

1 AN ACT concerning civil law.

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

4 Article 1. General Provisions and Definitions.

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

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

12 (1) land trust;

13 (2) voting trust;

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

16 (4) liquidation trust;

17 (5) escrow;

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

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

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

4 Section 103. Definitions. In this Code:

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

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

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

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

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

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

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

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

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

1 beneficiary; or

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

6 (5) "Charitable organization" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 general power of appointment other than a power:

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

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

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

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

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

16 (i) the occurrence of the specified event;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

19 (36) "Terms of the trust" means:

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

23 (i) expressed in the trust instrument; or

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

26 (B) the trust's provisions as established, determined,

1 or modified by:

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

4 (ii) a court order; or

5 (iii) a nonjudicial settlement agreement under  
6 Section 111.

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

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

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

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

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

1 Section 104. Knowledge.

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

4 (1) has actual knowledge of it;

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

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

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

23 Section 105. Default and mandatory rules.

24 (a) The trust instrument may specify the rights, powers,

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

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

9 (1) the requirements for creating a trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 another statute of this State.

2 Section 107. Governing law.

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

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

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

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

14 Section 108. Principal place of administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 specified in the notice.

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

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

12 Section 109. Methods and waiver of notice.

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

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

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



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

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

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

16 Section 110. Others treated as qualified beneficiaries.

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

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

24 Section 111. Nonjudicial settlement agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25          (f) In the trustee's sole discretion, the trustee may, but  
26          is not required to, obtain and rely upon an opinion of counsel

1 on any matter relevant to this Section, including, without  
2 limitation:

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

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

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

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

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

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

8           Section 113. Insurable interest of trustee.

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

14                 (1) the insured is:

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

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

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

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

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

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

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

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

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

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

24           (c) Except as provided in subsections (a) and (b), if the  
25 gift is not to a descendant of the settlor or is not to a class

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

20 Section 115. Transfer of real property to trust. The  
21 transfer of real property to a trust requires a transfer of  
22 legal title to the trustee evidenced by a written instrument of  
23 conveyance.

24 Article 2. Judicial Proceedings.



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

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

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

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

10          Section 202. Jurisdiction over trustee and beneficiary.

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

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

23          (c) Service of process upon any person who is subject to  
24 the jurisdiction of the courts of this State, as provided in

1 this Section, may be made by personally serving the summons  
2 upon the defendant outside this State, as provided in the Code  
3 of Civil Procedure, with the same force and effect as though  
4 summons had been personally served within this State.

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

8 Section 203. (Reserved).

9 Section 204. Venue.

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

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

22 (c) At the election of the Attorney General, venue for a  
23 judicial proceeding involving a trust with a charitable  
24 interest is also proper in any county where the Attorney

1 General accepts and maintains the list of registrations under  
2 the Charitable Trust Act.

3 Article 3. Representation.

4 Section 301. Representation: basic effect.

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

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

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

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

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

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

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

7 (2) the holder of a power of appointment under Section  
8 302;

9 (3) a designated representative under Section 307;

10 (4) a court-appointed guardian of the estate, or, if  
11 none, a court-appointed guardian of the person under  
12 subsection (b) of Section 303;

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

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

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

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

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

1 accountings, or reports to the person represented.

2 Section 302. Representation by holders of certain powers.

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

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

19 Section 303. Representation by others.

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

1 other beneficiaries who have a successor, contingent, future,  
2 or other interest in the trust.

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

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

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

1 beneficiary of the trust is entitled to represent the child.

2 Section 304. Representation by person having substantially  
3 identical interest.

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

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

22 Section 305. Appointment of representative.

23 (a) If the court determines that representation of an  
24 incapacitated, unborn, or unascertainable beneficiary might

1 otherwise be inadequate, the court may appoint a representative  
2 for any nonjudicial matter to receive any notice, information,  
3 accounting, or report on behalf of the beneficiary and to  
4 represent and bind the beneficiary, or may appoint a guardian  
5 ad litem in any judicial proceeding to represent the interests  
6 of, bind, and approve any order or agreement on behalf of the  
7 beneficiary.

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

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

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

19 Section 306. Representation of charity. If a trust contains  
20 a charitable interest, the Attorney General may, in accordance  
21 with this Section, represent, bind, and act on behalf of the  
22 charitable interest with respect to any particular question or  
23 dispute, including without limitation representing the  
24 charitable interest in a nonjudicial settlement agreement  
25 under Section 111, in an agreement to convert a trust to a



1 total return trust under Article 11, or in a distribution in  
2 further trust under Article 12. A charitable organization that  
3 is specifically named as beneficiary of a trust or otherwise  
4 has a beneficial interest in a trust may act for itself.  
5 Notwithstanding any other provision, nothing in this Section  
6 shall be construed to limit or affect the Attorney General's  
7 authority to file an action or take other steps as he or she  
8 deems advisable at any time to enforce or protect the general  
9 public interest as to a trust that provides a beneficial  
10 interest or expectancy for one or more charitable organizations  
11 or charitable purposes whether or not a specific charitable  
12 organization is named in the trust. This Section shall be  
13 construed as declarative of existing law and not as a new  
14 enactment.

15 Section 307. Designated representative.

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

25 (b) Notwithstanding subsection (a):

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

4           (2) A designated representative may not represent and  
5           bind a qualified beneficiary while the designated  
6           representative is serving as a trustee.

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

12                   (A) the designated representative was specifically  
13                   nominated in the trust instrument; or

14                   (B) the designated representative is the qualified  
15                   beneficiary's spouse or a grandparent or descendant of  
16                   a grandparent of the qualified beneficiary or of the  
17                   qualified beneficiary's spouse.

18          (c) Each designated representative is a fiduciary of the  
19          trust subject to the standards applicable to a trustee of a  
20          trust under applicable law.

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

1 Article 4. Creation, Validity, Modification, and Termination  
2 of Trust.

3 Section 401. Methods of creating trust. A trust may be  
4 created by:

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

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

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

12 Section 402. Requirements for creation.

13 (a) A trust is created only if:

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

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

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

18 (A) a charitable trust;

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

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

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

24 (5) the same person is not the sole trustee and sole

1 beneficiary.

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

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

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

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

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

18 or

19 (3) any trust property was located.

20 Section 404. Trust purposes. A trust may be created only to  
21 the extent its purposes are lawful and not contrary to public  
22 policy.

23 Section 405. Charitable purposes; enforcement.

1           (a) A charitable trust may be created for any charitable  
2 purpose.

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

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

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

22           Section 407. Evidence of oral trust. Except as required by  
23 a statute other than this Code, a trust need not be evidenced  
24 by a trust instrument, but the creation of an oral trust and

1 its terms may be established only by clear and convincing  
2 evidence.

3 Section 408. Trusts for domestic or pet animals.

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

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

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

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

21 (A) as directed in the trust instrument;

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

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

1           under the residuary clause in the transferor's will;

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

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

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

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

19          (6) If a trustee is not designated or no designated  
20          trustee is willing and able to serve, the court shall name  
21          a trustee. The court may order the transfer of the property  
22          to another trustee if the transfer is necessary to ensure  
23          that the intended use is carried out, and if a successor  
24          trustee is not designated in the trust instrument or if no  
25          designated successor trustee agrees to serve and is able to  
26          serve. The court may also make other orders and

1 determinations as are advisable to carry out the intent of  
2 the transferor and the purpose of this Section.

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

5 Section 409. Noncharitable trust without ascertainable  
6 beneficiary.

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

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

16 (1) as directed in the trust instrument;

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

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

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

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



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

7           Section 410. Modification or termination of trust;  
8 proceedings for approval or disapproval.

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

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

22           Section 411. Modification or termination of noncharitable  
23 irrevocable trust by consent.

24           (a) A noncharitable irrevocable trust may be terminated

1 upon consent of all of the beneficiaries if the court concludes  
2 that continuance of the trust is not necessary to achieve any  
3 material purpose of the trust.

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

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

12 (d) Upon termination of a trust under subsection (a), the  
13 trustee shall distribute the trust property as agreed by the  
14 beneficiaries.

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

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

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

24 Section 412. Modification or termination because of  
25 unanticipated circumstances or inability to administer trust

1 effectively.

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

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

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

17 (d) Notwithstanding any other provision in this Section, if  
18 the trust contains a charitable interest, the modification  
19 cannot diminish the charitable interest or alter the charitable  
20 purpose, except as would be permitted under Section 413, and  
21 upon termination of a trust under this Section, any charitable  
22 distribution shall be made in a manner consistent with the  
23 settlor's charitable purpose as determined by the court.

24 Section 413. Cy pres.

25 (a) Except as otherwise provided in subsection (b), if a

1 particular charitable purpose becomes unlawful, impracticable,  
2 impossible to achieve, or wasteful:

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

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

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

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

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

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

19 Section 414. Modification or termination of uneconomic  
20 trust.

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

1 trust.

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

6 (c) Upon termination of a trust under this Section, the  
7 trustee shall distribute the trust property to the current  
8 beneficiaries in the proportions to which they are entitled to  
9 mandatory current distributions, or if their interests are  
10 indefinite, to the current beneficiaries per stirpes if they  
11 have a common ancestor, or if not, then in equal shares. The  
12 trustee shall give notice to the current beneficiaries at least  
13 30 days before the effective date of the termination.

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

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

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

1           Section 415. Reformation to correct mistakes. The court may  
2 reform the terms of a trust, even if unambiguous, to conform  
3 the terms to the settlor's intention if it is proved by clear  
4 and convincing evidence what the settlor's intention was and  
5 that the terms of the trust were affected by a mistake of fact  
6 or law, whether in expression or inducement.

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

12           Section 417. Combination and division of trusts.

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

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

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

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

21           (b) No consolidation, severance, or segregation may be made  
22 if the result impairs the rights of any beneficiary or  
23 adversely affects achievement of the material purposes of the

1 subject trust or trusts.

2 (c) A severance or consolidation may be made for any reason  
3 including to reflect a partial disclaimer, to reflect  
4 differences in perpetuities periods, to reflect or result in  
5 differences in federal or state tax attributes, to satisfy any  
6 federal tax requirement or election, or to reduce potential  
7 generation-skipping transfer tax liability, and shall be made  
8 in a manner consistent with the rules governing disclaimers,  
9 federal tax attributes, requirements or elections, or any  
10 applicable federal or state tax rules or regulations.

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

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

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





1 both voluntary and involuntary transfer of a beneficiary's  
2 interest.

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

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

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

15 Section 503. Exceptions to spendthrift provision.

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

19 (b) A spendthrift provision is unenforceable against:

20 (1) a beneficiary's child, spouse, or former spouse who  
21 has a judgment or court order against the beneficiary for  
22 child support obligations owed by the beneficiary as  
23 provided in the Income Withholding for Support Act, the  
24 Non-Support Punishment Act, the Illinois Parentage Act of  
25 2015, the Illinois Marriage and Dissolution of Marriage

1 Act, and similar provisions of other Acts that provide for  
2 the support of a child;

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

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

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

20 Section 504. Discretionary distributions; effect of  
21 standard.

22 (a) As used in this Section, "discretionary distribution"  
23 means a distribution that is subject to the trustee's  
24 discretion regardless of whether the discretion is expressed in  
25 the form of a standard of distribution and regardless of

1 whether the trustee has abused the discretion.

2 (b) Regardless of whether a trust contains a spendthrift  
3 provision, and regardless of whether the beneficiary is acting  
4 as trustee, if a trustee may make discretionary distributions  
5 to or for the benefit of a beneficiary, a creditor of the  
6 beneficiary, including a creditor described in subsection (b)  
7 of Section 503, may not:

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

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

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

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

24 Section 505. Creditor's claim against settlor.

25 (a) Whether or not the terms of a trust contain a

1 spendthrift provision, the following rules apply:

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

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

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

22 (4) Paragraph (2) does not apply to the assets of an  
23 irrevocable trust established for the benefit of a person  
24 with a disability that meets the requirements of 42 U.S.C.  
25 1396p(d)(4) or similar federal law governing the transfer  
26 to such a trust.

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

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

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

1 (C) Sections 18-10 and 18-13 of the Probate Act of  
2 1975, detailing the classification and priority of  
3 payment of claims, expenses, and taxes from the probate  
4 estate of a decedent, or comparable provisions of the  
5 law of the deceased settlor's domicile at death if not  
6 Illinois, apply to a revocable trust to the extent the  
7 assets of the settlor's probate estate are inadequate  
8 and the personal representative or creditor or taxing  
9 authority of the settlor's estate has perfected its  
10 right to collect from the settlor's revocable trust.

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

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

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

25 (b) For purposes of this Section:

26 (1) during the period the power may be exercised, the

1 holder of a power of withdrawal is treated in the same  
2 manner as the settlor of a revocable trust to the extent of  
3 the property subject to the power; and

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

10 Section 506. Overdue distribution.

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

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

1           Section 507. Personal obligations of trustee. Trust  
2 property is not subject to personal obligations of the trustee,  
3 even if the trustee becomes insolvent or bankrupt.

4           Section 508. Lapse of power to withdraw. A beneficiary of a  
5 trust may not be considered to be a settlor or to have made a  
6 transfer to the trust merely because of a lapse, release, or  
7 waiver of his or her power of withdrawal to the extent that the  
8 value of the affected property does not exceed the greatest of  
9 the amounts specified in Sections 2041(b)(2), 2514(e), and  
10 2503(b) of the Internal Revenue Code.

11           Section 509. Trust for beneficiary with a disability.

12           (a) As used in this Section:

13                 (1) "Discretionary trust" means a trust in which the  
14 trustee has discretionary power to determine distributions  
15 to be made under the trust.

16                 (2) "Resources" includes, but is not limited to, any  
17 interest in real or personal property, judgment,  
18 settlement, annuity, maintenance, support for minor  
19 children, and support for non-minor children.

20           (b) A discretionary trust for the benefit of an individual  
21 who has a disability that substantially impairs the  
22 individual's ability to provide for his or her own care or  
23 custody and constitutes a substantial disability, is not liable



1 to pay or reimburse this State or any public agency for  
2 financial aid or services to the individual except to the  
3 extent the trust was created by the individual or trust  
4 property has been distributed directly to or is otherwise under  
5 the control of the individual, except that this exception does  
6 not apply to a trust created with the property of the  
7 individual with a disability or property within his or her  
8 control if the trust complies with Medicaid reimbursement  
9 requirements of federal law. Notwithstanding any other  
10 provisions to the contrary, a trust created with the property  
11 of the individual with a disability or property within his or  
12 her control is liable, after the reimbursement of Medicaid  
13 expenditures, to this State for reimbursement of any other  
14 service charges outstanding at the death of the individual with  
15 a disability. Property, goods, and services purchased or owned  
16 by a trust for and used or consumed by a beneficiary with a  
17 disability shall not be considered trust property distributed  
18 to or under the control of the beneficiary.

19 (c) Except as otherwise prohibited by law, the court or a  
20 person with a disability may irrevocably assign resources of  
21 that person to either or both of: (i) an ABLE account, as  
22 defined under Section 16.6 of the State Treasurer Act; or (ii)  
23 a discretionary trust that complies with the Medicaid  
24 reimbursement requirements of federal law. A court may reserve  
25 the right to determine the amount, duration, or enforcement of  
26 the irrevocable assignment.

1 Article 6. Revocable Trusts.

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

6 Section 602. Revocation or amendment of revocable trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (a) To the extent a trust is revocable by a settlor, and  
3 the settlor personally has capacity to revoke the trust, a  
4 trustee may follow a direction of the settlor that is contrary  
5 to the terms of the trust. To the extent a trust is revocable  
6 by a settlor in conjunction with a person other than a trustee  
7 or person holding an adverse interest, and the settlor and such  
8 other person personally have the capacity to revoke the trust,  
9 the trustee may follow a direction from the settlor and the  
10 other person holding the power to revoke even if the direction  
11 is contrary to the terms of the trust.

12 (b) To the extent a trust is revocable by a settlor, and  
13 the settlor personally has capacity to revoke the trust, rights  
14 of the beneficiaries are subject to the control of, and the  
15 duties of the trustee are owed exclusively to, the settlor.

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

22 (d) Except as provided in subsection (e), only the settlor,  
23 a representative of the settlor under Article 3 during the  
24 settlor's lifetime if the settlor is incapacitated, and the  
25 representative of the settlor's estate after the settlor's

1 death have standing to contest, challenge, or bring any  
2 proceeding in any court regarding any action of the trustee of  
3 a revocable trust taken or not taken while the trust is  
4 revocable.

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

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

21 Section 604. Limitation on action contesting validity of  
22 revocable trust; distribution of trust property.

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

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

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

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

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

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

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

23           (c) A beneficiary of a trust that was revocable at the  
24 settlor's death that is determined to have been invalid is  
25 liable to return any distribution received and all income and  
26 appreciation associated with the distribution from the date of

1 receipt until the date of return of the distribution.

2 Section 605. Revocation of provisions in revocable trust by  
3 divorce or annulment

4 (a) As used in this Section:

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

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

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

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

21 (b) Unless the trust instrument or the judgment of judicial  
22 termination of marriage expressly provides otherwise, judicial  
23 termination of marriage of the settlor of a trust revokes every  
24 provision that is revocable by the settlor pertaining to the  
25 settlor's former spouse in a trust instrument or amendment

1 executed by the settlor before the entry of the judgment of  
2 judicial termination of marriage of the settlor and any such  
3 trust shall be administered and construed as if the settlor's  
4 former spouse had died upon entry of the judgment of judicial  
5 termination of marriage.

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

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

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

23 Article 7. Office of Trustee.

24 Section 701. Accepting or declining trusteeship.



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

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

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

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

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

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

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

26          (d) A person acting under subsection (c) is not liable for

1 actions taken in good faith.

2 Section 702. Trustee's bond.

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

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

11 (c) A corporate fiduciary, as defined in Section 1-5.505 of  
12 the Corporate Fiduciary Act, qualified to do trust business in  
13 this State need not give bond, even if required by the terms of  
14 the trust.

15 Section 703. Co-trustees.

16 (a) Co-trustees who are unable to reach a unanimous  
17 decision may act by majority decision after prior written  
18 notice to, or written waiver of notice by, each other  
19 co-trustee.

20 (b) If a vacancy occurs in a co-trusteeship, subsection (b)  
21 of Section 704 applies.

22 (c) A co-trustee must participate in the performance of a  
23 trustee's function unless the co-trustee is unavailable to  
24 perform the function because of absence, illness,

1 disqualification under other law, or other temporary  
2 incapacity or the co-trustee has properly delegated the  
3 performance of the function to another trustee.

4 (d) If a co-trustee is unavailable to perform duties  
5 because of absence, illness, disqualification under other law,  
6 or other temporary incapacity, and prompt action is necessary  
7 to achieve the purposes of the trust or to avoid injury to the  
8 trust property, the remaining co-trustee or a majority of the  
9 remaining co-trustees may act for the trust.

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

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

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

20 (1) prevent a co-trustee from committing a serious  
21 breach of trust; and

22 (2) compel a co-trustee to redress a serious breach of  
23 trust.

24 (h) A dissenting trustee who joins in an action at the  
25 direction of the majority of the trustees and who notified any  
26 co-trustee of the dissent at or before the time of the action

1 is not liable for the action unless the action is a serious  
2 breach of trust.

3 Section 704. Vacancy in trusteeship; appointment of  
4 successor.

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

6 (1) a person designated as trustee declines the  
7 trusteeship;

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

10 (3) a trustee resigns;

11 (4) a trustee is disqualified or removed;

12 (5) a trustee dies;

13 (6) a guardian is appointed for an individual serving  
14 as trustee; or

15 (7) an individual serving as trustee becomes  
16 incapacitated.

