically states otherwise.

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

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

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

§ 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL

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

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

the extent of the property subject to the power.

§ 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY

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

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

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

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

(1) the trustee has actual knowledge of a pending judicial proceeding contesting the validity of the trust; or

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

(c) A beneficiary of a trust that is determined to have been invalid in whole or in part is liable to return any distribution received to the extent that the invalidity applies to the distribution.

CHAPTER 7. OFFICE OF TRUSTEE

§ 701. ACCEPTING OR DECLINING TRUSTEESHIP

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

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

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

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

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

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a qualified beneficiary; and

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

§ 702. TRUSTEE'S BOND

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

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

§ 703. COTRUSTEES

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

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

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

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

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

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

(g) Each trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a serious breach of trust; and
- (2) compel a cotrustee to redress a serious breach of trust.

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

§ 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

(a) A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a guardian is appointed for an individual serving as trustee.

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

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

- (1) by a person designated in the terms of the trust to act as successor trustee;
- (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) by a person appointed by the probate court.

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

- (1) by a person designated in the terms of the trust to act as successor trustee;
- (2) by a person appointed by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or

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

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the probate court may appoint an additional trustee or special fiduciary whenever the probate court considers the appointment necessary for the administration of the trust.

§ 705. RESIGNATION OF TRUSTEE

(a) A trustee may resign:

(1) upon at least 30 days' notice in writing to the qualified beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the capacity to revoke and to all cotrustees; or

(2) with the approval of the probate court.

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

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

§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE

(a) The settlor, a cotrustee, or a beneficiary may request the probate court to remove a trustee under subsection (b) of this section or to replace a trustee under subsection (c) of this section. A trustee may be removed by the probate court on its own initiative.

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

(1) the trustee is obviously unsuitable;

(2) the trustee has committed a serious breach of trust;

(3) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(4) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;

(5) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the probate court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(6) for any cause, if the interests of the trust estate require it.

(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:

(1) Whether removal would substantially improve or benefit the administration of the trust;

(2) The relationship between the grantor and the trustee as it existed at the time the trust was created;

(3) Changes in the nature of the trustee since the creation of the trust;

(4) The relationship between the trustee and the beneficiaries;

(5) The responsiveness of the trustee to the beneficiaries;

(6) The experience and skill level of the trustee;

(7) The investment performance of the trustee;

(8) The charges for services performed by the trustee; and

(9) Any other relevant factors pertaining to the administration of the trust.

(d) A probate court may order trustees who are replaced pursuant to an action brought under subsection (c) of this section to reimburse the trust for attorney's fees and court costs paid by the trust relating to the action.

(e) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the probate court may order such appropriate relief under subsection 1001(b) of this title as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE

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

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

§ 708. COMPENSATION OF TRUSTEE

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

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the probate court may allow more or less compensation if:

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

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

(c)(1) Factors for the probate court to consider in deciding upon a trustee's compensation shall include:

(A) the size of the trust;

(B) the nature and number of the assets;

(C) the results obtained;

(D) the time and responsibility required;

(E) the expertise required;

(F) any management or sale of real property or closely held business interests;

(G) any involvement in litigation to protect the trust property;

(H) the fee customarily charged in the locality for similar services;

(I) the experience, reputation, and ability of the person performing the services;

(J) the effect that the particular employment may have on the ability of the person employed to engage in other employment;

(K) the time limitations imposed by the trustee or by the circumstances; and

(L) other relevant factors.

(2) The order of the factors in this subsection does not imply their relative importance.

§ 709. REIMBURSEMENT OF EXPENSES

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

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

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

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

CHAPTER 8. DUTIES AND POWERS OF TRUSTEE

§ 801. DUTY TO ADMINISTER TRUST

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this title.

§ 802. DUTY OF LOYALTY

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

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012 of this title, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (1) the transaction was authorized by the terms of the trust;
- (2) the transaction was approved by the probate court;
- (3) the beneficiary did not commence a judicial proceeding within the time allowed by section 1005 of this title;
- (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 1009 of this title;
- (5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee;
- (6) the transaction was consented to in writing by a settlor of the trust while the trust was revocable.

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

- (1) the trustee's spouse;
- (2) the trustee's descendants, siblings, parents, or their spouses;
- (3) an agent or attorney of the trustee; or

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

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

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

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment is fairly priced and otherwise complies with the prudent investor rule of chapter 9 of this title. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must include in the trustee's annual report of the rate and method by which that compensation was determined.

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

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

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

(2) payment of reasonable compensation to the trustee;

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

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

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

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

§ 803. IMPARTIALITY

If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust, giving due regard to the beneficiaries' respective interests.

§ 804. PRUDENT ADMINISTRATION

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

§ 805. COSTS OF ADMINISTRATION

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

§ 806. TRUSTEE'S SKILLS

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

§ 807. DELEGATION BY TRUSTEE

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

(1) selecting an agent;

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

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

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

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

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

§ 808. POWERS TO DIRECT

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

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

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

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

§ 809. CONTROL AND PROTECTION OF TRUST PROPERTY

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

§ 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

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

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

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

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

§ 811. ENFORCEMENT AND DEFENSE OF CLAIMS

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

§ 812. COLLECTING TRUST PROPERTY

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

§ 813. DUTY TO INFORM AND REPORT

(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. Notice does not need to be provided to the attorney general by the trustee of a charitable trust under this section except upon request by the attorney general or as provided in subsection (f) of this section.