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

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

25 (1) by a person designated in accordance with the trust

1 instrument to act as successor trustee;

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

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

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

12 Section 705. Resignation of trustee.

13 (a) A trustee may resign:

14 (1) upon notice to the settlor, if living, to the  
15 beneficiaries who are distributees or permissible  
16 distributees of trust income, and all co-trustees; or

17 (2) with the approval of the court.

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

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

24 Section 706. Removal of trustee.

1           (a) A settlor, a co-trustee, or a qualified beneficiary may  
2 request the court to remove a trustee, or a trustee may be  
3 removed by the court on its own initiative.

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

5               (1) the trustee has committed a serious breach of  
6 trust;

7               (2) lack of cooperation among co-trustees  
8 substantially impairs the administration of the trust;

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

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

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

1 Section 707. Delivery of property by former trustee.

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

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

11 Section 708. Compensation of trustee.

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

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

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

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

24 Section 709. Reimbursement of expenses.

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

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

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

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

11 Article 8. Duties and Powers of Trustee.

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

16 Section 802. Duty of loyalty.

17 (a) Subject to the rights of persons dealing with or  
18 assisting the trustee as provided in Section 1012, a sale,  
19 encumbrance, or other transaction involving the investment or  
20 management of trust property entered into by the trustee for  
21 the trustee's own personal account or that is otherwise  
22 affected by a conflict between the trustee's fiduciary and  
23 personal interests is voidable by a beneficiary affected by the



1 transaction and a trustee must disgorge to the trust any profit  
2 from such transaction if voided, unless:

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

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

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

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

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

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

20 (1) the trustee's spouse;

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

23 (3) a corporation or other person or enterprise in  
24 which the trustee, or a person that owns a significant  
25 interest in the trustee, has an interest that might affect  
26 the trustee's best judgment, except as otherwise

1 authorized by law.

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

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

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

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

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

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

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

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

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

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

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

25           Section 803. Impartiality. If a trust has 2 or more

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

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

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

15 Section 806. (Reserved).

16 Section 807. Delegation by trustee.

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

20 (b) A trustee may delegate duties and powers that a prudent  
21 trustee of comparable skills could properly delegate under the  
22 circumstances. The trustee shall exercise reasonable care,

1 skill, and caution in:

2 (1) selecting an agent;

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

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

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

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

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

18 Section 808. Directed trusts.

19 (a) In this Section:

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

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

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

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

25          (5) "Power" means authority to take or withhold an  
26          action or decision, including, but not limited to, an

1 expressly specified power, the implied power necessary to  
2 exercise a specified power, and authority inherent in a  
3 general grant of discretion.

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

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

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

24 (2) direct the trustee with respect to all management,  
25 control, and voting powers related directly or indirectly  
26 to trust assets, including, but not limited to, voting

1 proxies for securities held in trust;

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

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

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

24 (d) A trust protector may be designated in the trust  
25 instrument of a trust. The powers of a trust protector may be  
26 exercised or not exercised in the sole and absolute discretion



1 of the trust protector, and are binding on all other persons,  
2 including, but not limited to, each beneficiary, investment  
3 trust advisor, distribution trust advisor, fiduciary, excluded  
4 fiduciary, and any other party having an interest in the trust.  
5 The trust instrument may use the title "trust protector" or any  
6 similar name or description demonstrating the intent to provide  
7 for the office and function of a trust protector. The powers  
8 granted to a trust protector by the trust instrument may  
9 include but are not limited to authority to do any one or more  
10 of the following:

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

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

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

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

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

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

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

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

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

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

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

23          (e) A directing party is a fiduciary of the trust subject  
24          to the same duties and standards applicable to a trustee of a  
25          trust as provided by applicable law unless the trust instrument  
26          provides otherwise, but the trust instrument may not, however,

1     relieve or exonerate a directing party from the duty to act or  
2     withhold acting as the directing party in good faith reasonably  
3     believes is in the best interests of the trust.

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

19           (1) if a trust instrument provides that an excluded  
20    fiduciary is to follow the direction of a directing party,  
21    and such excluded fiduciary acts in accordance with such a  
22    direction, then except in cases of willful misconduct on  
23    the part of the excluded fiduciary in complying with the  
24    direction of the directing party, the excluded fiduciary is  
25    not liable for any loss resulting directly or indirectly  
26    from following any such direction, including but not

1 limited to compliance regarding the valuation of assets for  
2 which there is no readily available market value;

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

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

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

1 relate to a decision or action of the directing party.

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

17 (i) Other required notices.

18 (1) A directing party shall:

19 (A) within 90 days after becoming a directing  
20 party, notify each qualified beneficiary of the  
21 acceptance and of the directing party's name, address,  
22 and telephone number, except that the notice  
23 requirement of this subdivision (A) does not apply with  
24 respect to a succession of a business entity by merger  
25 or consolidation with another business entity or by  
26 transfer between holding company affiliates if there

1 is no change in the contact information for the  
2 directing party, in which case the successor entity has  
3 discretion to determine what timing and manner of  
4 notice is appropriate;

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

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

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

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

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

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

26 (2) any existing or future trust that:

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

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

16          Section 809. Control and protection of trust property. A  
17          trustee shall take reasonable steps to take control of and  
18          protect the trust property. If a corporation is acting as  
19          co-trustee with one or more individuals, the corporate trustee  
20          shall have custody of the trust estate unless all the trustees  
21          otherwise agree.

22          Section 810. Recordkeeping and identification of trust  
23          property.

24          (a) A trustee shall keep adequate records of the

1 administration of the trust.

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

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

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

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

19 Section 812. Powers and duties of successor; liability for  
20 acts of predecessor; approval of accounts.

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

24 (b) A successor trustee is under no duty to inquire into



1 the acts or doings of a predecessor trustee, and is not liable  
2 for any act or failure to act of a predecessor trustee.

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

9 Section 813.1. Duty to inform and account; trusts  
10 irrevocable and trustees accepting appointment after effective  
11 date of Code.

12 (a) This Section is prospective only and does not apply to  
13 any trust that was irrevocable before the effective date of  
14 this Code, or to a trustee who accepts a trusteeship before the  
15 effective date of this Code. Subject to Section 105, this  
16 Section supplants any common law duty of a trustee to inform  
17 and account to trust beneficiaries. This Section does not apply  
18 to trusts that became irrevocable before the effective date of  
19 this Code.

20 (b) General principles.

21 (1) The trustee shall notify each qualified  
22 beneficiary:

23 (A) of the trust's existence;

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

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

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

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

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

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

22 (5) Notwithstanding any other provision, a trustee in  
23 its discretion may provide notice, information, trust  
24 accountings, or reports to any beneficiary of the trust  
25 regardless of whether the communication is otherwise  
26 required to be provided.

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

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

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

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

1 accounting on behalf of a deceased or incapacitated trustee.

2 (d) Other required notices.

3 (1) A trustee shall:

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

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

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

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

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

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

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

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

15           (3) a representative under Article 3 for a qualified  
16           beneficiary for information that was previously provided  
17           to the qualified beneficiary or a representative under  
18           Article 3 for the qualified beneficiary.

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

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

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

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

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

1           Section 813.2. Duty to inform and account; trusts  
2           irrevocable and trustees accepting appointment before the  
3           effective date of Code.

4           (a) This Section applies to all trusts that were  
5           irrevocable before the effective date of this Code and to a  
6           trustee who accepts a trusteeship before the effective date of  
7           this Code.

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

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

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

1 guardian of the person of the beneficiary.

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

9 Section 814. Discretionary powers; tax savings.

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

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

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

25 (2) a trustee or other fiduciary may not exercise a



1 power to make discretionary distributions to satisfy a  
2 legal obligation of support that such fiduciary personally  
3 owes another person.

4 (c) Subject to subsections (d) and (e), if a beneficiary of  
5 a trust, in an individual, trustee, or other capacity, removes  
6 a fiduciary and appoints a successor fiduciary who would be  
7 related or subordinate to that beneficiary within the meaning  
8 of Section 672(c) of the Internal Revenue Code if the  
9 beneficiary were the grantor, that successor fiduciary's  
10 discretionary powers are limited as follows:

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

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

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

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

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

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

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

5           (1) a person other than a settlor who is a beneficiary  
6 and trustee or other fiduciary of a trust that confers on  
7 such fiduciary a power exercisable only in conjunction with  
8 another person having a substantial interest in the  
9 property subject to the power that is adverse to the  
10 interest of that fiduciary within the meaning of Section  
11 2041(b)(1)(C)(ii) of the Internal Revenue Code;

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

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

18           (4) a trust if contributions to the trust qualify for  
19 the annual exclusion under Section 2503(c) of the Internal  
20 Revenue Code; or

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

25           (f) A power whose exercise is limited or prohibited by  
26 subsections (b) and (c) may be exercised by a majority of the

1 remaining trustees or other fiduciaries whose exercise of the  
2 power is not so limited or prohibited. If the power of all  
3 trustees or other fiduciaries is so limited or prohibited, the  
4 court may appoint a special fiduciary with authority to  
5 exercise the power.

6 Section 815. General powers of trustee.

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

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

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

11 (A) all powers over the trust property that an  
12 unmarried owner with legal capacity has over  
13 individually owned property;

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

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

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

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

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

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

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

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

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

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

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

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

26                   (B) hold a security in the name of a nominee or in

1 other form without disclosure of the trust so that  
2 title may pass by delivery;

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

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

9 (E) participate in mergers, consolidations,  
10 foreclosures, reorganizations, and liquidations;

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

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

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

1 acquisition of property, including an option exercisable  
2 beyond the duration of the trust, and exercise an option so  
3 acquired;

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

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

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

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

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

25 (C) decline to accept property into trust or  
26 disclaim any power with respect to property that is or

1           may be burdened with liability for violation of  
2           environmental law;

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

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

9           (14) pay, contest, prosecute, or abandon any claim,  
10          settle a claim or charges in favor of or against the trust,  
11          and release, in whole or in part, a claim belonging to the  
12          trust;

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

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

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

26          (18) make loans out of trust property, including loans

1 to a beneficiary on terms and conditions the trustee  
2 considers to be fair and reasonable under the  
3 circumstances, and the trustee has a lien on future  
4 distributions for repayment of those loans;

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

7 (20) appoint a trustee to act in another jurisdiction  
8 to act as sole or co-trustee with respect to any part or  
9 all of trust property located in the other jurisdiction,  
10 confer upon the appointed trustee any or all of the rights,  
11 powers, and duties of the appointing trustee, require that  
12 the appointed trustee furnish security, and remove any  
13 trustee so appointed;

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

21 (A) directly to the beneficiary;

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

24 (C) to a custodian for the beneficiary under any  
25 state's Uniform Transfers to Minors Act, Uniform Gifts  
26 to Minors Act or Uniform Custodial Trust Act, and, for



1           that purpose, to create a custodianship or custodial  
2           trust;

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

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

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

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

26          (22) on distribution of trust property or the division

1 or termination of a trust, make distributions in divided or  
2 undivided interests, allocate particular assets in  
3 proportionate or disproportionate shares, value the trust  
4 property for those purposes, and adjust for resulting  
5 differences in valuation;

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

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

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

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

24 (27) enter into agreements for bank or other deposit  
25 accounts, safe deposit boxes, or custodian, agency, or  
26 depository arrangements for all or any part of the trust

1 estate, including, to the extent fair to the beneficiaries,  
2 agreements for services provided by a bank operated by or  
3 affiliated with the trustee, and to pay reasonable  
4 compensation for those services, including, to the extent  
5 fair to the beneficiaries, compensation to the bank  
6 operated by or affiliated with the trustee, except that  
7 nothing in this Section shall be construed as removing any  
8 depository arrangements from the requirements of the  
9 prudent investor rule;

10 (28) engage attorneys, auditors, financial advisors,  
11 and other agents and pay reasonable compensation to such  
12 persons;

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

14 (30) if fair to the beneficiaries, deal with the  
15 executor, trustee, or other representative of any other  
16 trust or estate in which a beneficiary of the trust has an  
17 interest, even if the trustee is an executor, trustee, or  
18 other representative of the other trust or estate;

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

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

26 (33) except as otherwise directed by the court, have

1 all of the rights, powers, and duties given to or imposed  
2 upon the trustee by law and the terms of the trust during  
3 the period between the termination of the trust and the  
4 distribution of the trust assets and during any period in  
5 which any litigation is pending that may void or invalidate  
6 the trust in whole or in part or affect the rights, powers,  
7 duties, or discretions of the trustee;

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

25 (35) drill, mine, and otherwise operate for the  
26 development of oil, gas, and other minerals; enter into

1 contracts relating to the installation and operation of  
2 absorption and repressuring plants; enter into unitization  
3 or pooling agreements for any purpose including primary,  
4 secondary, or tertiary recovery; place and maintain pipe  
5 lines; execute oil, gas, and mineral leases, division and  
6 transfer orders, grants, deeds, releases and assignments,  
7 and other instruments; participate in a cooperative coal  
8 marketing association or similar entity; and perform such  
9 other acts as the trustee deems appropriate using such  
10 methods as are commonly employed by owners of similar  
11 interests in the community in which the interests are  
12 located;

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

18 (37) continue a business in the partnership form and  
19 participate in its management by having the trustee or one  
20 or more agents of the trustee act as a partner, limited  
21 partner, or employee with appropriate compensation from  
22 the business; enter into new partnership agreements and  
23 incorporate the business; and, with respect to activities  
24 under this paragraph (37), the trustee or the agent or  
25 agents of the trustee shall not be personally liable to  
26 third persons with respect to actions not sounding in tort

1           unless the trustee or agent fails to identify the trust  
2           estate and disclose that the trustee or agent is acting in  
3           a representative capacity, except that nothing in this  
4           paragraph impairs in any way the liability of the trust  
5           estate with respect to activities under this paragraph (37)  
6           to the extent of the assets of the trust estate.

7           (38) Release, by means of any written renunciation,  
8           relinquishment, surrender, refusal to accept,  
9           extinguishment, and any other form of release, any power  
10          granted to the trustee by applicable law or the terms of a  
11          trust and held by such trustee in its fiduciary capacity,  
12          including any power to invade property, any power to alter,  
13          amend, or revoke any instrument, whether or not such  
14          release causes a termination of any right or interest  
15          thereunder, and any power remaining where one or more  
16          partial releases have heretofore or hereafter been made  
17          with respect to such power, whether heretofore or hereafter  
18          created or reserved as to: (i) any property that is subject  
19          thereto; (ii) any one or more of the objects thereof; or  
20          (iii) limit in any other respect the extent to which it may  
21          be exercised. The release may be permanent or applicable  
22          only for a specific time and may apply only to the trustee  
23          executing the release or the trustee and all future  
24          trustees, successor trustees, and co-trustees of the trust  
25          acting at any time or from time to time.

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

20           Section 818. (Reserved).

21           Section 819. Nominee registration. The trustee may cause  
22 stocks, bonds, and other real or personal property belonging to  
23 the trust to be registered and held in the name of a nominee  
24 without mention of the trust in any instrument or record

1 constituting or evidencing title thereto. The trustee is liable  
2 for the acts of the nominee with respect to any investment so  
3 registered. The records of the trustee shall show at all times  
4 the ownership of the investment by the trustee, and the stocks,  
5 bonds, and other similar investments shall be in the possession  
6 and control of the trustee and be kept separate and apart from  
7 assets that are the individual property of the trustee.

8 Section 820. Proceeds of eminent domain or partition. If a  
9 trustee is appointed by a court of this State to receive money  
10 under eminent domain or partition proceedings and to invest it  
11 for the benefit of the person who would be entitled to the real  
12 estate or its income if it had not been taken or sold, on  
13 petition of any interested person describing the real estate to  
14 be purchased, the price to be paid, the probable income to be  
15 derived and the state of the title, the court may authorize the  
16 trustee to invest all or any part of the money in other real  
17 estate in this State. Title to the real estate so purchased  
18 shall be taken in the name of the trustee. If the interest of  
19 the beneficiary in the real estate taken or sold was a legal  
20 interest, the court shall direct the trustee to convey to the  
21 beneficiary a legal estate upon the same conditions and  
22 limitations of title, but the conveyance by the trustee shall  
23 preserve any right of entry for condition broken, possibility  
24 of reverter created by the instrument of title or any reversion  
25 or other vested interest that arose by operation of law at the



1 time the instrument took effect. The court shall not direct the  
2 conveyance by the trustee unless there is a person or class of  
3 persons in being who would have a vested interest in the real  
4 estate taken or sold under the instrument of title to the real  
5 estate and who would be entitled to possession of the real  
6 estate if it had not been taken or sold.

7 Section 821. Lands or estates subject to future interest or  
8 power of appointment; waste; appointment of trustee. If lands  
9 or any estate therein are subject to any legal or equitable  
10 future interest of any kind or to any power of appointment,  
11 whether a trust is involved or not, and it is made to appear  
12 that such lands or estate are liable to waste or depreciation  
13 in value, or that the sale thereof and the safe and proper  
14 investment of the proceeds will inure to the benefit and  
15 advantage of the persons entitled thereto, or that it is  
16 otherwise necessary for the conservation, preservation, or  
17 protection of the property or estate or of any present or  
18 future interest therein that such lands or estate be sold,  
19 mortgaged, leased, converted, exchanged, improved, managed or  
20 otherwise dealt with, the court may, pending the happening of  
21 the contingency, if any, and the vesting in possession of such  
22 future interest, declare a trust, and appoint a trustee or  
23 trustees for such lands or estate and vest in a trustee or  
24 trustees title to the property, and authorize and direct the  
25 sale of such property, either at a public sale or at private

1 sale, and upon such terms and conditions as the court may  
2 direct, and in such case may authorize the trustee or trustees  
3 to make such sale and to receive, hold and invest the proceeds  
4 thereof under the direction of the court for the benefit of the  
5 persons entitled or who may become entitled thereto according  
6 to their respective rights and interests, authorize and direct  
7 that all or any portion of the property, or the proceeds  
8 thereof, so subject to such future interests or powers of  
9 appointment, be leased, mortgaged, converted, exchanged,  
10 improved, managed, invested, reinvested, or otherwise dealt  
11 with, as the rights and interests of the parties and the  
12 equities of the case may require, and to that end may confer  
13 all necessary powers on the trustee or trustees. All orders of  
14 every court entered pursuant to this Section after June 30,  
15 1982 and before September 16, 1985 vesting title to property in  
16 a trustee are hereby validated and such title is vested in such  
17 trustee effective the day the court entered such order.

18 Article 9. Illinois Prudent Investor Law; Life Insurance;  
19 Affiliated Investments.

20 Section 900. Article title. This Article may be referred to  
21 as the Illinois Prudent Investor Law.

22 Section 901. Prudent investor rule.

23 (a) Except as otherwise provided in subsection (b), a

1 trustee administering a trust has a duty to invest and manage  
2 the trust assets to comply with the prudent investor rule set  
3 forth in this Article.

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

9 Section 902. Standard of care; portfolio strategy; risk and  
10 return objectives.

11 (a) A trustee has a duty to invest and manage trust assets  
12 as a prudent investor would, considering the purposes, terms,  
13 distribution requirements, and other circumstances of the  
14 trust. This standard requires the exercise of reasonable care,  
15 skill, and caution and applies not in isolation, but in the  
16 context of the trust portfolio as a whole and as a part of an  
17 overall investment strategy that incorporates risk and return  
18 objectives reasonably suitable to the trust.