(b) A trustee:

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

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

(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

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

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee

remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative may send the qualified beneficiaries a report on behalf of a deceased trustee, and a guardian or a duly authorized agent under a power of attorney may send the qualified beneficiaries a report on behalf of an incapacitated trustee.

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

(e) Subdivisions (b)(2) and (3) of this section do not apply to a trustee who accepts a trusteeship before the effective date of this title, to an irrevocable trust created before the effective date of this title, or to a revocable trust that becomes irrevocable before the effective date of this title.

(f)(1) A person seeking relief regarding a charitable trust under this subsection shall notify the attorney general upon filing a petition to:

(A) select a charitable purpose or charitable beneficiary as provided in subsection 405(b) of this title;

(B) enforce a charitable trust as provided in subsection 405(c) of this title;

(C) remove or replace a trustee of a charitable trust as provided in section 706 of this title; or

(D) remedy a breach of trust as provided in section 1001 off this title.

(2) Notice does not have to be given under this subsection if the trustee reasonably believes that the assets of the trust are less than \$10,000.00.

§ 814. DISCRETIONARY POWERS; TAX SAVINGS

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

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

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

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

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

(d) Subsection (b) of this section does not apply to:

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

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

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

§ 815. GENERAL POWERS OF TRUSTEE

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

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

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

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

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

(C) any other powers conferred by this title.

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

§ 816. SPECIFIC POWERS OF TRUSTEE

Without limiting the authority conferred by section 815 of this title, a trustee may:

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an

option exercisable beyond the duration of the trust, and exercise an option so acquired;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) paying it to the beneficiary's guardian of the property or, if the beneficiary does not have a guardian of the property, the beneficiary's guardian of the person;

(B) paying it to the beneficiary's custodian under the Uniform Gifts to Minors Act, and, for that purpose, creating a custodianship; or

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

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

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

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

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

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

§ 817. DISTRIBUTION UPON TERMINATION

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

if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

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

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

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

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

CHAPTER 9. UNIFORM PRUDENT INVESTOR ACT AND UNITRUSTS

§ 901. PRUDENT INVESTOR RULE

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

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

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

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

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

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

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

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ 903. DIVERSIFICATION

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 904. DUTIES AT INCEPTION OF TRUSTEESHIP

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this chapter.

§ 905. REVIEWING COMPLIANCE

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 906. LANGUAGE INVOKING STANDARD OF THIS CHAPTER

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety

of their capital,” “prudent man rule,” “prudent trustee rule,” “prudent person rule,” and “prudent investor rule.”

§ 907. TOTAL RETURN UNITRUSTS

(a) In this section:

(1) “Disinterested person” means a person who is not a “related or subordinate party” (as defined in Section 672(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title (referred to in this section as the “I.R.C.”)) with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

(2) “Income trust” means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(3) “Interested distributee” means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a “related or subordinate party” (as defined in I.R.C. § 672(c)) with respect to such distributee.

(4) “Interested trustee” means any or all of the following:

(A) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;

(B) Any trustee who may be removed and replaced by an interested distributee;

(C) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) “Total return unitrust” means an income trust which has been converted under and meets the provisions of this section.

(6) “Settlor” means an individual who created an inter vivos or a testamentary trust.

(7) “Unitrust amount” means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or when two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee

(in either case referred to in this subsection as “trustee”), may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protectors or trust advisors of the trust;

(C) At least one person receiving such notice in each tier described in subdivision 103(13) of this title is legally competent; and

(D) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, when two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust or both if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(i) The percentage to be used to calculate the unitrust amount;

(ii) The method to be used in determining the fair market value of the trust; and

(iii) Which assets, if any, are to be excluded in determining the unitrust amount;

(C) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protector or trust advisor of the trust;

(D) At least one person receiving such notice in each tier described in subdivision 103(13) of this title (first tier, second tier and final beneficiaries) is legally competent; and

(E) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(d) A trustee who desires to: convert an income trust to a total return unitrust; reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability or elects not to do it under the provisions of subsection (b) or (c) of this section, the trustee may petition the probate court for such order as the trustee deems

appropriate. If there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the probate court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the probate court as shall be necessary to enable the probate court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent nor more than five percent, taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that:

(1) Instead of sending written notice as provided in subsection (b) or (c) of this section, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of such income, to the attorney general of this state;

(2) Subdivision (b)(3)(C) or (c)(3)(D) of this section (relating to legal competence of qualified beneficiaries), as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount and the amount required by I.R.C. § 4942.

(h) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9), may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) and then from net long-term capital gain described in I.R.C. § 1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions (including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases);

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Vermont under Vermont law or to any trust, regardless of its place of administration, whose governing instrument provides that Vermont law governs matters of construction or administration unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) or a charitable-remainder trust described in I.R.C. § 664(d);

(3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 14A V.S.A. § 907, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust" or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount" or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the probate court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

§ 908. EXPRESS TOTAL RETURN UNITRUSTS

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under section 907 of this title, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust or a reconversion of an income trust to a unitrust similar to the mechanism under section 907 of this title.

(e) If an express total return unitrust does not specifically or by reference to section 907 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

(f) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in the Internal Revenue Code of 1986 (as in effect on the effective date of this title and referred to in this section as the "I.R.C."), § 1222(9), from net realized short-term capital gain as described in I.R.C. § 1222(5) and then from net realized long-term capital gain described in I.R.C. § 1222(7); and

(4) From the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

CHAPTER 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§ 1001. REMEDIES FOR BREACH OF TRUST

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

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

- (1) compel the trustee to perform the trustee's duties;
- (2) enjoin the trustee from committing a breach of trust;
- (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) order a trustee to account;
- (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) suspend the trustee;
- (7) remove the trustee as provided in section 706 of this title;
- (8) reduce or deny compensation to the trustee;
- (9) subject to section 1012 of this title, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) order any other appropriate relief.