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

25 (c) The circumstances that a trustee may consider in making

1 investment decisions include, without limitation:

2 (1) the general economic conditions;

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

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

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

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

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

12 (7) environmental and social considerations;

13 (8) governance policies of the entities in which the  
14 trustee may invest;

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

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

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

24 Section 903. Diversification. A trustee has a duty to  
25 diversify the investments of the trust unless, under the

1 circumstances, the trustee reasonably believes it is in the  
2 interests of the beneficiaries and furthers the purposes of the  
3 trust not to diversify.

4 Section 904. Duties at inception of trusteeship. A trustee  
5 has a duty, within a reasonable time after the acceptance of a  
6 trusteeship, to review trust assets and to make and implement  
7 decisions concerning the retention and disposition of original  
8 preexisting investments, in order to conform to this Article. A  
9 trustee's decision to retain or dispose of an asset may  
10 properly be influenced by the asset's special relationship or  
11 value to the purposes of the trust or to some or all of the  
12 beneficiaries, consistent with the trustee's duty of  
13 impartiality.

14 Section 905. Court action. Nothing in this Article  
15 abrogates or restricts the power of an appropriate court in  
16 proper cases to: (i) direct or permit the trustee to deviate  
17 from the terms of the trust; or (ii) to direct or permit the  
18 trustee to take, or to restrain the trustee from taking, any  
19 action regarding the making or retention of investments.

20 Section 906. (Reserved).

21 Section 907. (Reserved).

1           Section 908. Reviewing compliance. No specific investment  
2 course of action is, taken alone, prudent or imprudent. The  
3 trustee may invest in every kind of property and type of  
4 investment, subject to this Article. A trustee's investment  
5 decisions and actions are to be judged in terms of the  
6 trustee's reasonable business judgment regarding the  
7 anticipated effect on the trust portfolio as a whole under the  
8 facts and circumstances prevailing at the time of the decision  
9 or action. This Article is a test of conduct and not of  
10 resulting performance.

11           Section 909. Delegation of investment and management  
12 functions. Notwithstanding any other provision of this Code,  
13 before delegating any investment functions to an agent in  
14 accordance with subsection (b) of Section 807, a trustee shall  
15 conduct an inquiry into the experience, performance history,  
16 professional licensing or registration, if any, and financial  
17 stability of the investment agent.

18           Section 910. Language invoking standard of Article. The  
19 following terms or comparable language in the investment powers  
20 and related provisions of a trust instrument, unless otherwise  
21 limited or modified by that instrument, shall be construed as  
22 authorizing any investment or strategy permitted under this  
23 Article: "investments permissible by law for investment of  
24 trust funds", "legal investments", "authorized investments",

1 "using the judgment and care under the circumstances then  
2 prevailing that persons of prudence, discretion, and  
3 intelligence exercise in the management of their own affairs,  
4 not in regard to speculation but in regard to the permanent  
5 disposition of their funds, considering the probable income as  
6 well as the probable safety of their capital", "prudent man  
7 rule", "prudent trustee rule", "prudent person rule", and  
8 "prudent investor rule".

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

10 Section 912. Application to existing trusts. The Sections  
11 of this Article that precede this Section apply to all existing  
12 and future trusts, but only as to actions or inactions  
13 occurring on or after January 1, 1992.

14 Section 913. Life insurance.

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

22 (1) to determine whether any contract of life insurance  
23 in the trust, or to be acquired by the trust, is or remains

1 a proper investment, including, without limitation, with  
2 respect to:

3 (A) the type of insurance contract;

4 (B) the quality of the insurance contract;

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

6 (D) the investments held within the insurance  
7 contract.

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

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

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

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

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

26 (c) This Section applies to an irrevocable trust created



1 after the effective date of this Code or to a revocable trust  
2 that becomes irrevocable after the effective date of this Code.  
3 The trustee of a trust described under this Section established  
4 before the effective date of this Code shall notify the settlor  
5 in writing that, unless the settlor provides written notice to  
6 the contrary to the trustee within 90 days of the trustee's  
7 notice, this Section applies to the trust. This Section does  
8 not apply if, within 90 days of the trustee's notice, the  
9 settlor notifies the trustee in writing that this Section does  
10 not apply. If the settlor is deceased, then the trustee shall  
11 give notice to all of the legally competent current  
12 beneficiaries, and this Section applies to the trust unless the  
13 majority of the beneficiaries notify the trustee to the  
14 contrary in writing within 90 days of the trustee's notice.

15 Section 914. Investments in affiliated investments;  
16 transactions with affiliates.

17 (a) As used in this Section:

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

23 (2) "Affiliated investment" means an investment for  
24 which the fiduciary or an affiliate of the fiduciary acts  
25 as advisor, administrator, distributor, placement agent,

1 underwriter, broker, or in any other capacity for which the  
2 fiduciary or an affiliate of the fiduciary receives or has  
3 received compensation from the investment.

4 (3) "Fiduciary capacity" includes an agent with  
5 investment discretion to determine what securities or  
6 other assets to purchase or sell on behalf of a fiduciary  
7 account.

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

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

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

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

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

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

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

21           (f) This Section applies to the purchase of securities made  
22 at the time of the initial offering of the securities or at any  
23 time thereafter.

24           (g) A financial institution that has complied with the  
25 terms of this Section has full authority to administer an  
26 affiliated investment, including the authority to vote proxies

1 on the affiliated investment.

2 Article 10. Liability of Trustees and Rights of Persons Dealing  
3 with Trustee.

4 Section 1001. Remedies for breach of trust.

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

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

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

10 (2) enjoin the trustee from committing a breach of  
11 trust;

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

14 (4) order a trustee to account;

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

17 (6) suspend the trustee;

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

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

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

24 (c) Nothing in this Section limits the equitable powers of

1 the court to order other appropriate relief.

2 Section 1002. Damages for breach of trust.

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

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

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

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

21 Section 1003. No damages in absence of breach. Except as  
22 provided in Section 802, absent a breach of trust, a trustee is  
23 not liable to a beneficiary for a loss or depreciation in the  
24 value of trust property or for any benefit received by the

1 trustee by reason of the administration of the trust.

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

7 Section 1005. Limitation on action against trustee.

8 (a) A beneficiary may not commence a proceeding against a  
9 trustee for breach of trust for any matter disclosed in writing  
10 by a trust accounting, or otherwise as provided in Sections  
11 813.1, 813.2, and Section 1102, after the date on which the  
12 disclosure becomes binding upon the beneficiary as provided  
13 below:

14 (1) With respect to a trust that becomes irrevocable  
15 after the effective date of this Code and to trustees  
16 accepting appointment after the effective date of this  
17 Code, a matter disclosed in writing by a trust accounting  
18 or otherwise pursuant to Section 813.1 and Section 1102 is  
19 binding on each person who receives the information and  
20 each person represented as provided in Article 3 by a  
21 person who receives the information, and all of the  
22 person's respective successors, representatives, heirs,  
23 and assigns, unless an action against the trustee is  
24 instituted within 2 years after the date the information is

1 furnished. A trust accounting or other communication  
2 adequately discloses the existence of a potential claim for  
3 breach of trust if it provides sufficient information so  
4 that the person entitled to receive the information knows  
5 of the potential claim or should have inquired into its  
6 existence.

7 (2) With respect to a trust that became irrevocable  
8 before the effective date of this Code or a trustee that  
9 accepted appointment before the effective date of this  
10 Code, a current account is binding on each beneficiary  
11 receiving the account and on the beneficiary's heirs and  
12 assigns unless an action against the trustee is instituted  
13 by the beneficiary or the beneficiary's heirs and assigns  
14 within 3 years after the date the current account is  
15 furnished, and a final accounting is binding on each  
16 beneficiary receiving the final accounting and all persons  
17 claiming by or through the beneficiary, unless an action  
18 against the trustee is instituted by the beneficiary or  
19 person claiming by or through him or her within 3 years  
20 after the date the final account is furnished. If the  
21 account is provided to the representative of the estate of  
22 the beneficiary or to a spouse, parent, adult child, or  
23 guardian of the person of the beneficiary, the account is  
24 binding on the beneficiary unless an action is instituted  
25 against the trustee by the representative of the estate of  
26 the beneficiary or by the spouse, parent, adult child, or

1 guardian of the person to whom the account is furnished  
2 within 3 years after the date it is furnished.

3 (3) Notwithstanding paragraphs (1) and (2), with  
4 respect to trust estates that terminated and were  
5 distributed 10 years or less before January 1, 1988, the  
6 final account furnished to the beneficiaries entitled to  
7 distribution of the trust estate is binding on the  
8 beneficiaries receiving the final account, and all persons  
9 claiming by or through them, unless an action against the  
10 trustee is instituted by the beneficiary or person claiming  
11 by or through him or her within 5 years after January 1,  
12 1988 or within 10 years after the date the final account  
13 was furnished, whichever is longer.

14 (4) Notwithstanding paragraphs (1), (2) and (3), with  
15 respect to trust estates that terminated and were  
16 distributed more than 10 years before January 1, 1988, the  
17 final account furnished to the beneficiaries entitled to  
18 distribution of the trust estate is binding on the  
19 beneficiaries receiving the final account, and all persons  
20 claiming by or through them, unless an action against the  
21 trustee is instituted by the beneficiary or person claiming  
22 by or through him or her within 2 years after January 1,  
23 1988.

24 (b) Unless barred earlier under subsection (a), a judicial  
25 proceeding by a beneficiary against a trustee for breach of  
26 trust must be commenced within 5 years after the first to occur



1 of:

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

3 (2) the termination of the beneficiary's interest in  
4 the trust; or

5 (3) the termination of the trust.

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

10 Section 1006. Reliance on trust instrument. A trustee who  
11 acts in reasonable reliance on the express language of the  
12 trust instrument is not liable to a beneficiary for a breach of  
13 trust to the extent the breach resulted from the reliance.

14 Section 1007. Event affecting administration or  
15 distribution. If the happening of an event, including, but not  
16 limited to, marriage, divorce, performance of educational  
17 requirements, or death, affects the administration or  
18 distribution of a trust, a trustee who has exercised reasonable  
19 care to ascertain the happening of the event is not liable for  
20 a loss resulting from the trustee's lack of knowledge.

21 Section 1008. Exculpation of trustee.

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

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

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

8           (b) An exculpatory term drafted or caused to be drafted by  
9 the trustee is invalid as an abuse of a fiduciary or  
10 confidential relationship unless the trustee proves that the  
11 exculpatory term is fair under the circumstances and that its  
12 existence and contents were adequately communicated to the  
13 settlor. These conditions are satisfied if the settlor was  
14 represented by independent counsel.

15           Section 1009. Beneficiary's consent, release, or  
16 ratification.

17           (a) A trustee is not liable to a beneficiary, or to anyone  
18 claiming by or through the beneficiary, for breach of trust if  
19 the beneficiary consented to the conduct constituting the  
20 breach, released the trustee from liability for the breach, or  
21 ratified the transaction constituting the breach, unless:

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

25           (2) at the time of the consent, release, or

1           ratification, the beneficiary did not know of the  
2           beneficiary's rights or of the material facts relating to  
3           the breach.

4           (b) If the beneficiary's consent, release, or ratification  
5           involves a self-dealing transaction, the consent, release, or  
6           ratification is binding only if the transaction was fair and  
7           reasonable. The condition that a self-dealing transaction must  
8           be fair and reasonable is satisfied if the beneficiary was  
9           represented by independent counsel. No consideration is  
10          required for the consent, release, or ratification to be valid.

11          Section 1010. Limitation on personal liability of trustee.

12          (a) Except as otherwise provided in the contract, a trustee  
13          is not personally liable on a contract properly entered into in  
14          the trustee's fiduciary capacity in the course of administering  
15          the trust if the trustee in the contract disclosed the  
16          fiduciary capacity.

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

22          (c) A claim based on a contract entered into by a trustee  
23          in the trustee's fiduciary capacity, on an obligation arising  
24          from ownership or control of trust property, or on a tort  
25          committed in the course of administering a trust, may be

1 asserted in a judicial proceeding against the trustee in the  
2 trustee's fiduciary capacity, whether or not the trustee is  
3 personally liable for the claim.

4 Section 1011. Interest as general partner.

5 (a) Except as otherwise provided in subsection (c) or  
6 unless personal liability is imposed in the contract, a trustee  
7 who holds an interest as a general partner in a general or  
8 limited partnership is not personally liable on a contract  
9 entered into by the partnership after the trust's acquisition  
10 of the interest if the fiduciary capacity was disclosed in the  
11 contract or in a statement previously filed pursuant to the  
12 Uniform Partnership Act (1997) or Uniform Limited Partnership  
13 Act (2001) or any other similar state law.

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

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

24 (d) If the trustee of a revocable trust holds an interest  
25 as a general partner, the settlor is personally liable for

1 contracts and other obligations of the partnership as if the  
2 settlor were a general partner.

3 Section 1012. Protection of person dealing with trustee.

4 (a) A person other than a beneficiary or a beneficiary's  
5 representative under Article 3 acting in a representative  
6 capacity who in good faith assists a trustee, or who in good  
7 faith and for value deals with a trustee, without knowledge  
8 that the trustee is exceeding or improperly exercising the  
9 trustee's powers is protected from liability as if the trustee  
10 properly exercised the power.

11 (b) A person other than a beneficiary or a beneficiary's  
12 representative under Article 3 acting in a representative  
13 capacity who in good faith deals with a trustee is not required  
14 to inquire into the extent of the trustee's powers or the  
15 propriety of their exercise.

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

19 (d) A person other than a beneficiary who in good faith  
20 assists a former trustee, or who in good faith and for value  
21 deals with a former trustee, without knowledge that the  
22 trusteeship has terminated is protected from liability as if  
23 the former trustee were still a trustee.

24 (e) Comparable protective provisions of other laws  
25 relating to commercial transactions or transfer of securities

1 by fiduciaries prevail over the protection provided by this  
2 Section.

3 Section 1013. Certification of trust.

4 (a) Instead of furnishing a copy of the trust instrument to  
5 a person other than a beneficiary, the trustee may furnish to  
6 the person a certification of trust containing the following  
7 information:

8 (1) a statement that the trust exists and the date the  
9 trust instrument was executed;

10 (2) the identity of the settlor;

11 (3) the identity and address of the currently acting  
12 trustee;

13 (4) the powers of the trustee;

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

17 (6) the authority of co-trustees to sign or otherwise  
18 authenticate and whether all or less than all are required  
19 in order to exercise powers of the trustee;

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

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

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

25 (c) A certification of trust must state that the trust has

1 not been revoked, modified, or amended in any manner that would  
2 cause the representations contained in the certification of  
3 trust to be incorrect.

4 (d) A certification of trust need not contain the  
5 dispositive terms of a trust.

6 (e) A recipient of a certification of trust may require the  
7 trustee to furnish copies of those excerpts from the original  
8 trust instrument and later amendments that designate the  
9 trustee and confer upon the trustee the power to act in the  
10 pending transaction.

11 (f) A person who acts in reliance upon a certification of  
12 trust without actual knowledge that the representations  
13 contained therein are incorrect is not liable to any person for  
14 so acting and may assume without inquiry the existence of the  
15 facts contained in the certification. Knowledge of the trust  
16 instrument may not be inferred solely from the fact that a copy  
17 of all or part of the trust instrument is held by the person  
18 relying upon the certification.

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

23 (h) A person making a demand for the trust instrument in  
24 addition to a certification of trust or excerpts is liable for  
25 damages if the court determines that the person did not act in  
26 good faith in demanding the trust instrument. A person required

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

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

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

16 CERTIFICATION OF TRUST

17 Name of trust: .....

18 Date trust instrument was executed: .....

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

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

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

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

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

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



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

3 Name(s) of successor trustee(s): .....

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

6 Title to the trust property shall be taken as follows (for  
7 example, "John Doe and Jane Doe, co-trustees of the Doe Family  
8 Living Trust, dated January 4, 1999"): .....

9 .... This is an irrevocable trust.

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

12 .... This is an unamendable trust.

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

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

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

23 Trustee Signature: .....

1 Printed Name: .....

2 Trustee Signature: .....

3 Printed Name: .....

4 [OPTIONAL:

5 State of .....)

6 County of .....)

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

9 (Signature of Notary Public):

10 .....

11 (SEAL)]

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

1 Article 11. Total Return Trusts.

2 Section 1101. Total return trust defined; trustee duty to  
3 inform.

4 (a) In this Article, "total return trust" means a trust  
5 converted in accordance with this Article that the trustee  
6 shall manage and invest seeking a total return without regard  
7 to whether the return is from income or appreciation of  
8 principal.

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

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

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

24 (2) the trustee sends a written notice of the trustee's

1 decision to convert the trust to a total return trust,  
2 specifying a prospective effective date for the conversion  
3 and including a copy of this Article, to all of the  
4 qualified beneficiaries; and

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

8 Section 1103. Conversion by agreement. Conversion to a  
9 total return trust may be made by agreement between a trustee  
10 and all qualified beneficiaries. The agreement may include any  
11 actions a court could properly order under Section 1108;  
12 however, any distribution percentage determined by the  
13 agreement may not be less than 3% nor greater than 5%.

14 Section 1104. Conversion or reconversion by court.

15 (a) The trustee may for any reason elect to petition the  
16 court to order conversion to a total return trust, including  
17 without limitation the reason that conversion under Section  
18 1102 is unavailable because a beneficiary timely objects to the  
19 conversion to a total return trust.

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

1           (c) The trustee may petition the court prospectively to  
2           reconvert from a total return trust or adjust the distribution  
3           percentage if the trustee determines that the reconversion or  
4           adjustment will enable the trustee to better carry out the  
5           purposes of the trust. A beneficiary may request the trustee to  
6           petition the court prospectively to reconvert from a total  
7           return trust or adjust the distribution percentage. If the  
8           trustee declines or fails to act within 6 months after  
9           receiving a written request to do so, the beneficiary may  
10          petition the court to order the reconversion or adjustment.

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

25          (e) The court shall order conversion to (or reconversion  
26          prospectively from or adjustment of the distribution

1 percentage of) a total return trust if the court determines  
2 that the conversion (or reconversion or adjustment of the  
3 distribution percentage) will enable the trustee to better  
4 carry out the purposes of the trust and the conversion (or  
5 reconversion or adjustment of the distribution percentage) is  
6 in the best interests of the beneficiaries.

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

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

11 (2) average the valuation of the trust's net assets  
12 over a period other than 3 years;

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

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

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

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

24 Section 1105. Post conversion. While a trust is a total  
25 return trust, all of the following apply to the trust:

1           (1) the trustee shall make income distributions in  
2 accordance with the trust instrument subject to this  
3 Article;

4           (2) the term "income" in the trust instrument means an  
5 annual amount (the "distribution amount") equal to a  
6 percentage (the "distribution percentage") of the net fair  
7 market value of the trust's assets, whether the assets are  
8 considered income or principal under the Principal and  
9 Income Act, averaged over the lesser of:

10           (A) the 3 preceding years; or

11           (B) the period during which the trust has been in  
12 existence;

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

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

24           (5) a change in the method of determining a reasonable  
25 current return by converting to a total return trust in  
26 accordance with this Article and substituting the

1 distribution amount for net trust accounting income is a  
2 proper change in the definition of trust income  
3 notwithstanding any contrary provision of the Principal  
4 and Income Act, and the distribution amount shall be deemed  
5 a reasonable current return that fairly apportions the  
6 total return of a total return trust.

7 Section 1106. Administration.

8 (a) As used in this Section, "excluded asset" means an  
9 asset for which there is no readily available market value and  
10 that the trustee determines in accordance with subsection (d)  
11 shall be excluded from the net fair market value of the trust's  
12 assets for purposes of determining the distribution amount  
13 under paragraph (2) of Section 1105.

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

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

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

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

24 (4) the manner of adjusting valuations and  
25 calculations of the distribution amount to account for



1 other payments from or contributions to the trust;

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

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

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

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

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

11 (8) which trust assets are excluded assets; and

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

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

17 (d) Unless the trustee determines there are compelling  
18 reasons to the contrary considering all relevant factors  
19 including the best interests of the beneficiaries, the trustee  
20 shall treat each asset for which there is no readily available  
21 market value as an excluded asset. Examples of assets for which  
22 there is a readily available market value include: cash and  
23 cash equivalents; stocks, bonds, and other securities and  
24 instruments for which there is an established market on a stock  
25 exchange, in an over-the-counter market, or otherwise; and any  
26 other property that can reasonably be expected to be sold

1 within one week of the decision to sell without extraordinary  
2 efforts by the seller. Examples of assets for which there is no  
3 readily available market value include: stocks, bonds, and  
4 other securities and instruments for which there is no  
5 established market on a stock exchange, in an over-the-counter  
6 market, or otherwise; real property; tangible personal  
7 property; and artwork and other collectibles.

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

13 Section 1107. Allocations.

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

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

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

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

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

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

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

5           (6) then from other trust principal.

6           Section 1108. Restrictions. Conversion to a total return  
7           trust does not affect any provision in the trust instrument:

8           (1) directing or authorizing the trustee to distribute  
9           principal;

10          (2) directing or authorizing the trustee to distribute  
11          a fixed annuity or a fixed fraction of the value of trust  
12          assets;

13          (3) authorizing a beneficiary to withdraw a portion or  
14          all of the principal; or

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

19          Section 1109. Tax limitations.

20          (a) If a particular trustee is a beneficiary of the trust  
21          and conversion or failure to convert would enhance or diminish  
22          the beneficial interest of the trustee, or if possession or  
23          exercise of the conversion power by a particular trustee would  
24          alone cause any individual to be treated as owner of a part of

1 the trust for income tax purposes or cause a part of the trust  
2 to be included in the gross estate of any individual for estate  
3 tax purposes, then the particular trustee may not participate  
4 as a trustee in the exercise of the conversion power except  
5 that the particular trustee may petition the court under  
6 subsection (a) of Section 1104 to order conversion in  
7 accordance with this Article.

8 (b) If the particular trustee has one or more co-trustees  
9 to whom subsection (a) does not apply, the co-trustee or  
10 co-trustees may convert the trust to a total return trust in  
11 accordance with this Article.

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

19 Section 1111. Remedies. A trustee who reasonably and in  
20 good faith takes any action under this Article is not liable to  
21 any interested person. If a trustee reasonably and in good  
22 faith takes any action under this Article and an interested  
23 person opposes the action, the person's exclusive remedy is to  
24 obtain an order of the court directing the trustee to convert

1 the trust to a total return trust, to reconvert from a total  
2 return trust, to change the distribution percentage, or to  
3 order any administrative procedures the court determines  
4 necessary or helpful for the proper functioning of the trust.  
5 An action by a trustee under this Article is presumed taken or  
6 omitted reasonably and in good faith unless it is determined by  
7 the court to have been an abuse of discretion.

8 Section 1112. Application. This Article is available to  
9 trusts in existence on or after August 22, 2002. This Article  
10 shall be construed as pertaining to the administration of a  
11 trust and shall be available to any trust that is administered  
12 in Illinois or that is governed by Illinois law with respect to  
13 the meaning and effect of its terms unless one of the following  
14 apply:

15 (1) The trust is a trust described in Section  
16 642(c)(5), 664(d), 2702(a)(3), or 2702(b) of the Internal  
17 Revenue Code.

18 (2) The trust instrument expressly prohibits use of  
19 this Article by specific reference to this Article or a  
20 prior corresponding law. A provision in the trust  
21 instrument in the form: "Neither the provisions of Article  
22 11 of the Illinois Trust Code nor any corresponding  
23 provision of future law may be used in the administration  
24 of this trust" or a similar provision demonstrating that  
25 intent is sufficient to preclude the use of this Article.

1 Section 1113. Application to express trusts.

2 (a) In this Section:

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

8 (2) "Unitrust amount" means an amount equal to a  
9 percentage of a trust's assets that may or must be  
10 distributed to one or more beneficiaries annually in  
11 accordance with the terms of the trust. The unitrust amount  
12 may be determined by reference to the net fair market value  
13 of the trust's assets as of a particular date or as an  
14 average determined on a multiple-year basis.

15 (b) A unitrust changes the definition of income by  
16 substituting the unitrust amount for net trust accounting  
17 income as the method of determining current return and shall be  
18 given effect notwithstanding any contrary provision of the  
19 Principal and Income Act. By way of example and not limitation,  
20 a unitrust amount determined by a percentage of not less than  
21 3% nor greater than 5% is conclusively presumed a reasonable  
22 current return that fairly apportions the total return of a  
23 unitrust.

24 (c) Subsection (b) of Section 1107 applies to a unitrust  
25 except to the extent its trust instrument expressly provides

1 otherwise.

2 (d) This Section does not apply to a charitable remainder  
3 unitrust as defined by Section 664(d) of the Internal Revenue  
4 Code.

5 Article 12. Trust Decanting.

6 Section 1201. Article title. This Article may be referred  
7 to as the Trust Decanting Law.

8 Section 1202. Definitions. In this Article:

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

11 (2) "Authorized fiduciary" means:

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

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

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

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

21 (4) "Decanting power" or "the decanting power" means the  
22 power of an authorized fiduciary under this Article to  
23 distribute property of a first trust to one or more second

1 trusts or to modify the terms of the first trust.

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

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

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

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

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

17 (10) "Second trust" means:

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

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

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

24 Section 1203. Scope.

25 (a) Except as otherwise provided in subsections (b) and



1 (c), this Article applies to an express trust that is  
2 irrevocable or revocable by the settlor only with the consent  
3 of the trustee or a person holding an adverse interest.

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

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

8 (d) This Article does not limit the power of a trustee,  
9 powerholder, or other person to distribute or appoint property  
10 in further trust or to modify a trust under the trust  
11 instrument, law of this State other than this Article, common  
12 law, a court order, or a nonjudicial settlement agreement.

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

17 Section 1204. Fiduciary duty.

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

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

25 (c) Except as otherwise provided in a first-trust

1 instrument, for purposes of this Article and Section 801, the  
2 terms of the first trust are deemed to include the decanting  
3 power.

4 Section 1205. Application; governing law. This Article  
5 applies to a trust created before, on, or after the effective  
6 date of this Code that:

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

10 (2) provides by its trust instrument that it is  
11 governed by the law of this State or is governed by the law  
12 of this State for the purpose of:

13 (A) administration, including administration of a  
14 trust whose governing law for purposes of  
15 administration has been changed to the law of this  
16 State;

17 (B) construction of terms of the trust; or

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

20 Section 1206. Reasonable reliance. A trustee or other  
21 person that reasonably relies on the validity of a distribution  
22 of part or all of the property of a trust to another trust, or a  
23 modification of a trust, under this Article, law of this State  
24 other than this Article or the law of another jurisdiction is

1 not liable to any person for any action or failure to act as a  
2 result of the reliance.

3 Section 1207. Notice.

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

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

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

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

16 (2) each qualified beneficiary of the first trust;

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

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

21 (5) each other fiduciary of the first trust;

22 (6) each fiduciary of the second trust; and

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

25 (d) An authorized fiduciary is not required to give notice

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

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

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

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

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

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

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

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

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

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

25 (h) An exercise of the decanting power is not ineffective  
26 because of the failure to give notice to one or more persons

1 under subsection (c) if the authorized fiduciary acted with  
2 reasonable care to comply with subsection (c).

3 (i) If the first trust contains a charitable interest and  
4 the Attorney General objects to the proposed exercise of the  
5 decanting power in writing delivered to the authorized  
6 fiduciary before the end of the notice period, the authorized  
7 fiduciary may proceed with the proposed exercise of the  
8 decanting power only with either court approval or the later  
9 written consent of the Attorney General.

10 Section 1208. (Reserved).

11 Section 1209. Court involvement.

12 (a) On application of an authorized fiduciary, a person  
13 entitled to notice under Section 1207(c), a beneficiary, or,  
14 with respect to a charitable interest, the Attorney General or  
15 any other person that has standing to enforce the charitable  
16 interest, the court may:

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

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

1 (3) approve an exercise of the decanting power;

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

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

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

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

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

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

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

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

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

24 Section 1210. Formalities. An exercise of the decanting  
25 power must be made in a record signed by an authorized

1 fiduciary. The signed record must, directly or by reference to  
2 the notice required by Section 1207, identify the first trust  
3 and the second trust or trusts and state the property of the  
4 first trust being distributed to each second trust and the  
5 property, if any, that remains in the first trust.

6 Section 1211. Decanting power under expanded distributive  
7 discretion.

8 (a) In this Section:

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

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

21 (3) "Vested interest" means:

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

25 (B) a current and noncontingent right, annually or

1 more frequently, to a mandatory distribution of  
2 income, a specified dollar amount, or a percentage of  
3 value of some or all of the trust property;

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

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

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

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

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

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

25 (2) include as a presumptive remainder beneficiary or  
26 successor beneficiary a person that is not a current



1 beneficiary, presumptive remainder beneficiary, or  
2 successor beneficiary of the first trust, except as  
3 otherwise provided in subsection (d); or

4 (3) reduce or eliminate a vested interest.

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

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

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

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

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

24 (e) A power of appointment described in subsection (d)(1)  
25 through (4) of subsection (d) may be general or nongeneral. The  
26 class of permissible appointees in favor of which the power may

1 be exercised may be broader than or different from the  
2 beneficiaries of the first trust.

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

8 Section 1212. Decanting power under limited distributive  
9 discretion.

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

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

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

23 (d) A power to make a distribution under a second trust for  
24 the benefit of a beneficiary who is an individual is  
25 substantially similar to a power under the first trust to make

1 a distribution directly to the beneficiary. A distribution is  
2 for the benefit of a beneficiary if:

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

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

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

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

17 Section 1213. Trust for beneficiary with disability.

18 (a) In this Section:

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

25 (2) "Best interests" of a beneficiary with a disability

1 include, without limitation, consideration of the  
2 financial impact to the family of the beneficiary who has a  
3 disability.

4 (3) "Governmental benefits" means financial aid or  
5 services from a state, federal, or other public agency.

6 (4) "Special-needs fiduciary" means, with respect to a  
7 trust that has a beneficiary with a disability:

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

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

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

22 (5) "Special-needs trust" means a trust the trustee  
23 believes would not be considered a resource for purposes of  
24 determining whether the beneficiary with a disability is  
25 eligible for governmental benefits.

26 (b) A special-needs fiduciary may exercise the decanting

1 power under Section 1211 over the principal of a first trust as  
2 if the fiduciary had authority to distribute principal to a  
3 beneficiary with a disability subject to expanded distributive  
4 discretion if:

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

7 (2) the special-needs fiduciary determines that  
8 exercise of the decanting power will further the purposes  
9 of the first trust or the best interests of the beneficiary  
10 with a disability.

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

13 (1) If the first trust was created by the beneficiary  
14 with a disability, or to the extent the first trust was  
15 funded by the beneficiary with a disability, then  
16 notwithstanding paragraph (2) of subsection (c) of Section  
17 1211, the interest in the second trust of a beneficiary  
18 with a disability may:

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

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

25 (2) Paragraph (3) of subsection (c) of Section 1211  
26 does not apply to the interests of the beneficiary with a

1 disability.

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

8 Section 1214. Protection of charitable interests.

9 (a) In this Section:

10 (1) "Determinable charitable interest" means a  
11 charitable interest that is a right to a mandatory  
12 distribution currently, periodically, on the occurrence of  
13 a specified event, or after the passage of a specified time  
14 and that is unconditional or that will in all events be  
15 held for charitable purposes.

16 (2) "Unconditional" means not subject to the  
17 occurrence of a specified event that is not certain to  
18 occur, other than a requirement in a trust instrument that  
19 a charitable organization be in existence or qualify under  
20 a particular provision of the Internal Revenue Code on the  
21 date of the distribution if the charitable organization  
22 meets the requirement on the date of determination.

23 (b) If a first trust contains a determinable charitable  
24 interest, the Attorney General has the rights of a qualified  
25 beneficiary and may represent and bind the charitable interest.

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

3 (1) diminish the charitable interest;

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

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

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

10 (d) If there are 2 or more second trusts, the second trusts  
11 shall be treated as one trust for purposes of determining  
12 whether the exercise of the decanting power diminishes the  
13 charitable interest or diminishes the interest of an identified  
14 charitable organization for purposes of subsection (c).

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

19 (1) the Attorney General, after receiving notice under  
20 Section 1207, fails to object in a signed record delivered  
21 to the authorized fiduciary within the notice period;

22 (2) the Attorney General consents in a signed record to  
23 the second trusts being administered under the law of  
24 another jurisdiction; or

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

1           (f) This Article does not limit the powers and duties of  
2 the Attorney General under Illinois law.

3           Section 1215. Trust limitation on decanting.

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

7                 (1) the decanting power; or

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

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

14                 (1) the decanting power; or

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

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

22           (d) Subject to subsections (a) and (b), an authorized  
23 fiduciary may exercise the decanting power under this Article  
24 even if the first-trust instrument permits the authorized  
25 fiduciary or another person to modify the first-trust



1 instrument or to distribute part or all of the principal of the  
2 first trust to another trust.

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

7 Section 1216. Change in compensation.

8 (a) If a first-trust instrument specifies an authorized  
9 fiduciary's compensation, the fiduciary may not exercise the  
10 decanting power to increase the fiduciary's compensation  
11 beyond the specified compensation unless:

12 (1) all qualified beneficiaries of the second trust  
13 consent to the increase in a signed record; or

14 (2) the increase is approved by the court.

15 (b) If a first-trust instrument does not specify an  
16 authorized fiduciary's compensation, the fiduciary may not  
17 exercise the decanting power to increase the fiduciary's  
18 compensation above the compensation permitted by Section 708  
19 unless:

20 (1) all qualified beneficiaries of the second trust  
21 consent to the increase in a signed record; or

22 (2) the increase is approved by the court.

23 (c) A change in an authorized fiduciary's compensation that  
24 is incidental to other changes made by the exercise of the  
25 decanting power is not an increase in the fiduciary's

1 compensation for purposes of subsections (a) and (b).

2 Section 1217. Relief from liability and indemnification.

3 (a) Except as otherwise provided in this Section, a  
4 second-trust instrument may not relieve an authorized  
5 fiduciary from liability for breach of trust to a greater  
6 extent than the first-trust instrument.

7 (b) A second-trust instrument may provide for  
8 indemnification of an authorized fiduciary of the first trust  
9 or another person acting in a fiduciary capacity under the  
10 first trust for any liability or claim that would have been  
11 payable from the first trust if the decanting power had not  
12 been exercised.

13 (c) A second-trust instrument may not reduce fiduciary  
14 liability in the aggregate.

15 (d) Subject to subsection (c), a second-trust instrument  
16 may divide and reallocate fiduciary powers among fiduciaries,  
17 including one or more trustees, distribution advisors,  
18 investment advisors, trust protectors, or other persons, and  
19 relieve a fiduciary from liability for an act or failure to act  
20 of another fiduciary as permitted by law of this State other  
21 than this Article.

22 Section 1218. Removal or replacement of authorized  
23 fiduciary. An authorized fiduciary may not exercise the  
24 decanting power to modify a provision in the first-trust

1 instrument granting another person power to remove or replace  
2 the fiduciary unless:

3 (1) the person holding the power consents to the  
4 modification in a signed record and the modification  
5 applies only to the person;

6 (2) the person holding the power and the qualified  
7 beneficiaries of the second trust consent to the  
8 modification in a signed record and the modification grants  
9 a substantially similar power to another person; or

10 (3) the court approves the modification and the  
11 modification grants a substantially similar power to  
12 another person.

13 Section 1219. Tax-related limitations.

14 (a) In this Section:

15 (1) "Grantor trust" means a trust as to which a settlor  
16 of a first trust is considered the owner under Sections 671  
17 through 677 of the Internal Revenue Code or Section 679 of  
18 the Internal Revenue Code.

19 (2) "Nongrantor trust" means a trust that is not a  
20 grantor trust.

21 (3) "Qualified benefits property" means property  
22 subject to the minimum distribution requirements of  
23 Section 401(a)(9) of the Internal Revenue Code, and any  
24 applicable regulations, or to any similar requirements  
25 that refer to Section 401(a)(9) of the Internal Revenue

1 Code or the regulations.

2 (b) An exercise of the decanting power is subject to the  
3 following limitations:

4 (1) If a first trust contains property that qualified,  
5 or would have qualified but for provisions of this Article  
6 other than this Section, for a marital deduction for  
7 purposes of the gift or estate tax under the Internal  
8 Revenue Code or a state gift, estate, or inheritance tax,  
9 the second-trust instrument must not include or omit any  
10 term that, if included in or omitted from the trust  
11 instrument for the trust to which the property was  
12 transferred, would have prevented the transfer from  
13 qualifying for the deduction, or would have reduced the  
14 amount of the deduction, under the same provisions of the  
15 Internal Revenue Code or state law under which the transfer  
16 qualified.

17 (2) If the first trust contains property that  
18 qualified, or would have qualified but for provisions of  
19 this Article other than this Section, for a charitable  
20 deduction for purposes of the income, gift, or estate tax  
21 under the Internal Revenue Code or a state income, gift,  
22 estate, or inheritance tax, the second-trust instrument  
23 must not include or omit any term that, if included in or  
24 omitted from the trust instrument for the trust to which  
25 the property was transferred, would have prevented the  
26 transfer from qualifying for the deduction, or would have

1 reduced the amount of the deduction, under the same  
2 provisions of the Internal Revenue Code or state law under  
3 which the transfer qualified.

4 (3) If the first trust contains property that  
5 qualified, or would have qualified but for provisions of  
6 this Article other than this Section, for the exclusion  
7 from the gift tax described in Section 2503(b) of the  
8 Internal Revenue Code, the second-trust instrument must  
9 not include or omit a term that, if included in or omitted  
10 from the trust instrument for the trust to which the  
11 property was transferred, would have prevented the  
12 transfer from qualifying under the same provision of  
13 Section 2503 of the Internal Revenue Code. If the first  
14 trust contains property that qualified, or would have  
15 qualified but for provisions of this Article other than  
16 this Section, for the exclusion from the gift tax described  
17 in Section 2503(b) of the Internal Revenue Code, by  
18 application of Section 2503(c) of the Internal Revenue  
19 Code, the second-trust instrument must not include or omit  
20 a term that, if included or omitted from the trust  
21 instrument for the trust to which the property was  
22 transferred, would have prevented the transfer from  
23 qualifying under Section 2503(c) of the Internal Revenue  
24 Code.

25 (4) If the property of the first trust includes shares  
26 of stock in an S corporation, as defined in Section 1361 of

1 the Internal Revenue Code and the first trust is, or but  
2 for provisions of this Article other than this Section  
3 would be, a permitted shareholder under any provision of  
4 Section 1361 of the Internal Revenue Code, an authorized  
5 fiduciary may exercise the power with respect to part or  
6 all of the S-corporation stock only if any second trust  
7 receiving the stock is a permitted shareholder under  
8 Section 1361(c)(2) of the Internal Revenue Code. If the  
9 property of the first trust includes shares of stock in an  
10 S corporation and the first trust is, or but for provisions  
11 of this Article other than this Section, would be, a  
12 qualified subchapter-S trust within the meaning of Section  
13 1361(d) of the Internal Revenue Code, the second-trust  
14 instrument must not include or omit a term that prevents  
15 the second trust from qualifying as a qualified  
16 subchapter-S trust.