§ 1002. DAMAGES FOR BREACH OF TRUST

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

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

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

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

§ 1003. DAMAGES IN ABSENCE OF BREACH

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to reasonable compensation under section 708 of this title.

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

§ 1004. ATTORNEY'S FEES AND COSTS

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

§ 1005. LIMITATION OF ACTION AGAINST TRUSTEE

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

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

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

- (1) the removal, resignation, or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

(d) Subsections (a) through (c) of this section shall not apply to the filing of a petition in probate court by the attorney general for breach of trust against the trustee of a charitable trust with a principal place of administration in this state. The attorney general may file a petition within three years after the potential claim arises.

§ 1006. RELIANCE ON TRUST INSTRUMENT

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

§ 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specified age, or death, affects the administration or distribution of a trust, a trustee who

has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 1008. EXCULPATION OF TRUSTEE

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

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

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

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

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

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

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

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

§ 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in making the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.

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

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

§ 1011. INTEREST AS GENERAL PARTNER

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity, an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract will be satisfied if the trustee signs the contract or signs another writing which is contemporaneously delivered to the other parties to the contract in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

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

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

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

§ 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE

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

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

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

(d) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee without

knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

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

§ 1013. CERTIFICATION OF TRUST

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:

(1) the name of the trust, if one is given;

(2) the date of the trust instrument;

(3) the name of each grantor or settlor;

(4) the name of each original trustee;

(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;

(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;

(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions, and a statement that the trust exists;

(8) a statement that no provisions of the trust instrument limit the authority so granted; and

(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.

(b) A certificate of trust executed under subsection (a) of this section may be recorded in the municipal land records where the land identified in the certificate of trust or any attachment to it is located. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustee, the powers of the trustee and any limitations on

those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.

(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:

(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;

(2) the certificate is amended or revoked under subsection (d) of this section; or

(3) the full trust instrument including all amendments is recorded or filed.

(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is located.

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

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

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

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

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

CHAPTER 11. TRUST PROTECTORS AND TRUST ADVISORS

§ 1101. TRUST ADVISORS AND TRUST PROTECTORS

(a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries, or a

court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers:

(1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including (without limitation) any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) the power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) the power to appoint a successor trust protector or trust advisor;

(4) the power to review and approve a trustee's trust reports or accountings;

(5) the power to change the governing law or principal place of administration of the trust;

(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) the power to remove a trustee, cotrustee, or successor trustee for the reasons stated in the trust instrument, and to appoint a successor;

(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment, or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any noncharitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) the power to advise the trustee or cotrustee concerning any beneficiary;

(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and

(13) the power to direct the acquisition, disposition, or retention of any trust investment.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

§ 1102. TRUST ADVISORS AND TRUST PROTECTORS AS FIDUCIARIES

(a) A trust advisor or trust protector is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

§ 1103. TRUST ADVISOR AND TRUST PROTECTOR SUBJECT TO COURT JURISDICTION

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

§ 1104. NO DUTY TO REVIEW ACTIONS OF TRUSTEE, TRUST ADVISOR, OR TRUST PROTECTOR.

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

- (1) monitor the conduct of the trustee, trust advisor, or trust protector;
- (2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or
- (3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee's, trust advisor's, or trust protector's authority (such as confirming that the trustee's, trust advisor's, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee's, trust advisor's, or trust protector's direction or other information pursuant to section 813 of this title), shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.

§ 1105. FIDUCIARY'S LIABILITY FOR ACTION OR INACTION OF TRUSTEE, TRUST ADVISOR, AND TRUST PROTECTOR

An excluded fiduciary is not liable for:

(1) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(2) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

CHAPTER 12. MISCELLANEOUS PROVISIONS

§ 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 1202. ELECTRONIC RECORDS AND SIGNATURES

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

§ 1203. SEVERABILITY CLAUSE

If any provision of this title or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§ 1204. APPLICATION TO EXISTING RELATIONSHIPS

(a) Except as otherwise provided in this title, on the effective date of this title:

(1) this title applies to all trusts created before, on, or after its effective date;

(2) this title applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this title applies to judicial proceedings concerning testamentary trusts commenced before its effective date except that accountings shall continue to be due from the trustees of such trusts in the same manner and in the same frequency as required by the probate court prior to this title unless otherwise ordered by the probate court;

(4) this title applies to all other judicial proceedings concerning trusts commenced before its effective date unless the probate court finds that application of a particular provision of this title 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 title does not apply and the superseded law applies;

(5) any rule of construction or presumption provided in this title applies to trust instruments executed before the effective date of this title unless there is a clear indication of a contrary intent in the terms of the trust; and

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

(b) 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 title, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. 2. 4 V.S.A. § 111a is amended to read:

§ 111a. DESIGNATION AND JURISDICTION OF SUPERIOR COURT

Until otherwise provided by law or by judicial rules adopted by the supreme court not inconsistent with law, a court designated as the superior court, to be presided over by a superior judge or a judge designated under section 74 of this

title, shall be held in each county of this state. The setting of terms of the superior court shall be as was heretofore provided for the county courts under section 115 of this title. The jurisdiction of the superior court shall be the same as heretofore provided by law for the county courts in the Vermont Statutes Annotated, with the exception of actions relating to the administration of trusts as provided in section 311 of this title and as provided in Title 14A.

Sec. 3. 4 V.S.A. § 311 is amended to read:

§ 311. JURISDICTION GENERALLY

The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts created by will pursuant to Title 14A, trusts of absent person's estates, charitable, cemetery and philanthropic trusts, irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(c) of Title 14, the appointment of guardians, and of the powers, duties and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.

Sec. 4. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to probate courts, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a district of the court as follows:

(1) Decedent's estate for a resident of this state: in the district where the decedent resided at the time of death.

(2) Decedent's estate for a nonresident of this state: in any district where estate of the decedent is situated.

(3) Appointment of a conservator for the estate of an absent person:

(A) in the district of the absent person's last legal domicile; or

(B) if a nonresident of this state, in any district where estate of the absent person is situated.

(4) Trust estate created by will: in the district where the decedent's will is allowed.

(5) Appointment of a trustee for the estate of an absent person:

(A) in the district of the absent person's last legal domicile; or

(B) if the absent person has no domicile in this state, in any district where property of the absent person is situated; or

(C) in any district of residence of a fiduciary or representative of an estate having possession and control of property the absent person received by virtue of a legacy or as an heir of an estate.

(6) Charitable, cemetery and philanthropic trusts:

(A) in the district where the trustee resides; or

(B) in the district where the creation of the trust is recorded.

(7) Appointment of a guardian of a person resident in this state:

(A) in the district where the ward resides at the time of appointment; except

(B) when the guardian is appointed for a minor who is interested in a decedent's estate as an heir, devisee or legatee or representative of either, in the district where the decedent's estate is being probated.

(8) Appointment of a guardian for a nonresident minor: in the district where the minor owns or has an interest in real estate.

(9) Termination or modification of a guardianship or change of a guardian:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

~~(10) Estate of a nonresident testamentary trust: in the district where the estate is situated.~~

(11) Estate of a nonresident charitable or philanthropic testamentary trust:

(A) in any district where the legacy or gift is to be paid or distributed;
or

(B) in any district where the beneficiary or beneficiaries reside or are located.

(12) Appointment of a guardian as to the estate of a nonresident subject to guardianship in this state or under guardianship in another state: in any district where estate of the nonresident ward or prospective ward is situated.

(13) Change of residential placement for a ward under total or limited guardianship:

(A) in the district of the appointing court; or

(B) in the district where the ward resides.

(14) Petition to determine title to property in the name of a person deceased seven or more years without probate of a decedent estate: in the district where the property is situated.

(15) Uniform gifts to minors:

(A) petition to expend custodial property for a minor's support, education or maintenance: in the district where the minor resides;

(B) petition for permission to resign or for designation of a successor custodian: in the district where the minor resides.

(16) Relinquishment for adoption:

(A) in the district where a written relinquishment is executed; or

(B) in the district where a licensed child placing agency to which written relinquishment is made has its principal office.

(17) Adoption:

(A) if the adopting person or persons are residents of this state, in the district where they reside; or

(B) if the adopting person or persons are nonresidents, in a court of competent jurisdiction where they reside; or

(C) if the prospective adoptee is a minor who has been relinquished or committed to the department of social and rehabilitation services or a licensed child placing agency, in the district where the department or agency is located or has its principal office.

(18) Change of name: in the district where the person resides.

(19) Issuance of new or amended birth certificate: in the district where the birth occurred.

(20) Correction or amendment of a marriage certificate: in the district where the original certificate is filed.

(21) Correction or amendment of a death certificate: in the district where the original certificate is filed.

(22) Emergency waiver of premarital medical certificate: in the district where application is made for the marriage license.

(23) Proceedings relating to cemetery lots: in the district where the cemetery lot is located.

(24) Trusts relating to community mausoleums or columbariums: in the district where the community mausoleum or columbarium is located.

(25) Petition for license to convey homestead interest of an insane spouse: in the district where the homestead is situated.

(26) Declaratory judgments (unless otherwise provided in Title 14A for proceedings relating to the administration of trusts):

(A) if any related proceeding is then pending in any probate court, in that district;

(B) if no proceeding is pending:

(i) in the district where the petitioner resides; or

(ii) if a decedent's estate, a guardian or ward, or trust governed by Title 14 is the subject of the proceeding, in any district where venue lies for a proceeding thereon.

(27) Issuance of certificates of public good authorizing the marriage of persons under 16 years of age: in the district or county where either applicant resides, if either is a resident of the state; otherwise in the district or county in which the marriage is sought to be consummated.

(28) Appointment of a trustee for a person confined under a sentence of imprisonment: in the district or county in which the person resided at the time of sentence, or in the district or county in which the sentence was imposed.

(29) Proceedings concerning chapter 231 of Title 18: in the district where the principal resides or in the district where the principal is a patient admitted to a health care facility.

(30) Proceedings under subchapter 3 of chapter 107 of Title 18, in the district where the decedent resided at the time of death or where the remains are currently located.

Sec. 5. 12 V.S.A. § 4251 is amended to read:

§ 4251. ACTIONS FOR ACCOUNTING—JURY

The superior courts shall have original jurisdiction, exclusive of the district court, in actions for an accounting other than accountings involved in the administration of trusts under Title 14A. When the defendant in such an action brought in one of the following ways pleads in defense an answer which, if true, makes him or her not liable to account, the issue thus raised may be tried to a jury:

(1) By one joint tenant, tenant in common or coparcener, his or her administrator or executor against the other, his or her administrator or executor, as bailiff for receiving more than his or her just proportion of any estate or interest;

(2) By an administrator or executor against his or her coadministrator or coexecutor, who neglects to pay the debts and funeral charges of the intestate or testator, in proportion to the estate in his or her hands, and he or she may recover such proportion of such estate as is just;

(3) By an executor, being a residuary legatee, against the coexecutor to recover his or her equal and ratable part of the estate in the hands of such coexecutor;

(4) By a residuary legatee against the executor;

(5) On book account.