17 (5) If the first trust contains property that  
18 qualified, or would have qualified but for provisions of  
19 this Article other than this Section, for a zero inclusion  
20 ratio for purposes of the generation-skipping transfer tax  
21 under Section 2642(c) of the Internal Revenue Code the  
22 second-trust instrument must not include or omit a term  
23 that, if included in or omitted from the first-trust  
24 instrument, would have prevented the transfer to the first  
25 trust from qualifying for a zero inclusion ratio under  
26 Section 2642(a) of the Internal Revenue Code.

1           (6) If the first trust is directly or indirectly the  
2 beneficiary of qualified benefits property, the  
3 second-trust instrument may not include or omit any term  
4 that, if included in or omitted from the first-trust  
5 instrument, would have increased the minimum distributions  
6 required with respect to the qualified benefits property  
7 under Section 401(a)(9) of the Internal Revenue Code and  
8 any applicable regulations, or any similar requirements  
9 that refer to Section 401(a)(9) of the Internal Revenue  
10 Code or the regulations. If an attempted exercise of the  
11 decanting power violates the preceding sentence, the  
12 trustee is deemed to have held the qualified benefits  
13 property and any reinvested distributions of the property  
14 as a separate share from the date of the exercise of the  
15 power and Section 1222 applies to the separate share.

16           (7) If the first trust qualifies as a grantor trust  
17 because of the application of Section 672(f)(2)(A) of the  
18 Internal Revenue Code the second trust may not include or  
19 omit a term that, if included in or omitted from the  
20 first-trust instrument, would have prevented the first  
21 trust from qualifying under Section 672(f)(2)(A) of the  
22 Internal Revenue Code.

23           (8) In this paragraph (8), "tax benefit" means a  
24 federal or state tax deduction, exemption, exclusion, or  
25 other benefit not otherwise listed in this Section, except  
26 for a benefit arising from being a grantor trust. Subject

1 to paragraph (9) of this subsection (b), a second-trust  
2 instrument may not include or omit a term that, if included  
3 in or omitted from the first-trust instrument, would have  
4 prevented qualification for a tax benefit if:

5 (A) the first-trust instrument expressly indicates  
6 an intent to qualify for the benefit or the first-trust  
7 instrument clearly is designed to enable the first  
8 trust to qualify for the benefit; and

9 (B) the transfer of property held by the first  
10 trust or the first trust qualified, or but for  
11 provisions of this Article other than this Section,  
12 would have qualified for the tax benefit.

13 (9) Subject to paragraph (4) of this subsection (b):

14 (A) except as otherwise provided in paragraph (7)  
15 of this subsection (b), the second trust may be a  
16 nongrantor trust, even if the first trust is a grantor  
17 trust; and

18 (B) except as otherwise provided in paragraph (10)  
19 of this subsection (b), the second trust may be a  
20 grantor trust, even if the first trust is a nongrantor  
21 trust.

22 (10) An authorized fiduciary may not exercise the  
23 decanting power if a settlor objects in a signed record  
24 delivered to the fiduciary within the notice period and:

25 (A) the first trust and second trusts are both  
26 grantor trusts, in whole or in part, the first trust



1 grants the settlor or another person the power to cause  
2 the second trust to cease to be a grantor trust, and  
3 the second trust does not grant an equivalent power to  
4 the settlor or other person; or

5 (B) the first trust is a nongrantor trust and the  
6 second trust is a grantor trust, in whole or in part,  
7 with respect to the settlor, unless:

8 (i) the settlor has the power at all times to  
9 cause the second trust to cease to be a grantor  
10 trust; or

11 (ii) the first-trust instrument contains a  
12 provision granting the settlor or another person a  
13 power that would cause the first trust to cease to  
14 be a grantor trust and the second-trust instrument  
15 contains the same provision.

16 Section 1220. Duration of second trust.

17 (a) Subject to subsection (b), a second trust may have a  
18 duration that is the same as or different from the duration of  
19 the first trust.

20 (b) To the extent that property of a second trust is  
21 attributable to property of the first trust, the second trust  
22 is subject to any rules governing maximum perpetuity,  
23 accumulation, or suspension of the power of alienation  
24 applicable to property of the first trust.

1           Section 1221. Need to distribute not required. An  
2 authorized fiduciary may exercise the decanting power whether  
3 or not under the first trust's discretionary distribution  
4 standard the fiduciary would have made or could have been  
5 compelled to make a discretionary distribution of principal at  
6 the time of the exercise.

7           Section 1222. Savings provision.

8           (a) If exercise of the decanting power would be effective  
9 under this Article except that the second-trust instrument in  
10 part does not comply with this Article, the exercise of the  
11 power is effective and the following rules apply to the  
12 principal of the first trust subject to the exercise of the  
13 power:

14           (1) A provision in the second-trust instrument that is  
15 not permitted under this Article is void to the extent  
16 necessary to comply with this Article.

17           (2) A provision required by this Article to be in the  
18 second-trust instrument that is not contained in the  
19 instrument is deemed to be included in the instrument to  
20 the extent necessary to comply with this Article.

21           (b) If a trustee or other fiduciary of a second trust  
22 discovers that subsection (a) applies to a prior exercise of  
23 the decanting power, the fiduciary shall take such appropriate  
24 corrective action as is consistent with the fiduciary's duties.

1 Section 1223. Trust for care of animal.

2 (a) In this Section:

3 (1) "Animal trust" means a trust or an interest in a  
4 trust created to provide for the care of one or more  
5 designated domestic or pet animals.

6 (2) "Protector" means a person described in paragraph  
7 (3) of subsection (b) of Section 408.

8 (b) The decanting power may be exercised over an animal  
9 trust that has a protector to the extent the trust could be  
10 decanted under this Article as if each animal that benefits  
11 from the trust were an individual, if the protector consents in  
12 a signed record to the exercise of the decanting power.

13 (c) A protector for an animal has the rights under this  
14 Article of a qualified beneficiary.

15 (d) Notwithstanding any other provision of this Article, if  
16 a first trust is an animal trust, in an exercise of the  
17 decanting power, the second trust must provide that trust  
18 property may be applied only to its intended purpose for the  
19 period the first trust benefited the animal.

20 Section 1224. (Reserved).

21 Section 1225. Settlor.

22 (a) For purposes of the laws of this State other than this  
23 Article and subject to subsection (b), a settlor of a first  
24 trust is deemed to be the settlor of the second trust with

1 respect to the portion of the principal of the first trust  
2 subject to the exercise of the decanting power.

3 (b) In determining settlor intent with respect to a second  
4 trust, the intent of a settlor of the first trust, the intent  
5 of a settlor of the second trust, and the intent of the  
6 authorized fiduciary may be considered.

7 Section 1226. Later-discovered property.

8 (a) Except as otherwise provided in subsection (c), if  
9 exercise of the decanting power was intended to distribute all  
10 the principal of the first trust to one or more second trusts,  
11 later-discovered property otherwise belonging to the first  
12 trust and property paid to or acquired by the first trust after  
13 the exercise of the power is part of the trust estate of the  
14 second trust.

15 (b) Except as otherwise provided in subsection (c), if  
16 exercise of the decanting power was intended to distribute less  
17 than all the principal of the first trust to one or more second  
18 trusts, later-discovered property belonging to the first trust  
19 or property paid to or acquired by the first trust after  
20 exercise of the decanting power remains part of the trust  
21 estate of the first trust.

22 (c) An authorized fiduciary may provide in an exercise of  
23 the decanting power or by the terms of a second trust for  
24 disposition of later-discovered property belonging to the  
25 first trust or property paid to or acquired by the first trust

1 after exercise of the decanting power.

2 Section 1227. Obligations. A debt, liability, or other  
3 obligation enforceable against property of a first trust is  
4 enforceable to the same extent against that property when held  
5 by the second trust after exercise of the decanting power.

6 Article 13. Uniform Powers of Appointment Law.

7 Section 1301. Article title. This Article may be referred  
8 to as the Uniform Powers of Appointment Law.

9 Section 1302. Definitions. In this Article:

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

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

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

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

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

22 (C) disposes of all property subject to disposition by

1 the powerholder.

2 (4) "Exclusionary power of appointment" means a power of  
3 appointment exercisable in favor of any one or more of the  
4 permissible appointees to the exclusion of the other  
5 permissible appointees.

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

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

10 (7) "Instrument" means a writing.

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

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

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

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

23 (12) "Terms of the instrument" means the manifestation of  
24 the intent of the maker of the instrument regarding the  
25 instrument's provisions as expressed in the instrument or as  
26 may be established by other evidence that would be admissible

1 in a legal proceeding.

2 Section 1303. Governing law. Unless the terms of the  
3 instrument creating a power of appointment manifest a contrary  
4 intent:

5 (1) the creation, revocation, or amendment of the power is  
6 governed by the law of the donor's domicile at the relevant  
7 time; and

8 (2) the exercise, release, or disclaimer of the power, or  
9 the revocation or amendment of the exercise, release, or  
10 disclaimer of the power, is governed by the law of the  
11 powerholder's domicile at the relevant time.

12 Section 1304. Creation of power of appointment.

13 (a) A power of appointment is created only if:

14 (1) the instrument creating the power:

15 (A) is valid under applicable law; and

16 (B) except as otherwise provided in subsection

17 (b), transfers the appointive property; and

18 (2) the terms of the instrument creating the power  
19 manifest the donor's intent to create, in a powerholder, a  
20 power of appointment over the appointive property  
21 exercisable in favor of a permissible appointee.

22 (b) Subdivision (a) (1) (B) does not apply to the creation of  
23 a power of appointment by the exercise of a power of  
24 appointment.

1 (c) A power of appointment may not be created in a deceased  
2 individual.

3 (d) Subject to an applicable rule against perpetuities, a  
4 power of appointment may be created in an unborn or  
5 unascertained powerholder.

6 Section 1305. Nontransferability. A powerholder may not  
7 transfer a power of appointment. If the powerholder dies  
8 without exercising or releasing the power, the power lapses.

9 Section 1306. Presumption of unlimited authority. Subject  
10 to Section 1308, and unless the terms of the instrument  
11 creating a power of appointment manifest a contrary intent, the  
12 power is:

- 13 (1) presently exercisable;  
14 (2) exclusionary; and  
15 (3) except as otherwise provided in Section 1307,  
16 general.

17 Section 1307. Exception to presumption of unlimited  
18 authority. Unless the terms of the instrument creating a power  
19 of appointment manifest a contrary intent, the power is  
20 nongeneral if:

- 21 (1) the power is exercisable only at the powerholder's  
22 death; and  
23 (2) the permissible appointees of the power are a



1 defined and limited class that does not include the  
2 powerholder's estate, the powerholder's creditors, or the  
3 creditors of the powerholder's estate.

4 Section 1308. Rules of classification.

5 (a) In this Section, "adverse party" means a person with a  
6 substantial beneficial interest in property that would be  
7 affected adversely by a powerholder's exercise or nonexercise  
8 of a power of appointment in favor of the powerholder, the  
9 powerholder's estate, a creditor of the powerholder, or a  
10 creditor of the powerholder's estate.

11 (b) If a powerholder may exercise a power of appointment  
12 only with the consent or joinder of an adverse party, the power  
13 is nongeneral.

14 (c) If the permissible appointees of a power of appointment  
15 are not defined and limited, the power is exclusionary.

16 Section 1309. Power to revoke or amend. A donor may revoke  
17 or amend a power of appointment only to the extent that:

18 (1) the instrument creating the power is revocable by  
19 the donor; or

20 (2) the donor reserves a power of revocation or  
21 amendment in the instrument creating the power of  
22 appointment.

23 Section 1310. Requisites for exercise of power of

1 appointment. A power of appointment is exercised only:

2 (1) if the instrument exercising the power is valid  
3 under applicable law;

4 (2) if the terms of the instrument exercising the  
5 power:

6 (A) manifest the powerholder's intent to exercise  
7 the power; and

8 (B) subject to Section 1313, satisfy the  
9 requirements of exercise, if any, imposed by the donor;  
10 and

11 (3) to the extent the appointment is a permissible  
12 exercise of the power.

13 Section 1311. Intent to exercise: determining intent from  
14 residuary clause.

15 (a) In this Section:

16 (1) "Residuary clause" does not include a residuary  
17 clause containing a blanket-exercise clause or a  
18 specific-exercise clause.

19 (2) "Will" includes a codicil and a testamentary  
20 instrument that revises another will.

21 (b) A residuary clause in a powerholder's will, or a  
22 comparable clause in the powerholder's revocable trust,  
23 manifests the powerholder's intent to exercise a power of  
24 appointment only if:

25 (1) the terms of the instrument containing the

1 residuary clause do not manifest a contrary intent;

2 (2) the power is a general power exercisable in favor  
3 of the powerholder's estate;

4 (3) there is no gift-in-default clause or it is  
5 ineffective; and

6 (4) the powerholder did not release the power.

7 Section 1312. Intent to exercise: after-acquired power.  
8 Unless the terms of the instrument exercising a power of  
9 appointment manifest a contrary intent:

10 (1) except as otherwise provided in paragraph (2), a  
11 blanket-exercise clause extends to a power acquired by the  
12 powerholder after executing the instrument containing the  
13 clause; and

14 (2) if the powerholder is also the donor of the power,  
15 the clause does not extend to the power unless there is no  
16 gift-in-default clause or it is ineffective.

17 Section 1313. Substantial compliance with donor-imposed  
18 formal requirement. A powerholder's substantial compliance  
19 with a formal requirement of an appointment imposed by the  
20 donor, including a requirement that the instrument exercising  
21 the power of appointment make reference or specific reference  
22 to the power, is sufficient if:

23 (1) the powerholder knows of and intends to exercise  
24 the power; and

1           (2) the powerholder's manner of attempted exercise of  
2           the power does not impair a material purpose of the donor  
3           in imposing the requirement.

4           Section 1314. Permissible appointment.

5           (a) A powerholder of a general power of appointment that  
6           permits appointment to the powerholder or the powerholder's  
7           estate may make any appointment, including an appointment in  
8           trust or creating a new power of appointment, that the  
9           powerholder could make in disposing of the powerholder's own  
10          property.

11          (b) A powerholder of a general power of appointment that  
12          permits appointment only to the creditors of the powerholder or  
13          of the powerholder's estate is restricted to appointing to  
14          those creditors.

15          (c) Unless the terms of the instrument creating a power of  
16          appointment manifest a contrary intent, the powerholder of a  
17          nongeneral power may:

18               (1) make an appointment in any form, with any  
19               conditions and limitations, including an appointment in  
20               trust to any trustee, in favor of a permissible appointee;

21               (2) create a general or nongeneral power in a  
22               permissible appointee that may be exercisable in favor of  
23               persons other than permissible appointees of the original  
24               nongeneral power; or

25               (3) create a nongeneral power in any person to appoint

1 to one or more of the permissible appointees of the  
2 original nongeneral power.

3 Section 1315. Appointment to deceased appointee. Subject  
4 to Section 4-11 of the Probate Act of 1975, an appointment to a  
5 deceased appointee is ineffective.

6 Section 1316. Impermissible appointment.

7 (a) Except as otherwise provided in Section 1315, an  
8 exercise of a power of appointment in favor of an impermissible  
9 appointee is ineffective.

10 (b) An exercise of a power of appointment in favor of a  
11 permissible appointee is ineffective to the extent the  
12 appointment is a fraud on the power.

13 Section 1317. Selective allocation doctrine. If a  
14 powerholder exercises a power of appointment in a disposition  
15 that also disposes of property the powerholder owns, the owned  
16 property and the appointive property must be allocated in the  
17 permissible manner that best carries out the powerholder's  
18 intent.

19 Section 1318. Capture doctrine: disposition of  
20 ineffectively appointed property under general power. To the  
21 extent a powerholder of a general power of appointment, other  
22 than a power to revoke, amend, or withdraw property from a

1 trust, makes an ineffective appointment:

2 (1) the gift-in-default clause controls the  
3 disposition of the ineffectively appointed property; or

4 (2) if there is no gift-in-default clause or to the  
5 extent the clause is ineffective, the ineffectively  
6 appointed property:

7 (A) passes to:

8 (i) the powerholder if the powerholder is a  
9 permissible appointee and living; or

10 (ii) if the powerholder is an impermissible  
11 appointee or not living, the powerholder's estate  
12 if the estate is a permissible appointee; or

13 (B) if there is no taker under subparagraph (A),  
14 passes under a reversionary interest to the donor or  
15 the donor's transferee or successor in interest.

16 Section 1319. Disposition of unappointed property under  
17 released or unexercised general power. To the extent a  
18 powerholder releases or fails to exercise a general power of  
19 appointment other than a power to revoke, amend, or withdraw  
20 property from a trust:

21 (1) the gift-in-default clause controls the  
22 disposition of the unappointed property; or

23 (2) if there is no gift-in-default clause or to the  
24 extent the clause is ineffective:

25 (A) except as otherwise provided in subparagraph

1 (B), the unappointed property passes to:

2 (i) the powerholder if the powerholder is a  
3 permissible appointee and living; or

4 (ii) if the powerholder is an impermissible  
5 appointee or not living, the powerholder's estate  
6 if the estate is a permissible appointee; or

7 (B) to the extent the powerholder released the  
8 power, or if there is no taker under subparagraph (A),  
9 the unappointed property passes under a reversionary  
10 interest to the donor or the donor's transferee or  
11 successor in interest.

12 Section 1320. Disposition of unappointed property under  
13 released or unexercised nongeneral power. To the extent a  
14 powerholder releases, ineffectively exercises, or fails to  
15 exercise a nongeneral power of appointment:

16 (1) the gift-in-default clause controls the disposition of  
17 the unappointed property; or

18 (2) if there is no gift-in-default clause or to the extent  
19 the clause is ineffective, the unappointed property:

20 (A) passes to the permissible appointees if:

21 (i) the permissible appointees are defined and  
22 limited; and

23 (ii) the terms of the instrument creating the power  
24 do not manifest a contrary intent; or

25 (B) if there is no taker under subparagraph (A), passes

1           under a reversionary interest to the donor or the donor's  
2           transferee or successor in interest.

3           Section 1321. Disposition of unappointed property if  
4           partial appointment to taker in default. Unless the terms of  
5           the instrument creating or exercising a power of appointment  
6           manifest a contrary intent, if the powerholder makes a valid  
7           partial appointment to a taker in default of appointment, the  
8           taker in default of appointment may share fully in unappointed  
9           property.

10          Section 1322. Appointment to taker in default. If a  
11          powerholder of a general power makes an appointment to a taker  
12          in default of appointment and the appointee would have taken  
13          the property under a gift-in-default clause had the property  
14          not been appointed, the power of appointment is deemed not to  
15          have been exercised, and the appointee takes under the  
16          gift-in-default clause.

17          Section 1323. Powerholder's authority to revoke or amend  
18          exercise. A powerholder may revoke or amend an exercise of a  
19          power of appointment only to the extent that:

20                 (1) the powerholder reserves a power of revocation or  
21                 amendment in the instrument exercising the power of  
22                 appointment and, if the power is nongeneral, the terms of  
23                 the instrument creating the power of appointment do not



1 prohibit the reservation; or

2 (2) the terms of the instrument creating the power of  
3 appointment provide that the exercise is revocable or  
4 amendable.

5 Section 1324. Disposition of trust property subject to  
6 power. In disposing of trust property subject to a power of  
7 appointment exercisable by an instrument other than a will, a  
8 trustee acting in good faith shall have no liability to any  
9 appointee or taker in default of appointment for relying upon  
10 an instrument believed to be genuine purporting to exercise a  
11 power of appointment or for assuming that there is no  
12 instrument exercising the power of appointment in the absence  
13 of actual knowledge thereof within 3 months of the last date on  
14 which the power of appointment may be exercised.