Sec. 6. 14 V.S.A. § 202 is amended to read:

§ 202. WHEN PARTIES BOUND BY OTHERS

In judicial proceedings involving trusts under this title or estates of decedents, minors, or persons under guardianship, the following apply:

(1) Persons are bound by orders binding others in the following cases:

(A) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(B) To the extent there is no conflict of interest between them or among persons represented, orders binding a guardian bind the person whose estate he or she controls; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons

interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian has been appointed, a parent may represent his or her minor child.

(C) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(2) At any point in a proceeding, a probate court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

(3) Parties shall be those persons so defined by the rules of probate procedure.

Sec. 7. 14 V.S.A. § 2301 is amended to read:

~~§ 2301. TRUSTEES; BOND; WHEN REQUIRED~~

~~Before entering upon the duties of office, a trustee appointed in a will shall file a petition and give a bond with surety to the probate court for the benefit of persons interested in the trust estate and conditioned for the faithful performance of duties. Unless the court deems it proper to require a bond with surety, only the individual bond of the trustees shall be required in a case in which the testator in the will appointing the trustee has directed that no bond, or a bond without surety, be required.~~

Sec. 8. 14 V.S.A. § 2302 is amended to read:

~~§ 2302. CONDITIONS~~

~~The conditions of the bond shall be as follows:~~

~~(1) To make a true inventory of the real estate and goods, chattels, rights and credits belonging to him as trustee, and which shall come to his possession or knowledge, and to return the same to the probate court at such time as the court directs;~~

~~(2) To manage and dispose of such estate and effects, and faithfully discharge his trust in relation to the same, according to law and the will of the testator;~~

~~(3) To render an account of the property in his hands, and of the management and disposition of the same within one year, and at other times when required by the probate court;~~

~~(4) To settle his accounts with the probate court at the expiration of his trust, and to pay over and deliver the estate and effects remaining in his hands, or due from him on such settlement to the persons entitled to the same, according to law and the will of the testator.~~

Sec. 9. 14 V.S.A. § 2304 is amended to read:

~~§ 2304. BOND WHEN MORE THAN ONE TRUSTEE~~

~~When two or more persons are appointed trustees by a will, the probate court may take a separate bond from each, with sureties, or a joint bond from all, with sureties.~~

Sec. 10. 14 V.S.A. § 2311 is amended to read:

~~§ 2311. TRUSTEES OF NONRESIDENT DECEDENTS; NONRESIDENT TRUSTEE; DECREE~~

~~When a nonresident testator has devised or bequeathed property, a minor portion of which is in this state, to a nonresident trustee for the benefit of nonresident beneficiaries, and a trustee under the will has been appointed in the state of the testator's domicile, and the domiciliary estate fully settled, the probate court in this state, on petition of the nonresident trustee and after notice to the commissioner of taxes, upon final settlement, may decree the trust property in this state to the nonresident trustee to be administered as a part of the foreign testamentary trust.~~

Sec. 11. 14 V.S.A. § 2312 is amended to read:

~~§ 2312. TRUSTEE FAILING TO GIVE BOND; EFFECT~~

~~A person appointed a trustee who neglects to give a bond when required and within the time directed by the probate court, shall be considered as having declined the trust.~~

Sec. 12. 14 V.S.A. § 2313 is amended to read:

~~§ 2313. RESIGNATION, REMOVAL AND APPOINTMENT OF TRUSTEES; TRUSTEE MAY DECLINE OR RESIGN~~

~~A trustee may decline or resign his trust, when the probate court deems it proper to allow the same.~~

Sec. 13. 14 V.S.A. § 2314 is amended to read:

~~§ 2314. TRUSTEE MAY BE REMOVED; SPECIAL FIDUCIARY; PETITION FOR REMOVAL BY BENEFICIARY OR CO-TRUSTEE~~

~~(a) When a trustee becomes incapacitated or otherwise unable to discharge the trust, or is obviously unsuitable, and when, for any cause, the interests of the trust estate require it, after giving notice as provided by the rules of probate procedure, the probate court may remove the trustee.~~

~~(b) When a trustee fails to perform duties required by law, the rules of probate procedure or order of the probate court, the court may suspend the trustee from further duties and appoint a special fiduciary to assume temporarily the powers and duties of the trustee replaced. A special fiduciary shall give a bond as is otherwise required in the proceeding.~~

~~(c) A co-trustee or a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least 18 years of age who believe that an existing trustee should be replaced by a more suitable trustee may petition the court for a replacement. The court may grant the petition, remove an existing trustee, and appoint a replacement trustee if, after giving notice as provided by the Vermont Rules of Probate Procedure, the court finds that a change in trustee would be in keeping with the intent of the grantor. In deciding whether to replace a trustee, the court may consider the following factors:~~

~~(1) Whether removal would substantially improve or benefit the administration of the trust.~~

~~(2) The relationship between the grantor and the trustee as it existed at the time the trust was created.~~

~~(3) Changes in the nature of the trustee since the creation of the trust.~~

~~(4) The relationship between the trustee and the beneficiaries.~~

~~(5) The responsiveness of the trustee to the beneficiaries.~~

~~(6) The experience and skill level of the trustee.~~

~~(7) The investment performance of the trustee.~~

~~(8) The charges for services performed by the trustee.~~

~~(9) Any other relevant factors pertaining to the administration of the trust.~~