15 Section 1325. Disclaimer. As provided by Section 2-7 of the  
16 Probate Act of 1975:

17 (1) A powerholder may disclaim all or part of a power  
18 of appointment.

19 (2) A permissible appointee, appointee, or taker in  
20 default of appointment may disclaim all or part of an  
21 interest in appointive property.

22 Section 1326. Authority to release. A powerholder may  
23 release a power of appointment, in whole or in part, except to

1 the extent the terms of the instrument creating the power  
2 prevent the release.

3 Section 1327. Method of release. A powerholder of a  
4 releasable power of appointment may release the power in whole  
5 or in part:

6 (1) by substantial compliance with a method provided in  
7 the terms of the instrument creating the power; or

8 (2) if the terms of the instrument creating the power  
9 do not provide a method or the method provided in the terms  
10 of the instrument is not expressly made exclusive, by an  
11 instrument manifesting the powerholder's intent by clear  
12 and convincing evidence.

13 Section 1328. Revocation or amendment of release. A  
14 powerholder may revoke or amend a release of a power of  
15 appointment only to the extent that:

16 (1) the instrument of release is revocable by the  
17 powerholder; or

18 (2) the powerholder reserves a power of revocation or  
19 amendment in the instrument of release.

20 Section 1329. Power to contract: presently exercisable  
21 power of appointment. A powerholder of a presently exercisable  
22 power of appointment may contract:

23 (1) not to exercise the power; or

1           (2) to exercise the power if the contract when made  
2           does not confer a benefit on an impermissible appointee.

3           Section 1330. Power to contract: power of appointment not  
4           presently exercisable. A powerholder of a power of appointment  
5           that is not presently exercisable may contract to exercise or  
6           not to exercise the power only if the powerholder:

- 7           (1) is also the donor of the power; and  
8           (2) has reserved the power in a revocable trust.

9           Section 1331. Remedy for breach of contract to appoint or  
10          not to appoint. The remedy for a powerholder's breach of a  
11          contract to appoint or not to appoint is limited to damages  
12          payable out of the appointive property or, if appropriate,  
13          specific performance of the contract.

14          Section 1332. Creditor claim: general power created by  
15          powerholder.

16          (a) In this Section, "power of appointment created by the  
17          powerholder" includes a power of appointment created in a  
18          transfer by another person to the extent the powerholder  
19          contributed value to the transfer.

20          (b) Appointive property subject to a general power of  
21          appointment created by the powerholder is subject to a claim of  
22          a creditor of the powerholder or of the powerholder's estate to  
23          the extent provided in the Uniform Fraudulent Transfer Act.

1           (c) Subject to subsection (b), appointive property subject  
2 to a general power of appointment created by the powerholder is  
3 not subject to a claim of a creditor of the powerholder or the  
4 powerholder's estate to the extent the powerholder irrevocably  
5 appointed the property in favor of a person other than the  
6 powerholder or the powerholder's estate.

7           (d) Subject to subsections (b) and (c), and notwithstanding  
8 the presence of a spendthrift provision or whether the claim  
9 arose before or after the creation of the power of appointment,  
10 appointive property subject to a general power of appointment  
11 created by the powerholder is subject to a claim of a creditor  
12 of:

13                 (1) the powerholder, to the same extent as if the  
14 powerholder owned the appointive property, if the power is  
15 presently exercisable; and

16                 (2) the powerholder's estate, to the extent the estate  
17 is insufficient to satisfy the claim and subject to the  
18 right of a decedent to direct the source from which  
19 liabilities are paid, if the power is exercisable at the  
20 powerholder's death.

21           Section 1333. Creditor claim: general power not created by  
22 powerholder.

23           (a) Except as otherwise provided in subsection (b),  
24 appointive property subject to a general power of appointment  
25 created by a person other than the powerholder is subject to a

1 claim of a creditor of:

2 (1) the powerholder, to the extent the powerholder's  
3 property is insufficient, if the power is presently  
4 exercisable; and

5 (2) the powerholder's estate if the power is exercised  
6 at the powerholder's death, to the extent the estate is  
7 insufficient, subject to the right of the deceased  
8 powerholder to direct the source from which liabilities are  
9 paid.

10 (b) Subject to subsection (c) of Section 1335, a power of  
11 appointment created by a person other than the powerholder that  
12 is subject to an ascertainable standard relating to an  
13 individual's health, education, support, or maintenance within  
14 the meaning of Section 2041(b)(1)(A) of the Internal Revenue  
15 Code or Section 2514(c)(1) of the Internal Revenue Code, as  
16 amended, is treated for purposes of this Article as a  
17 nongeneral power.

18 Section 1334. Power to withdraw.

19 (a) For purposes of Sections 1333 through 1336, and except  
20 as otherwise provided in subsection (b), a power to withdraw  
21 property from a trust is treated, during the time the power may  
22 be exercised, as a presently exercisable general power of  
23 appointment to the extent of the property subject to the power  
24 to withdraw.

25 (b) A power to withdraw property from a trust ceases to be

1 treated as a presently exercisable general power of appointment  
2 upon its lapse, release, or waiver.

3 Section 1335. Creditor claim: nongeneral power.

4 (a) Except as otherwise provided in subsections (b) and  
5 (c), appointive property subject to a nongeneral power of  
6 appointment is exempt from a claim of a creditor of the  
7 powerholder or the powerholder's estate.

8 (b) Appointive property subject to a nongeneral power of  
9 appointment is subject to a claim of a creditor of the  
10 powerholder or the powerholder's estate to the extent that the  
11 powerholder owned the property and, reserving the nongeneral  
12 power, transferred the property in violation of the Uniform  
13 Fraudulent Transfer Act.

14 (c) If the initial gift in default of appointment is to the  
15 powerholder or the powerholder's estate, a nongeneral power of  
16 appointment is treated for purposes of this Section as a  
17 general power.

18 Section 1336. Application to existing relationships.

19 (a) Except as otherwise provided in this Article, on and  
20 after the effective date of this Code:

21 (1) this Article applies to a power of appointment  
22 created before, on, or after its effective date;

23 (2) this Article applies to a judicial proceeding  
24 concerning a power of appointment commenced on or after its

1 effective date;

2 (3) this Article applies to a judicial proceeding  
3 concerning a power of appointment commenced before its  
4 effective date unless the court finds that application of a  
5 particular provision of this Article would substantially  
6 interfere with the effective conduct of the judicial  
7 proceeding or prejudice a right of a party, in which case  
8 the particular provision of this Article does not apply and  
9 the superseded law applies;

10 (4) a rule of construction or presumption provided in  
11 this Article applies to an instrument executed before the  
12 effective date of the Article unless there is a clear  
13 indication of a contrary intent in the terms of the  
14 instrument; and

15 (5) an act done before the effective date of this Code  
16 is not affected by this Article.

17 (b) If a right is acquired, extinguished, or barred on the  
18 expiration of a prescribed period that commenced under law of  
19 this State other than this Article before the effective date of  
20 this Code, the law continues to apply to the right.

21 (c) No trustee is liable to any person in whose favor a  
22 power of appointment may have been exercised for any  
23 distribution of property made to persons entitled to take in  
24 default of the effective exercise of the power of appointment  
25 to the extent that the distribution shall have been completed  
26 before the effective date of this Code.

1 Article 14. Perpetuities.

2 Section 1401. Article title. Except for Section 1407, this  
3 Article may be referred to as the Law Concerning Perpetuities.

4 Section 1402. Purpose. This Article modifies the common law  
5 rule of property known as the rule against perpetuities, that,  
6 except as modified by statutes in force at the effective date  
7 of this Article and by this Article, shall remain in full force  
8 and effect.

9 Section 1403. Definitions and terms. As used in this  
10 Article unless the context otherwise requires:

11 (a) Any reference in this Article to income to be "paid" or  
12 to income "payments" or to "receiving" income includes income  
13 payable or distributable to or applicable for the benefit of a  
14 beneficiary.

15 (b) "Instrument" means any writing pursuant to which any  
16 legal or equitable interest in property or in the income  
17 therefrom is affected, disposed of, or created.

18 (c) "Qualified perpetual trust" means any trust created by  
19 any written instrument executed on or after January 1, 1998,  
20 including an amendment to an instrument in existence before  
21 that date and the exercise of a power of appointment granted by  
22 an instrument executed or amended on or after that date:



1           (1) to which, by the specific terms governing the  
2 trust, the rule against perpetuities does not apply; and

3           (2) the power of the trustee (or other person to whom  
4 the power is properly granted or delegated) to sell  
5 property of which is not limited by the trust instrument or  
6 any provision of law for any period of time beyond the  
7 period of the rule against perpetuities.

8           Section 1404. Application of rule against perpetuities.

9           (a) The rule against perpetuities does not apply:

10           (1) to any disposition of property or interest therein  
11 that, at the effective date of this Code, does not violate,  
12 or is exempted by statute from the operation of, the common  
13 law rule against perpetuities;

14           (2) to powers of a trustee to sell, lease, or mortgage  
15 property or to powers that relate to the administration or  
16 management of trust assets, including, but not limited to,  
17 discretionary powers of a trustee to determine what  
18 receipts constitute principal and what receipts constitute  
19 income and powers to appoint a successor trustee;

20           (3) to mandatory powers of a trustee to distribute  
21 income, or to discretionary powers of a trustee to  
22 distribute principal before termination of a trust, to a  
23 beneficiary having an interest in the principal that is  
24 irrevocably vested in quality and quantity;

25           (4) to discretionary powers of a trustee to allocate

1 income and principal among beneficiaries, but no exercise  
2 of any such power after the expiration of the period of the  
3 rule against perpetuities is valid;

4 (5) to leases to commence in the future or upon the  
5 happening of a future event, but no such lease is valid  
6 unless the term of the lease actually commences in  
7 possession within 40 years from the date of execution of  
8 the lease;

9 (6) to commitments (A) by a lessor to enter into a  
10 lease with a subtenant or with the holder of a leasehold  
11 mortgage or (B) by a lessee or sublessee to enter into a  
12 lease with the holder of a mortgage;

13 (7) to options in gross or to preemptive rights in the  
14 nature of a right of first refusal, but no option in gross  
15 shall be valid for more than 40 years from the date of its  
16 creation; or

17 (8) to qualified perpetual trusts as defined in Section  
18 1403.

19 (b) The period of the rule against perpetuities shall not  
20 commence to run in connection with any disposition of property  
21 or interest therein, and no instrument shall be regarded as  
22 becoming effective for purposes of the rule against  
23 perpetuities, and no interest or power shall be deemed to be  
24 created for purposes of the rule against perpetuities as long  
25 as, by the terms of the instrument, the maker of the instrument  
26 has the power to revoke the instrument or to transfer or direct

1 to be transferred to himself or herself the entire legal and  
2 equitable ownership of the property or interest therein.

3 (c) In determining whether an interest violates the rule  
4 against perpetuities:

5 (1) it is presumed:

6 (A) that the interest was intended to be valid;

7 (B) in the case of an interest conditioned upon the  
8 probate of a will, the appointment of an executor,  
9 administrator or trustee, the completion of the  
10 administration of an estate, the payment of debts, the  
11 sale or distribution of property, the determination of  
12 federal or state tax liabilities or the happening of  
13 any administrative contingency, that the contingency  
14 must occur, if at all, within the period of the rule  
15 against perpetuities; and

16 (C) if the instrument creates an interest in the  
17 "widow", "widower", or "spouse" of another person,  
18 that the maker of the instrument intended to refer to a  
19 person who was living at the date that the period of  
20 the rule against perpetuities commences to run;

21 (2) if any interest, but for this subsection, would be  
22 invalid because it is made to depend upon any person  
23 attaining or failing to attain an age in excess of 21  
24 years, the age specified shall be reduced to 21 years as to  
25 every person to whom the age contingency applies;

26 (3) notwithstanding paragraphs (1) and (2), if the

1 validity of any interest depends upon the possibility of  
2 the birth or adoption of a child, the following apply:

3 (A) no person shall be deemed capable of having a  
4 child until he or she has attained the age of 13 years;

5 (B) any person who has attained the age of 65 years  
6 shall be deemed incapable of having a child;

7 (C) evidence is admissible as to the incapacity of  
8 having a child by a living person who has not attained  
9 the age of 65 years; and

10 (D) the possibility of having a child or more  
11 remote descendant by adoption shall be disregarded.

12 (d) Paragraphs (2), (3), and (6) of subsection (a) and  
13 subsection (b) are declaratory of existing law.

14 Section 1405. Trusts.

15 (a) Subject to subsections (e) and (f), a trust containing  
16 any limitation that, but for this subsection, would violate the  
17 rule against perpetuities as modified by Section 1404 shall  
18 terminate at the expiration of a period of:

19 (1) 21 years after the death of the last to die of all  
20 of the beneficiaries of the instrument who were living at  
21 the date when the period of the rule against perpetuities  
22 commenced to run; or

23 (2) 21 years after that date if no beneficiary of the  
24 instrument was then living, unless events occur that cause  
25 an earlier termination in accordance with the terms of the

1 instrument and then the principal shall be distributed as  
2 provided by the instrument.

3 (b) Subject to subsections (c), (d) and (e), when a trust  
4 terminates because of the application of subsection (a), the  
5 trustee shall distribute the principal to those persons who  
6 would be the heirs at law of the maker of the instrument if he  
7 or she died at the expiration of the period specified in  
8 subsection (a) and in the proportions then specified by  
9 statute, unless the trust was created by the exercise of a  
10 power of appointment and then the principal shall be  
11 distributed to the person who would have received it if the  
12 power had not been exercised.

13 (c) Before any distribution of principal is made pursuant  
14 to subsection (b), the trustee shall distribute, out of  
15 principal, to each living beneficiary who, but for termination  
16 of the trust because of the application of subsection (a),  
17 would have been entitled to be paid income after the expiration  
18 of the period specified in subsection (a), an amount equal to  
19 the present value (determined as provided in subsection (d)) of  
20 the income that the beneficiary would have been entitled to be  
21 paid after the expiration of that period.

22 (d) In determining the present value of income for purposes  
23 of any distribution to a beneficiary pursuant to subsection  
24 (c):

25 (1) when income payments would have been subject in  
26 whole or in part to any discretionary power, it shall be

1 assumed:

2 (A) that the income that would have been paid to an  
3 individual income beneficiary would have been the  
4 maximum amount of income that could have been paid to  
5 him or her in the exercise of the power;

6 (B) if the income would or might have been payable  
7 to more than one beneficiary, that (except as  
8 hereinafter provided) each beneficiary would have  
9 received an equal share of the income, unless the  
10 instrument specifies less than an equal share as the  
11 maximum amount or proportion of income that would have  
12 been paid to any beneficiary in the exercise of the  
13 power, in which event the maximum specified shall  
14 control; and

15 (C) if the income would or might have been payable  
16 to the descendants of the maker of the instrument or of  
17 another person, that, unless the instrument provides  
18 otherwise, the descendants would have received the  
19 income per stirpes;

20 (2) (A) present value shall be computed on an actuarial  
21 basis and there shall be assumed a return of 5%, at simple  
22 interest, on the value of the principal from which the  
23 beneficiary would have been entitled to receive income; and

24 (B) if the interest in income was to be for the life of  
25 the beneficiary or for the life of another, the computation  
26 shall be made on the expectancy set forth in the most

1 recently published American Experience Tables of Mortality  
2 and no other evidence of duration or expectancy shall be  
3 considered;

4 (3) if the trustee cannot determine the present value  
5 of any income interest in accordance with the provisions of  
6 the instrument and the foregoing rules concerning income  
7 payments, the present value of the interest shall be deemed  
8 to be zero.

9 (e) This Section applies only when a trust would violate  
10 the rule against perpetuities as modified by Section 1404 and  
11 does not apply to any trust that would have been valid apart  
12 from this Article.

13 (f) This Section does not apply when a trust violates the  
14 rule against perpetuities because the trust estate may not vest  
15 in the trustee within the period of the rule.

16 Section 1406. Applicability. Sections 1401 through 1405  
17 apply only to instruments, including instruments that exercise  
18 a power of appointment, that become effective after September  
19 22, 1969.

20 Section 1407. Vesting of any limitation of property.

21 (a) This Section may be referred to as the Perpetuities  
22 Vesting Law.

23 (b) The vesting of any limitation of property, whether  
24 created in the exercise of a power of appointment or in any

1 other manner, shall not be regarded as deferred for purposes of  
2 the rule against perpetuities merely because the limitation is  
3 made to the estate of a person or to a personal representative,  
4 or to a trustee under a will, or to take effect on the probate  
5 of a will.

6 (c) This Section applies only to limitations created after  
7 July 1, 1952.

8 Article 15. Miscellaneous Provisions.

9 Section 1501. Uniformity of application and construction.  
10 In applying and construing this Code, consideration must be  
11 given to the need to promote uniformity of the law with respect  
12 to its subject matter among states that enact comparable  
13 provisions of the Uniform Trust Code.

14 Section 1502. Severability. If any provision of this Code  
15 or its application to any person or circumstances is held  
16 invalid, the invalidity does not affect other provisions or  
17 applications of this Code which can be given effect without the  
18 invalid provision or application, and to this end the  
19 provisions of this Code are severable.

20 Section 1503. Rights retained by Attorney General. Nothing  
21 in this Code is intended to derogate any right the Attorney  
22 General has under the common law of this State to represent a



1 charitable interest in trust. Nothing in this Code relieves a  
2 trustee of duties to file documents under, and otherwise comply  
3 with, the Charitable Trust Act or the Solicitation for Charity  
4 Act.

5 Section 1504. (See Section 9999 for effective date.)

6 (760 ILCS 5/Act rep.)

7 Section 1505. The Trusts and Trustees Act is repealed.

8 (760 ILCS 35/Act rep.)

9 Section 1505.1. The Trusts and Dissolutions of Marriage Act  
10 is repealed.

11 (760 ILCS 105/Act rep.)

12 Section 1505.2. The Uniform Powers of Appointment Act is  
13 repealed.

14 (765 ILCS 305/Act rep.)

15 Section 1505.3. The Statute Concerning Perpetuities is  
16 repealed.

17 (765 ILCS 310/Act rep.)

18 Section 1505.4. The Perpetuities Vesting Act is repealed.

19 (765 ILCS 315/Act rep.)

1 Section 1505.5. The Trust Accumulation Act is repealed.

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

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

7 (2) This Code applies to all judicial proceedings  
8 concerning trusts commenced on or after its effective date.  
9 As used in this Section, "judicial proceedings" includes  
10 any proceeding before a court or administrative tribunal of  
11 this State and any arbitration or mediation proceedings.

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

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

1           superseded law applies.

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

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

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

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

21                           Article 16. Amendatory Provisions.

22           Section 1601. The Public Use Trust Act is amended by  
23           changing Section 2 as follows:

1 (30 ILCS 160/2) (from Ch. 127, par. 4002)

2 Sec. 2. (a) The Department of Agriculture and the  
3 Department of Natural Resources have the power to enter into a  
4 trust agreement with a person or group of persons under which  
5 the State agency may receive or collect money or other property  
6 from the person or group of persons and may expend such money  
7 or property solely for a public purpose within the powers and  
8 duties of that State agency and stated in the trust agreement.  
9 The State agency shall be the trustee under any such trust  
10 agreement.

11 (b) Money or property received under a trust agreement  
12 shall not be deposited in the State treasury and is not subject  
13 to appropriation by the General Assembly, but shall be held and  
14 invested by the trustee separate and apart from the State  
15 treasury. The trustee shall invest money or property received  
16 under a trust agreement as provided for trustees under the  
17 Illinois Trust Code ~~Trusts and Trustees Act~~ or as otherwise  
18 provided in the trust agreement.

19 (c) The trustee shall maintain detailed records of all  
20 receipts and disbursements in the same manner as required for  
21 trustees under the Illinois Trust Code ~~Trusts and Trustees Act~~.  
22 The trustee shall provide an annual accounting of all receipts,  
23 disbursements, and inventory to all donors to the trust and the  
24 Auditor General. The annual accounting shall be made available  
25 to any member of the public upon request.

26 (Source: P.A. 100-695, eff. 8-3-18.)

1 Section 1602. The Township Code is amended by changing  
2 Section 135-20 as follows:

3 (60 ILCS 1/135-20)

4 Sec. 135-20. Powers of board of managers. The board of  
5 managers shall control and manage the cemeteries jointly  
6 acquired by the townships or road districts. The board of  
7 managers may receive in trust from the proprietors or owners of  
8 any lot in the cemeteries, or any person, corporation,  
9 association, or society interested in the maintenance of those  
10 cemeteries, any gift or legacy of money or real, personal, or  
11 mixed property that is donated or bequeathed to the board of  
12 managers for the use and maintenance of the lot or cemeteries.  
13 The board of managers may convert the property into money, may  
14 invest the money in securities in which trust funds may be  
15 invested under the Illinois Trust Code ~~Trusts and Trustees Act~~,  
16 and may apply the income perpetually for the care of the lot or  
17 the care and maintenance of the cemeteries as specified in the  
18 gift or legacy or as provided by the board of managers if the  
19 gift or legacy does not specify the manner in which the income  
20 is to be expended.

21 (Source: P.A. 83-1362; 88-62.)

22 Section 1603. The Corporate Fiduciary Act is amended by  
23 changing Sections 1-6, 6-10, and 9-5 as follows:

1 (205 ILCS 620/1-6) (from Ch. 17, par. 1551-6)

2 Sec. 1-6. General Corporate Powers. A corporate fiduciary  
3 shall have the powers:

4 (a) if it is a State bank, those powers granted under  
5 Sections 3 and 5 of the Illinois Banking Act; and

6 (b) if it is a State savings and loan association,  
7 those powers granted under Sections 1-6 through 1-8 of the  
8 Illinois Savings and Loan Act of 1985; and

9 (c) if it is a State savings bank, those powers granted  
10 under the Savings Bank Act; and

11 (d) if it is a corporation organized under the Business  
12 Corporation Act of 1983, as now or hereafter amended, or a  
13 limited liability company organized under the Limited  
14 Liability Company Act, those powers granted in Article 8  
15 ~~Sections 4.01 through 4.24~~ of the Illinois Trust Code  
16 ~~Trusts and Trustees Act~~, as now or hereafter amended, to  
17 the extent the exercise of such powers by the corporate  
18 fiduciary are not contrary to the instrument containing the  
19 appointment of the corporate fiduciary, the court order  
20 appointing the corporate fiduciary or any other statute  
21 specifically limiting the power of the corporate fiduciary  
22 under the circumstances; and

23 (e) subject to Article XLIV of the Illinois Insurance  
24 Code, to act as the agent for any fire, life, or other  
25 insurance company authorized by the State of Illinois, by

1           soliciting and selling insurance and collecting premiums  
2           on policies issued by such company; and may receive for  
3           services so rendered such fees or commissions as may be  
4           agreed upon between the said corporate fiduciary and the  
5           insurance company for which it may act as agent; provided,  
6           however, that no such corporate fiduciary shall in any case  
7           assume or guarantee the payment of any premium on insurance  
8           policies issued through its agency by its principal; and  
9           provided further, that the corporate fiduciary shall not  
10          guarantee the truth of any statement made by an assured in  
11          filing his application for insurance.

12          The Commissioner may specify powers of corporate  
13          fiduciaries generally or of a particular corporate fiduciary  
14          and by rule or order limit or restrict such powers of corporate  
15          fiduciaries or a particular corporate fiduciary if he finds the  
16          exercise of such power by corporate fiduciaries generally or of  
17          the corporate fiduciary in particular may tend to be an unsafe  
18          or unsound practice, or if such power is otherwise not in the  
19          interest of beneficiaries of any fiduciary appointment.

20          (Source: P.A. 90-41, eff. 10-1-97; 90-424, eff. 1-1-98; 90-655,  
21          eff. 7-30-98; 91-97, eff. 7-9-99.)

22               (205 ILCS 620/6-10) (from Ch. 17, par. 1556-10)

23          Sec. 6-10. The receiver for a corporate fiduciary, under  
24          the direction of the Commissioner, shall have the power and  
25          authority and is charged with the duties and responsibilities

1 as follows:

2 (1) To take possession of, and for the purpose of the  
3 receivership, the title to the books, records and assets of  
4 every description of the corporate fiduciary.

5 (2) To proceed to collect all debts, dues and claims  
6 belonging to the corporate fiduciary.

7 (3) To file with the Commissioner a copy of each report  
8 which he makes to the court, together with such other  
9 reports and records as the Commissioner may require.

10 (4) The receiver shall have authority to sue and defend  
11 in the receiver's own name and with respect to the affairs,  
12 assets, claims, debts and choses ~~chooses~~ in action of the  
13 corporate fiduciary.

14 (5) The receiver shall have authority, and it shall be  
15 the receiver's duty, to surrender to the customers of such  
16 corporate fiduciary, when requested in writing directed to  
17 the receiver by such customers, the assets, private papers  
18 and valuables left with the corporate fiduciary for  
19 safekeeping, under a custodial or agency agreement, upon  
20 satisfactory proof of ownership.

21 (6) As soon as can reasonably be done, the receiver  
22 shall resign on behalf of the corporate fiduciary, all  
23 trusteeships, guardianships, and all appointments as  
24 executor and administrator, or as custodian under the  
25 Illinois Uniform Transfers to Minors Act, as now or  
26 hereafter amended, or as fiduciary under custodial or



1 agency agreements or under the terms of any other written  
2 agreement or court order whereunder the corporate  
3 fiduciary is holding property in a fiduciary capacity for  
4 the benefit of another person, making in each case, from  
5 the records and documents available to the receiver, a  
6 proper accounting, in the manner and scope as determined by  
7 the Commissioner to be practical and advisable under the  
8 circumstances, on behalf of the corporate fiduciary. The  
9 receiver, prior to resigning, shall cause a successor  
10 trustee or fiduciary to be appointed pursuant to the terms  
11 set forth in the governing instrument or pursuant to the  
12 provisions of the Illinois Trust Code ~~Trusts and Trustees~~  
13 ~~Act~~, as now or hereafter amended, if applicable, then the  
14 receiver shall make application to the court having  
15 jurisdiction over the liquidation or winding up of the  
16 corporate fiduciary, for the appointment of a successor.  
17 The receiver, if a corporate fiduciary, shall not be  
18 disqualified from acting as successor trustee or fiduciary  
19 if appointed under the terms of the governing instrument,  
20 by court order or by the customer of the corporate  
21 fiduciary whose affairs are being liquidated or wound up  
22 and, in such case, no guardian ad litem need be appointed  
23 to review the accounting of the receiver unless the  
24 beneficiaries or customers of the corporate fiduciary so  
25 request in writing.

26 (7) The receiver shall have authority to redeem or take

1 down collateral hypothecated by the corporate fiduciary to  
2 secure its notes and other evidence of indebtedness  
3 whenever the Commissioner deems it to be in the best  
4 interest of the creditors of the corporate fiduciary and  
5 directs the receiver so to do.

6 (8) Whenever the receiver shall find it necessary in  
7 the receiver's opinion to use and employ money of the  
8 corporate fiduciary, in order to protect fully and benefit  
9 the corporate fiduciary, by the purchase or redemption of  
10 any property, real or personal, in which the corporate  
11 fiduciary may have any rights by reason of any bond,  
12 mortgage, assignment, or other claim thereto, the receiver  
13 may certify the facts together with the receiver's opinions  
14 as to the value of the property involved, and the value of  
15 the equity the corporate fiduciary may have in the property  
16 to the Commissioner, together with a request for the right  
17 and authority to use and employ so much of the money of the  
18 corporate fiduciary as may be necessary to purchase the  
19 property, or to redeem the same from a sale if there was a  
20 sale, and if such request is granted, the receiver may use  
21 so much of the money of the corporate fiduciary as the  
22 Commissioner may have authorized to purchase said property  
23 at such sale.

24 (9) The receiver shall deposit daily all monies  
25 collected by the receiver in any State or national bank  
26 selected by the Commissioner, who may require (and the bank

1 so selected may furnish) of such depository satisfactory  
2 securities or satisfactory surety bond for the safekeeping  
3 and prompt payment of the money so deposited. The deposits  
4 shall be made in the name of the Commissioner in trust for  
5 the receiver and be subject to withdrawal upon the  
6 receiver's order or upon the order of such persons as the  
7 Commissioner may designate. Such monies may be deposited  
8 without interest, unless otherwise agreed. However, if any  
9 interest was paid by such depository, it shall accrue to  
10 the benefit of the particular trust or fiduciary account to  
11 which the deposit belongs. Except as otherwise directed by  
12 the Commissioner, notwithstanding any other provision of  
13 this paragraph, the receiver's investment and other powers  
14 shall be those under the governing instrument or under the  
15 Illinois Trust Code ~~Trusts and Trustees Act, as now or~~  
16 ~~hereafter amended~~, and shall include the power to pay out  
17 income and principal in accordance with the terms of the  
18 governing instrument.

19 (10) The receiver shall do such things and take such  
20 steps from time to time under the direction and approval of  
21 the Commissioner as may reasonably appear to be necessary  
22 to conserve the corporate fiduciary's assets and secure the  
23 best interests of the creditors of the corporate fiduciary.

24 (11) The receiver shall record any judgment of  
25 dissolution entered in a dissolution proceeding and  
26 thereupon turn over to the Commissioner a certified copy

1       thereof, together with all books of accounts and ledgers of  
2       such corporate fiduciary for preservation, as  
3       distinguished from the books of accounts and ledgers of the  
4       corporate fiduciary relating to the assets of the  
5       beneficiaries of such fiduciary relations, all of which  
6       books of accounts and ledgers shall be turned over by the  
7       receiver to the successor trustee or fiduciary.

8           (12) The receiver may cause all assets of the  
9       beneficiaries of such fiduciary relations to be registered  
10      in the name of the receiver or in the name of the  
11      receiver's nominee.

12          (13) The receiver shall have a reasonable period of  
13      time in which to review all of the trust accounts,  
14      executorships, administrations, guardianships, or  
15      other fiduciary relationships, in order to ascertain that  
16      the investments by the corporate fiduciary of the assets of  
17      such trust accounts, executorships, administrations,  
18      guardianships, or other fiduciary relationships comply  
19      with the terms of the governing instrument, the prudent  
20      person rule governing the investment of such funds, or any  
21      other law regulating the investment of such funds.

22          (14) For its services in administering the trusts and  
23      other fiduciary accounts of the corporate fiduciary during  
24      the period of winding up the affairs of the corporate  
25      fiduciary, the receiver shall be entitled to be reimbursed  
26      for all costs and expenses incurred by the receiver and

1 shall also be entitled to receive out of the assets of the  
2 individual fiduciary accounts being administered by the  
3 receiver during the period of winding up the affairs of the  
4 corporate fiduciary and prior to the appointment of a  
5 successor trustee or fiduciary, the usual and customary  
6 fees charged by the receiver in the administration of its  
7 own fiduciary accounts or reasonable fees approved by the  
8 Commissioner.

9 (15) The receiver, during its administration of the  
10 trusts and other fiduciary accounts of the corporate  
11 fiduciary during the winding up of the affairs of the  
12 corporate fiduciary, shall have all of the powers which are  
13 vested in trustees under the terms and provisions of the  
14 Illinois Trust Code ~~Trusts and Trustees Act, as now or~~  
15 ~~hereafter amended.~~

16 (16) Upon the appointment of a successor trustee or  
17 fiduciary, the receiver shall deliver to such successor  
18 trustee or fiduciary all of the assets belonging to the  
19 individual trust or fiduciary account as to which the  
20 successor trustee or fiduciary succeeds, and the receiver  
21 shall thereupon be relieved of any further duties or  
22 obligations with respect thereto.

23 (Source: P.A. 90-655, eff. 7-30-98; revised 10-18-18.)

24 (205 ILCS 620/9-5) (from Ch. 17, par. 1559-5)

25 Sec. 9-5. Applicability of other Acts by reference.

1 Corporate fiduciaries subject to the provisions of this Act  
2 shall continue to be subject to the provisions of other Acts  
3 which govern actions of trustees including, but not limited to:

4 (a) "An Act to provide for the appointment of successor  
5 trustees in land trust agreements", approved August 13, 1965,  
6 as amended.

7 (b) "An Act to require disclosure, under certification of  
8 perjury, of all beneficial interests in real property held in a  
9 land trust, in certain cases", approved September 21, 1973, as  
10 amended.

11 (c) "An Act in relation to land trusts and the power and  
12 authority of trustees of land trusts to deal with trust  
13 property", approved August 6, 1982, as amended.

14 (d) "An Act concerning the powers of corporations  
15 authorized to accept and execute trusts, to register and hold  
16 securities of fiduciary accounts in bulk and to deposit same  
17 with a depository", approved September 1, 1972, as amended.

18 (e) the "Common Trust Fund Act", approved July 29, 1943, as  
19 amended.

20 (f) the Illinois Trust Code ~~"Trusts and Trustees Act",~~  
21 ~~approved September 10, 1973, as amended.~~

22 (g) "An Act concerning liability for participation in  
23 breaches of fiduciary obligations", approved July 7, 1931, as  
24 amended.

25 (Source: P.A. 85-858.)

1           Section 1604. The Community-Integrated Living Arrangements  
2           Licensure and Certification Act is amended by changing Section  
3           3 as follows:

4           (210 ILCS 135/3) (from Ch. 91 1/2, par. 1703)

5           Sec. 3. As used in this Act, unless the context requires  
6           otherwise:

7           (a) "Applicant" means a person, group of persons,  
8           association, partnership or corporation that applies for a  
9           license as a community mental health or developmental services  
10          agency under this Act.

11          (b) "Community mental health or developmental services  
12          agency" or "agency" means a public or private agency,  
13          association, partnership, corporation or organization which,  
14          pursuant to this Act, certifies community-integrated living  
15          arrangements for persons with mental illness or persons with a  
16          developmental disability.

17          (c) "Department" means the Department of Human Services (as  
18          successor to the Department of Mental Health and Developmental  
19          Disabilities).

20          (d) "Community-integrated living arrangement" means a  
21          living arrangement certified by a community mental health or  
22          developmental services agency under this Act where 8 or fewer  
23          recipients with mental illness or recipients with a  
24          developmental disability who reside under the supervision of  
25          the agency. Examples of community-integrated ~~community~~

1 ~~integrated~~ living arrangements include but are not limited to  
2 the following:

3 (1) "Adult foster care", a living arrangement for  
4 recipients in residences of families unrelated to them, for  
5 the purpose of providing family care for the recipients on  
6 a full-time basis;

7 (2) "Assisted residential care", an independent living  
8 arrangement where recipients are intermittently supervised  
9 by off-site staff;

10 (3) "Crisis residential care", a non-medical living  
11 arrangement where recipients in need of non-medical,  
12 crisis services are supervised by on-site staff 24 hours a  
13 day;

14 (4) "Home individual programs", living arrangements  
15 for 2 unrelated adults outside the family home;

16 (5) "Supported residential care", a living arrangement  
17 where recipients are supervised by on-site staff and such  
18 supervision is provided less than 24 hours a day;

19 (6) "Community residential alternatives", as defined  
20 in the Community Residential Alternatives Licensing Act;  
21 and

22 (7) "Special needs trust-supported residential care",  
23 a living arrangement where recipients are supervised by  
24 on-site staff and that supervision is provided 24 hours per  
25 day or less, as dictated by the needs of the recipients,  
26 and determined by service providers. As used in this item



1 (7), "special needs trust" means a trust for the benefit of  
2 a beneficiary with a disability as described in Section  
3 1213 15.1 of the Illinois Trust Code ~~Trusts and Trustees~~  
4 ~~Act~~.

5 (e) "Recipient" means a person who has received, is  
6 receiving, or is in need of treatment or habilitation as those  
7 terms are defined in the Mental Health and Developmental  
8 Disabilities Code.

9 (f) "Unrelated" means that persons residing together in  
10 programs or placements certified by a community mental health  
11 or developmental services agency under this Act do not have any  
12 of the following relationships by blood, marriage or adoption:  
13 parent, son, daughter, brother, sister, grandparent, uncle,  
14 aunt, nephew, niece, great grandparent, great uncle, great  
15 aunt, stepbrother, stepsister, stepson, stepdaughter,  
16 stepparent or first cousin.

17 (Source: P.A. 99-143, eff. 7-27-15.)

18 Section 1605. The Title Insurance Act is amended by  
19 changing Section 21.1 as follows:

20 (215 ILCS 155/21.1)

21 Sec. 21.1. Receiver and involuntary liquidation.

22 (a) The Secretary's proceedings under this Section shall be  
23 the exclusive remedy and the only proceedings commenced in any  
24 court for the dissolution of, the winding up of the affairs of,

1 or the appointment of a receiver for a title insurance company.

2 (b) If the Secretary, with respect to a title insurance  
3 company, finds that (i) its capital is impaired or it is  
4 otherwise in an unsound condition, (ii) its business is being  
5 conducted in an unlawful, fraudulent, or unsafe manner, (iii)  
6 it is unable to continue operations, or (iv) its examination  
7 has been obstructed or impeded, the Secretary may give notice  
8 to the board of directors of the title insurance company of his  
9 or her finding or findings. If the Secretary's findings are not  
10 corrected to his or her satisfaction within 60 days after the  
11 company receives the notice, the Secretary shall take  
12 possession and control of the title insurance company, its  
13 assets, and assets held by it for any person for the purpose of  
14 examination, reorganization, or liquidation through  
15 receivership.

16 If, in addition to making a finding as provided in this  
17 subsection (b), the Secretary is of the opinion and finds that  
18 an emergency that may result in serious losses to any person  
19 exists, the Secretary may, in his or her discretion, without  
20 having given the notice provided for in this subsection, and  
21 whether or not proceedings under subsection (a) of this Section  
22 have been instituted or are then pending, take possession and  
23 control of the title insurance company and its assets for the  
24 purpose of examination, reorganization, or liquidation through  
25 receivership.

26 (c) The Secretary may take possession and control of a

1 title insurance company, its assets, and assets held by it for  
2 any person by posting upon the premises of each office located  
3 in the State of Illinois at which it transacts its business as  
4 a title insurance company a notice reciting that the Secretary  
5 is assuming possession pursuant to this Act and the time when  
6 the possession shall be deemed to commence.

7 (d) Promptly after taking possession and control of a title  
8 insurance company the Secretary, represented by the Attorney  
9 General, shall file a copy of the notice posted upon the  
10 premises in the Circuit Court of either Cook County or Sangamon  
11 County, which cause shall be entered as a court action upon the  
12 dockets of the court under the name and style of "In the matter  
13 of the possession and control by the Secretary of the  
14 Department of Financial and Professional Regulation of (insert  
15 the name of the title insurance company)". If the Secretary  
16 determines (which determination may be made at the time of, or  
17 at any time subsequent to, taking possession and control of a  
18 title insurance company) that no practical possibility exists  
19 to reorganize the title insurance company after reasonable  
20 efforts have been made, the Secretary, represented by the  
21 Attorney General, shall also file a complaint, if it has not  
22 already been done, for the appointment of a receiver or other  
23 proceeding as is appropriate under the circumstances. The court  
24 where the cause is docketed shall be vested with the exclusive  
25 jurisdiction to hear and determine all issues and matters  
26 pertaining to or connected with the Secretary's possession and

1 control of the title insurance company as provided in this Act,  
2 and any further issues and matters pertaining to or connected  
3 with the Secretary's possession and control as may be submitted  
4 to the court for its adjudication.