~~(d) As used in subsection (c) of this section:~~

~~(1) "Beneficiary" means a person who:~~

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

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

~~(2) "Court" means the probate court of the district in which the grantor resides or resided before dying or moving out of state, or where a co trustee resides, or where a beneficiary resides.~~

~~(3) "Grantor" 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 grantor 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.~~

~~(4) "Settler" and "grantor" have the same meaning.~~

~~(5) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution as defined in 8 V.S.A. § 10205(5), or other trust the nature of which does not admit of general trust administration.~~

~~(6) "Trustee" means an original, added, or successor trustee or co trustee.~~

~~(e) A court may order trustees who are replaced pursuant to an action brought under this section to reimburse the trust for attorney fees and court costs paid by the trust relating to the action.~~

Sec. 14. 14 V.S.A. § 2315 is amended to read:

~~§ 2315. ADDITIONAL TRUSTEE MAY BE APPOINTED~~

~~When the interests of the trust estate require it and upon notice as provided by the rules of probate procedure the probate court may appoint an additional trustee, who shall act jointly with the other or others and be subject to the same conditions.~~

Sec. 15. 14 V.S.A. § 2316 is amended to read:

~~§ 2316. VACANCY, NEW TRUSTEE APPOINTED~~

~~When a person appointed trustee declines or resigns the trust, dies, or is removed before the object for which appointment was made is accomplished,~~

~~and where adequate provision is not made by the will to fill the vacancy, after notice as provided by the rules of probate procedure, the probate court may appoint a new trustee to act alone or jointly with the others.~~

Sec. 16. 14 V.S.A. § 2317 is amended to read:

~~§ 2317. AUTHORITY OF NEW TRUSTEE; CONVEYANCE TO~~

~~The trustee so appointed shall have the same authority as if originally appointed by the testator or the probate court and the trust estate shall vest in him in the same manner. The probate court may order such conveyances to be made by the former trustee, or his representatives, or by the remaining trustees, as are necessary or proper to vest in the new trustee, either alone or jointly with others, the estate and effects which are to be held in trust.~~

Sec. 17. 14 V.S.A. § 2319 is amended to read:

~~§ 2319. BOND~~

~~A trustee appointed by the probate court shall give a bond as provided for a trustee appointed by a will with such necessary changes as the court directs.~~

Sec. 18. 14 V.S.A. § 2320 is amended to read:

~~§ 2320. DUTIES OF TRUSTEES AND SETTLEMENT OF ACCOUNT; INVENTORY AND APPRAISAL~~

~~In accordance with the rules of probate procedure, trustees shall make and return an inventory, when an inventory is required, and the estate shall be appraised as provided in case of a decedent's estate.~~

Sec. 19. 14 V.S.A. § 2321 is amended to read:

~~§ 2321. DUTIES OF TRUSTEES; PROPERTY KEPT SEPARATE~~

~~In the management of the trust estate, trustees shall perform the duties specified in their bonds and shall keep separate and distinct all moneys, property or securities received by them in the capacity of trustees.~~

Sec. 20. 14 V.S.A. § 2322 is amended to read:

~~§ 2322. LICENSE; SALE AND INVESTMENT OF ESTATE; SUPPORT OF FAMILY~~

~~On motion, the probate court may authorize or require the trustee to sell all or a part of the real estate, stock or other personal estate belonging to the trust estate, when it appears to the court to be beneficial to the trust estate and to the parties interested therein, or necessary or desirable in order to carry out the terms of the trust, and with moneys in the hands of the trustee, invest the proceeds of such sale in real estate or in such other manner as the court judges most beneficial to those interested in such trust estate. The court may make~~

~~further order or decree for the managing, investing or disposing of the trust fund as the case requires, consistent with the trust. In case of an absent person, the probate court may make such order for the support of the family as it deems necessary.~~

Sec. 21. 14 V.S.A. § 2323 is amended to read:

~~§ 2323. SALE OF REAL PROPERTY; ORDER OF COURT; REGULATIONS~~

~~The order of the probate court licensing the sale of real estate belonging to a trust estate shall be made under the following regulations:~~

~~(1) On motion, the probate court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure;~~

~~(2) At the hearing, the petitioner shall produce evidence of the value of the real estate to be sold, the interest of the trust estate therein, and of the necessity or desirability of such sale;~~

~~(3) Before license is granted, and if the probate court requires, the trustee shall give an additional bond with sufficient sureties for a suitable amount, conditioned that the trustee will account for the proceeds of the sale, according to law, and shall also be sworn to sell the real estate as in the trustee's judgment will be most beneficial to the trust estate; and a certificate of the oath, made by the authority administering it, shall be returned to the court before the license issues;~~

~~(4) If the foregoing requisites are complied with, the probate court may order the sale of the real estate of the trust estate, or its interest in the same, or that part thereof as the court deems necessary, at public or private sale, and shall furnish the trustee with a certified copy of its order;~~

~~(5) If the probate court directs a public sale, the order shall designate the mode of giving notice of the time and place thereof, and the sale shall be held in one of the towns where the real estate is located;~~

~~(6) The order of sale shall state that the requisites mentioned in subdivisions (1)-(3) of this section have been complied with, and a copy thereof shall be recorded, previous to the sale, in the office where a deed of that real estate is required to be recorded.~~

Sec. 22. 14 V.S.A. § 2324 is amended to read:

~~§ 2324. ACCOUNTS, TIME~~

~~Trustees shall annually render a full account of the management of trust estates, showing their receipts, disbursements and charges therein and the condition of such estates. Notice of the accounting shall be given as provided~~

~~by the rules of probate procedure. The decision of the court therein shall have the same effect as in case of settlement of accounts by executors or administrators.~~

Sec. 23. 14 V.S.A. § 2325 is amended to read:

~~§ 2325. EXAMINATIONS OF TRUSTEE~~

~~The probate court shall examine a trustee upon oath as to the correctness of the account before it is allowed by the court, but may dispense with an examination when objection is not made to the account.~~

Sec. 24. 14 V.S.A. § 2326 is amended to read:

~~§ 2326. RIGHT OF SURETY ON ACCOUNTING~~

~~Upon the filing of a trustee's account, a person interested as surety in respect to the account may intervene as a party with the same rights as are given to the surety of an administrator.~~

Sec. 25. 14 V.S.A. § 2328 is amended to read:

~~§ 2328. TRUSTS, DEVISE OR BEQUEST FOR CHARITY, CY PRES~~

~~If a trust for charity is or becomes illegal, impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, impossible or impracticable of enforcement and if the settlor or testator manifested a general intention to devote the property to charity, the superior court, on motion of any trustee, or any interested person, or the attorney general of the state, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.~~

Sec. 26. 14 V.S.A. § 2501 is amended to read:

~~§ 2501. CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS;
ANNUAL REPORTS~~

~~Every trustee or board of trustees, incorporated or unincorporated, who holds in trust, within this state, property given, devised, or bequeathed for benevolent, charitable, humane or philanthropic purposes, including to cemetery associations or societies and towns which hold funds for cemetery purposes, and who administers or is under a duty to administer the same in whole or in part for such purposes, annually, on or before the first day of September, shall make a written report to the probate court showing the property so held and administered, the receipts and expenditures in connection therewith, the whole number of beneficiaries thereof and such other information as the probate court may require.~~

Sec. 27. 27 V.S.A. § 352 is amended to read:

~~§ 352. CERTIFICATE OF TRUST~~

~~(a) The settlor or trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the settlors, grantors, or trustees that the statements contained in the certificate of trust are true and correct. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:~~

~~(1) the name of the trust, if one is given;~~

~~(2) the date of the trust instrument;~~

~~(3) the name of each grantor or settlor;~~

~~(4) the name of each original trustee;~~

~~(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;~~

~~(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;~~

~~(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions;~~

~~(8) a statement that no provisions of the trust instrument limit the authority so granted; and~~

~~(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.~~

~~(b) A certificate of trust executed under subsection (a) of this section may be recorded in the land records of the municipality where the land identified in the certificate of trust or any attachment to it is situated. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.~~

~~(c) A certificate of trust is conclusive proof as to the matters contained in it, and any party may rely upon the continued effectiveness of the certificate unless:~~

~~(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;~~

~~(2) the certificate is amended or revoked under subsection (d) of this section; or~~

~~(3) the full trust instrument is recorded, filed, or presented.~~

~~(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the settlor or trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is situated.~~

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

Sec. 29. REPEAL

9 V.S.A. §§ 4651-4662 (Uniform Prudent Investor Act) are repealed.

Sec. 30. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE COURTS

(a) The following entry fees shall be paid to the probate court for the benefit of the state, except for subdivision (17) of this subsection which shall be for the benefit of the county in which the fee was collected:

* * *

<p>(9) Testamentary trusts of \$20,000.00 or less <u>For all trust petitions, other than</u> <u>those described in subdivision (11) of this subsection,</u> <u>where the corpus of the trust at the time the petition</u> <u>is filed is \$100,000.00 or less, including petitions to</u> <u>modify or terminate a trust, to remove or substitute a</u> <u>trustee or trustees, or seeking remedies for breach of trust</u></p>	<p>\$50.00 <u>150.00</u></p>
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(10) Testamentary trusts of more than <u>For all trust petitions, other than those described in subdivision (11) of this subsection, where the corpus of the trust is more than \$100,000.00, including petitions to modify or terminate a trust, to remove or substitute a trustee or trustees, or seeking remedies for breach of trust</u>	\$20,000.00 \$100.00 \$250.00
(11) Annual accounts on testamentary trusts of more than \$20,000.00	\$30.00
* * *	
(21) Petitions for the removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts of \$20,000.00 or less	\$50.00
(22) Petitions for removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts more than \$20,000.00	\$100.00
(23) Petitions concerning advance directives pursuant to 18 V.S.A. § 9718	\$75.00

* * *

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Joint Resolution Adopted in Concurrence

J.R.H. 13.

Joint House resolution entitled:

Joint resolution urging Congress to support the International Violence Against Women Act.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Rules Suspended; Bill Amended; Third Reading Ordered

S. 115.

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and Senate bill entitled:

An act relating to civil marriage.

Was taken up for immediate consideration on a division of the Senate, Yeas 21, Nays 6, the necessary three-quarter vote having been attained.

Senator Campbell, for the Committee on Judiciary, to which the bill was referred, reported recommending that the bill be amended as follows:

First: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. 18 V.S.A. § 5131(a) is amended to read:

(a)(1) Upon application in a form prescribed by the department, a town clerk shall issue to a person a civil marriage license in the form prescribed by the department and shall enter thereon the names of the parties to the proposed marriage, fill out the form as far as practicable and retain in the clerk's office a copy thereof.

(2) The department shall prescribe forms that allow each party to a marriage to be designated "bride," "groom," or "spouse," as he or she chooses, and the application shall be in substantially the following form:

VERMONT DEPARTMENT OF HEALTH

APPLICATION FOR VERMONT LICENSE OF MARRIAGE

FEE FOR MARRIAGE LICENSE: \$45.00, FEE FOR CERTIFIED COPY \$10.00

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)		
SEX	DATE OF BIRTH (e.g., July 1, 2009)	AGE
BIRTHPLACE	EDUCATION (Circle No. Yrs. Completed)	
	GRADE S 1-8	GRADES 9-12 (1-5+)
RESIDENCE (No. and Street)		
CITY OR TOWN	COUNTY	STATE
RACE – White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)		
FATHER'S NAME (First, Middle, Last)		

FATHER'S BIRTHPLACE (State or Foreign Country)		MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)			
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION	
Date last marriage or civil union ended _____ Month _____ Year			
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER			
Does either party have a legal guardian _____ Yes _____ No			

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)		
SEX	DATE OF BIRTH (e.g., July 1, 2009)	AGE
BIRTHPLACE	EDUCATION (Circle No. Yrs. Completed)	
	GRADES 1-8	GRADES 9-12 COLLEGE (1-5+)
RESIDENCE (No. and Street)		
CITY OR TOWN	COUNTY	STATE
RACE – White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)		
FATHER'S NAME (First, Middle, Last)		

FATHER'S BIRTHPLACE (State or Foreign Country)		MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)			
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION	
Date last marriage or civil union ended _____ Month _____ Year			
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER			
Does either party have a legal guardian _____ Yes _____ No			
APPLICANTS			
We hereby certify that the information provided is correct to the best of our knowledge and belief and that we are free to marry under the laws of Vermont.			
SIGNATURE _____		SIGNATURE _____	
Date signed _____		Date signed: _____	
Planned marriage date _____		Location (City or town) _____	
Officiant Name & Address _____			
Your mailing address after wedding _____			
Do you want a certified copy of your Marriage Certificate? (\$10.00) _____ Yes _____ No			

Date License issued _____ Clerk issuing License _____

This worksheet may be destroyed after marriage is registered

(3) At least one party to the proposed marriage shall sign the certifying application to the accuracy of the facts so stated. The license shall be issued by the clerk of the town where either ~~the bride or groom~~ party resides or, if neither is a resident of the state, by any town clerk in the state.

Second: By striking out Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. 18 V.S.A. § 5144 is amended to read:

§ 5144. PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGE

(a) Marriages may be solemnized by a supreme court justice, a superior court judge, a district judge, a judge of probate, an assistant judge, a justice of the peace, an individual who has registered as an officiant with the Vermont secretary of state pursuant to section 5144a of this title, a member of the clergy residing in this state and ordained or licensed, or otherwise regularly authorized thereunto by the published laws or discipline of the general conference, convention, or other authority of his or her faith or denomination, or by such a clergy person residing in an adjoining state or country, whose parish, church, temple, mosque, or other religious organization lies wholly or in part in this state, or by a member of the clergy residing in some other state of the United States or in the Dominion of Canada, provided he or she has first secured from the probate court of the district within which the marriage is to be solemnized a special authorization, authorizing him or her to certify the marriage if such probate judge determines that the circumstances make the special authorization desirable. Marriage among the Friends or Quakers, the Christadelphian Ecclesia, and the Baha'i Faith may be solemnized in the manner heretofore used in such societies.

(b) This section does not require a member of the clergy authorized to solemnize a marriage as set forth in subsection (a) of this section, nor societies of Friends or Quakers, the Christadelphian Ecclesia, or the Baha'i Faith to solemnize any marriage, and any refusal to do so shall not create any civil claim or cause of action.

And that when so amended the bill ought to pass.

Senator Ayer, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass.

Senator Mullin moves to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Judiciary as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. ADVISORY REFERENDUM

There shall be submitted to the voters of the state of Vermont on a ballot prepared by the secretary of state on March 2, 2010, the question:

“Shall the General Assembly amend the laws of the state to allow couples of the same sex to marry?”

Which was disagreed to on a roll call, Yeas 11, Nays 19.

Senator Maynard having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Brock, Choate, Doyle, Giard, Illuzzi, Kitchel, Maynard, Mazza, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Carris, Cummings, Flanagan, Hartwell, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Those Senators absent and not voting were: None.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 26, Nays 4.

Senator Maynard having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, White.

Those Senators who voted in the negative were: Brock, Illuzzi, Maynard, Starr.

Those Senators absent and not voting were: None.

Rules Suspended; Bill Amended; Third Reading Ordered

S. 18.

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and Senate bill entitled:

An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

Was taken up for immediate consideration.

Senator McCormack, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the bill be amended as follows:

First: In Sec. 1, 24 V.S.A. § 2291a, after the second period by inserting the following: This section shall not apply to a municipal ordinance, resolution, or other enactment that is in effect as of June 1, 2009.

Second: In Sec. 2, 24 V.S.A. § 4413(g), after the period by inserting the following: This subsection shall not apply to a deed restriction, covenant, or similar binding agreement running with the land that is in effect as of June 1, 2009.

Third: In Sec. 3, 27 V.S.A. § 544, after subsection (c) by inserting a new subsection to be lettered subsection (d) to read as follows:

(d) This section shall not apply to a deed restriction, covenant, or similar binding agreement running with the land in effect as of June 1, 2009.

Fourth: By adding a new section to be numbered Sec. 4 to read as follows:

Sec. 4. EFFECTIVE DATE

This act shall take effect on June 1, 2009.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until nine o'clock and fifteen minutes in the morning.