5 The Secretary, upon taking possession and control of a  
6 title insurance company, may, and if not previously done shall,  
7 immediately upon filing a complaint for dissolution make an  
8 examination of the affairs of the title insurance company or  
9 appoint a suitable person to make the examination as the  
10 Secretary's agent. The examination shall be conducted in  
11 accordance with and pursuant to the authority granted under  
12 Section 12 of this Act. The person conducting the examination  
13 shall have and may exercise on behalf of the Secretary all of  
14 the powers and authority granted to the Secretary under Section  
15 12. A copy of the report shall be filed in any dissolution  
16 proceeding filed by the Secretary. The reasonable fees and  
17 necessary expenses of the examining person, as approved by the  
18 Secretary or as recommended by the Secretary and approved by  
19 the court if a dissolution proceeding has been filed, shall be  
20 borne by the subject title insurance company and shall have the  
21 same priority for payment as the reasonable and necessary  
22 expenses of the Secretary in conducting an examination. The  
23 person appointed to make the examination shall make a proper  
24 accounting, in the manner and scope as determined by the  
25 Secretary to be practical and advisable under the  
26 circumstances, on behalf of the title insurance company and no

1 guardian ad litem need be appointed to review the accounting.

2 (e) The Secretary, upon taking possession and control of a  
3 title insurance company and its assets, shall be vested with  
4 the full powers of management and control including, but not  
5 limited to, the following:

6 (1) the power to continue or to discontinue the  
7 business;

8 (2) the power to stop or to limit the payment of its  
9 obligations;

10 (3) the power to collect and to use its assets and to  
11 give valid receipts and acquittances therefor;

12 (4) the power to transfer title and liquidate any bond  
13 or deposit made under Section 4 of this Act;

14 (5) the power to employ and to pay any necessary  
15 assistants;

16 (6) the power to execute any instrument in the name of  
17 the title insurance company;

18 (7) the power to commence, defend, and conduct in the  
19 title insurance company's name any action or proceeding in  
20 which it may be a party;

21 (8) the power, upon the order of the court, to sell and  
22 convey the title insurance company's assets, in whole or in  
23 part, and to sell or compound bad or doubtful debts upon  
24 such terms and conditions as may be fixed in that order;

25 (9) the power, upon the order of the court, to make and  
26 to carry out agreements with other title insurance

1 companies, financial institutions, or with the United  
2 States or any agency of the United States for the payment  
3 or assumption of the title insurance company's  
4 liabilities, in whole or in part, and to transfer assets  
5 and to make guaranties, in whole or in part, in connection  
6 therewith;

7 (10) the power, upon the order of the court, to borrow  
8 money in the name of the title insurance company and to  
9 pledge its assets as security for the loan;

10 (11) the power to terminate his or her possession and  
11 control by restoring the title insurance company to its  
12 board of directors;

13 (12) the power to appoint a receiver which may be the  
14 Secretary of the Department of Financial and Professional  
15 Regulation, another title insurance company, or another  
16 suitable person and to order liquidation of the title  
17 insurance company as provided in this Act; and

18 (13) the power, upon the order of the court and without  
19 the appointment of a receiver, to determine that the title  
20 insurance company has been closed for the purpose of  
21 liquidation without adequate provision being made for  
22 payment of its obligations, and thereupon the title  
23 insurance company shall be deemed to have been closed on  
24 account of inability to meet its obligations to its  
25 insureds or escrow depositors.

26 (f) Upon taking possession, the Secretary shall make an

1 examination of the condition of the title insurance company, an  
2 inventory of the assets and, unless the time shall be extended  
3 by order of the court or unless the Secretary shall have  
4 otherwise settled the affairs of the title insurance company  
5 pursuant to the provisions of this Act, within 90 days after  
6 the time of taking possession and control of the title  
7 insurance company, the Secretary shall either terminate his or  
8 her possession and control by restoring the title insurance  
9 company to its board of directors or appoint a receiver, which  
10 may be the Secretary of the Department of Financial and  
11 Professional Regulation, another title insurance company, or  
12 another suitable person and order the liquidation of the title  
13 insurance company as provided in this Act. All necessary and  
14 reasonable expenses of the Secretary's possession and control  
15 shall be a priority claim and shall be borne by the title  
16 insurance company and may be paid by the Secretary from the  
17 title insurance company's own assets as distinguished from  
18 assets held for any other person.

19 (g) If the Secretary takes possession and control of a  
20 title insurance company and its assets, any period of  
21 limitation fixed by a statute or agreement that would otherwise  
22 expire on a claim or right of action of the title insurance  
23 company, on its own behalf or on behalf of its insureds or  
24 escrow depositors, or upon which an appeal must be taken or a  
25 pleading or other document filed by the title insurance company  
26 in any pending action or proceeding, shall be tolled until 6

1 months after the commencement of the possession, and no  
2 judgment, lien, levy, attachment, or other similar legal  
3 process may be enforced upon or satisfied, in whole or in part,  
4 from any asset of the title insurance company or from any asset  
5 of an insured or escrow depositor while it is in the possession  
6 of the Secretary.

7 (h) If the Secretary appoints a receiver to take possession  
8 and control of the assets of insureds or escrow depositors for  
9 the purpose of holding those assets as fiduciary for the  
10 benefit of the insureds or escrow depositors pending the  
11 winding up of the affairs of the title insurance company being  
12 liquidated and the appointment of a successor escrowee for  
13 those assets, any period of limitation fixed by statute, rule  
14 of court, or agreement that would otherwise expire on a claim  
15 or right of action in favor of or against the insureds or  
16 escrow depositors of those assets or upon which an appeal must  
17 be taken or a pleading or other document filed by a title  
18 insurance company on behalf of an insured or escrow depositor  
19 in any pending action or proceeding shall be tolled for a  
20 period of 6 months after the appointment of a receiver, and no  
21 judgment, lien, levy, attachment, or other similar legal  
22 process shall be enforced upon or satisfied, in whole or in  
23 part, from any asset of the insured or escrow depositor while  
24 it is in the possession of the receiver.

25 (i) If the Secretary determines at any time that no  
26 reasonable possibility exists for the title insurance company



1 to be operated by its board of directors in accordance with the  
2 provisions of this Act after reasonable efforts have been made  
3 and that it should be liquidated through receivership, he or  
4 she shall appoint a receiver. The Secretary may require of the  
5 receiver such bond and security as the Secretary deems proper.  
6 The Secretary, represented by the Attorney General, shall file  
7 a complaint for the dissolution or winding up of the affairs of  
8 the title insurance company in a court of the county in which  
9 the principal office of the title insurance company is located  
10 and shall cause notice to be given in a newspaper of general  
11 circulation once each week for 4 consecutive weeks so that  
12 persons who may have claims against the title insurance company  
13 may present them to the receiver and make legal proof thereof  
14 and notifying those persons and all to whom it may concern of  
15 the filing of a complaint for the dissolution or winding up of  
16 the affairs of the title insurance company and stating the name  
17 and location of the court. All persons who may have claims  
18 against the assets of the title insurance company, as  
19 distinguished from the assets of insureds and escrow depositors  
20 held by the title insurance company, and the receiver to whom  
21 those persons have presented their claims may present the  
22 claims to the clerk of the court, and the allowance or  
23 disallowance of the claims by the court in connection with the  
24 proceedings shall be deemed an adjudication in a court of  
25 competent jurisdiction. Within a reasonable time after  
26 completion of publication, the receiver shall file with the

1 court a correct list of all creditors of the title insurance  
2 company as shown by its books, who have not presented their  
3 claims and the amount of their respective claims after allowing  
4 adjusted credit, deductions, and set-offs as shown by the books  
5 of the title insurance company. The claims so filed shall be  
6 deemed proven unless objections are filed thereto by a party or  
7 parties interested therein within the time fixed by the court.

8 (j) The receiver for a title insurance company has the  
9 power and authority and is charged with the duties and  
10 responsibilities as follows:

11 (1) To take possession of and, for the purpose of the  
12 receivership, title to the books, records, and assets of  
13 every description of the title insurance company.

14 (2) To proceed to collect all debts, dues, and claims  
15 belonging to the title insurance company.

16 (3) To sell and compound all bad and doubtful debts on  
17 such terms as the court shall direct.

18 (4) To sell the real and personal property of the title  
19 insurance company, as distinguished from the real and  
20 personal property of the insureds or escrow depositors, on  
21 such terms as the court shall direct.

22 (5) To file with the Secretary a copy of each report  
23 that he or she makes to the court, together with such other  
24 reports and records as the Secretary may require.

25 (6) To sue and defend in his or her own name and with  
26 respect to the affairs, assets, claims, debts, and choses

1 in action of the title insurance company.

2 (7) To surrender to the insureds and escrow depositors  
3 of the title insurance company, when requested in writing  
4 directed to the receiver by them, the escrowed funds (on a  
5 pro rata basis), and escrowed documents in the receiver's  
6 possession upon satisfactory proof of ownership and  
7 determination by the receiver of available escrow funds.

8 (8) To redeem or take down collateral hypothecated by  
9 the title insurance company to secure its notes and other  
10 evidence of indebtedness whenever the court deems it to be  
11 in the best interest of the creditors of the title  
12 insurance company and directs the receiver so to do.

13 (k) Whenever the receiver finds it necessary in his or her  
14 opinion to use and employ money of the title insurance company  
15 in order to protect fully and benefit the title insurance  
16 company by the purchase or redemption of property, real or  
17 personal, in which the title insurance company may have any  
18 rights by reason of any bond, mortgage, assignment, or other  
19 claim thereto, the receiver may certify the facts together with  
20 the receiver's opinions as to the value of the property  
21 involved and the value of the equity the title insurance  
22 company may have in the property to the court, together with a  
23 request for the right and authority to use and employ so much  
24 of the money of the title insurance company as may be necessary  
25 to purchase the property, or to redeem the property from a sale  
26 if there was a sale, and if the request is granted, the

1 receiver may use so much of the money of the title insurance  
2 company as the court may have authorized to purchase the  
3 property at the sale.

4 The receiver shall deposit daily all moneys collected by  
5 him or her in any State or national bank approved by the court.  
6 The deposits shall be made in the name of the Secretary, in  
7 trust for the receiver, and be subject to withdrawal upon the  
8 receiver's order or upon the order of those persons the  
9 Secretary may designate. The moneys may be deposited without  
10 interest, unless otherwise agreed. The receiver shall do the  
11 things and take the steps from time to time under the direction  
12 and approval of the court that may reasonably appear to be  
13 necessary to conserve the title insurance company's assets and  
14 secure the best interests of the creditors, insureds, and  
15 escrow depositors of the title insurance company. The receiver  
16 shall record any judgment of dissolution entered in a  
17 dissolution proceeding and thereupon turn over to the Secretary  
18 a certified copy of the judgment.

19 The receiver may cause all assets of the insureds and  
20 escrow depositors of the title insurance company to be  
21 registered in the name of the receiver or in the name of the  
22 receiver's nominee.

23 For its services in administering the escrows held by the  
24 title insurance company during the period of winding up the  
25 affairs of the title insurance company, the receiver is  
26 entitled to be reimbursed for all costs and expenses incurred

1 by the receiver and shall also be entitled to receive out of  
2 the assets of the individual escrows being administered by the  
3 receiver during the period of winding up the affairs of the  
4 title insurance company and prior to the appointment of a  
5 successor escrowee the usual and customary fees charged by an  
6 escrowee for escrows or reasonable fees approved by the court.

7 The receiver, during its administration of the escrows of  
8 the title insurance company during the winding up of the  
9 affairs of the title insurance company, shall have all of the  
10 powers that are vested in trustees under the terms and  
11 provisions of the Illinois Trust Code ~~Trusts and Trustees Act~~.

12 Upon the appointment of a successor escrowee, the receiver  
13 shall deliver to the successor escrowee all of the assets  
14 belonging to each individual escrow to which the successor  
15 escrowee succeeds, and the receiver shall thereupon be relieved  
16 of any further duties or obligations with respect thereto.

17 (1) The receiver shall, upon approval by the court, pay all  
18 claims against the assets of the title insurance company  
19 allowed by the court pursuant to subsection (i) of this  
20 Section, as well as claims against the assets of insureds and  
21 escrow depositors of the title insurance company in accordance  
22 with the following priority:

23 (1) All necessary and reasonable expenses of the  
24 Secretary's possession and control and of its receivership  
25 shall be paid from the assets of the title insurance  
26 company.

1           (2) All usual and customary fees charged for services  
2           in administering escrows shall be paid from the assets of  
3           the individual escrows being administered. If the assets of  
4           the individual escrows being administered are  
5           insufficient, the fees shall be paid from the assets of the  
6           title insurance company.

7           (3) Secured claims, including claims for taxes and  
8           debts due the federal or any state or local government,  
9           that are secured by liens perfected prior to the date of  
10          filing of the complaint for dissolution, shall be paid from  
11          the assets of the title insurance company.

12          (4) Claims by policyholders, beneficiaries, insureds,  
13          and escrow depositors of the title insurance company shall  
14          be paid from the assets of the insureds and escrow  
15          depositors. If there are insufficient assets of the  
16          insureds and escrow depositors, claims shall be paid from  
17          the assets of the title insurance company.

18          (5) Any other claims due the federal government shall  
19          be paid from the assets of the title insurance company.

20          (6) Claims for wages or salaries, excluding vacation,  
21          severance, and sick leave pay earned by employees for  
22          services rendered within 90 days prior to the date of  
23          filing of the complaint for dissolution, shall be paid from  
24          the assets of the title insurance company.

25          (7) All other claims of general creditors not falling  
26          within any priority under this subsection (1) including

1 claims for taxes and debts due any state or local  
2 government which are not secured claims and claims for  
3 attorney's fees incurred by the title insurance company in  
4 contesting the dissolution shall be paid from the assets of  
5 the title insurance company.

6 (8) Proprietary claims asserted by an owner, member, or  
7 stockholder of the title insurance company in receivership  
8 shall be paid from the assets of the title insurance  
9 company.

10 The receiver shall pay all claims of equal priority  
11 according to the schedule set out in this subsection, and shall  
12 not pay claims of lower priority until all higher priority  
13 claims are satisfied. If insufficient assets are available to  
14 meet all claims of equal priority, those assets shall be  
15 distributed pro rata among those claims. All unclaimed assets  
16 of the title insurance company shall be deposited with the  
17 receiver to be paid out by him or her when such claims are  
18 submitted and allowed by the court.

19 (m) At the termination of the receiver's administration,  
20 the receiver shall petition the court for the entry of a  
21 judgment of dissolution. After a hearing upon the notice as the  
22 court may prescribe, the court may enter a judgment of  
23 dissolution whereupon the title insurance company's corporate  
24 existence shall be terminated and the receivership concluded.

25 (n) The receiver shall serve at the pleasure of the  
26 Secretary and upon the death, inability to act, resignation, or

1 removal by the Secretary of a receiver, the Secretary may  
2 appoint a successor, and upon the appointment, all rights and  
3 duties of the predecessor shall at once devolve upon the  
4 appointee.

5 (o) Whenever the Secretary shall have taken possession and  
6 control of a title insurance company or a title insurance agent  
7 and its assets for the purpose of examination, reorganization,  
8 or liquidation through receivership, or whenever the Secretary  
9 shall have appointed a receiver for a title insurance company  
10 or title insurance agent and filed a complaint for the  
11 dissolution or winding up of its affairs, and the title  
12 insurance company or title insurance agent denies the grounds  
13 for such actions, it may at any time within 10 days apply to  
14 the Circuit Court of Cook or Sangamon County to enjoin further  
15 proceedings in the premises; and the Court shall cite the  
16 Secretary to show cause why further proceedings should not be  
17 enjoined, and if the Court shall find that grounds do not  
18 exist, the Court shall make an order enjoining the Secretary or  
19 any receiver acting under his direction from all further  
20 proceedings on account of the alleged grounds.

21 (Source: P.A. 94-893, eff. 6-20-06.)

22 Section 1606. The Illinois Funeral or Burial Funds Act is  
23 amended by changing Sections 4a and 5 as follows:

24 (225 ILCS 45/4a)



1           Sec. 4a. Investment of funds.

2           (a) A trustee has a duty to invest and manage the trust  
3 assets pursuant to the Illinois Prudent Investor Law ~~Rule~~ under  
4 Article 9 of the Illinois Trust Code ~~Trusts and Trustees Act~~.

5           (b) The trust shall be a single-purpose trust fund. In the  
6 event of the seller's bankruptcy, insolvency or assignment for  
7 the benefit of creditors, or an adverse judgment, the trust  
8 funds shall not be available to any creditor as assets of the  
9 seller or to pay any expenses of any bankruptcy or similar  
10 proceeding, but shall be distributed to the purchasers or  
11 managed for their benefit by the trustee holding the funds.  
12 Except in an action by the Comptroller to revoke a license  
13 issued pursuant to this Act and for creation of a receivership  
14 as provided in this Act, the trust shall not be subject to  
15 judgment, execution, garnishment, attachment, or other seizure  
16 by process in bankruptcy or otherwise, nor to sale, pledge,  
17 mortgage, or other alienation, and shall not be assignable  
18 except as approved by the Comptroller. The changes made by  
19 Public Act 91-7 are intended to clarify existing law regarding  
20 the inability of licensees to pledge the trust.

21           (c) Because it is not known at the time of deposit or at  
22 the time that income is earned on the trust account to whom the  
23 principal and the accumulated earnings will be distributed for  
24 the purpose of determining the Illinois income tax due on these  
25 trust funds, the principal and any accrued earnings or losses  
26 related to each individual account shall be held in suspense

1 until the final determination is made as to whom the account  
2 shall be paid. The beneficiary's estate shall not be  
3 responsible for any funeral and burial purchases listed in a  
4 pre-need contract if the pre-need contract is entered into on a  
5 guaranteed price basis.

6 If a pre-need contract is not a guaranteed price contract,  
7 then to the extent the proceeds of a non-guaranteed price  
8 pre-need contract cover the funeral and burial expenses for the  
9 beneficiary, no claim may be made against the estate of the  
10 beneficiary. A claim may be made against the beneficiary's  
11 estate if the charges for the funeral services and merchandise  
12 at the time of use exceed the amount of the amount in trust  
13 plus the percentage of the sale proceeds initially retained by  
14 the seller or the face value of the life insurance policy or  
15 tax-deferred annuity.

16 (Source: P.A. 96-879, eff. 2-2-10.)

17 (225 ILCS 45/5) (from Ch. 111 1/2, par. 73.105)

18 Sec. 5. This Act shall not be construed to prohibit the  
19 trustee and trustee's depository from being reimbursed and  
20 receiving from such funds their reasonable compensation and  
21 expenses in the custody and administration of such funds  
22 pursuant to the Illinois Trust Code ~~Trusts and Trustees Act~~.

23 (Source: P.A. 96-879, eff. 2-2-10.)

24 Section 1607. The Mental Health and Developmental

1 Disabilities Code is amended by changing Sections 3-605, 5-105,  
2 and 3-819 as follows:

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

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

19 (b) The county sheriff may delegate his duties under  
20 subsection (a) to another law enforcement body within that  
21 county if that law enforcement body agrees.

22 (b-5) In counties with a population under 3,000,000, upon  
23 receipt of a petition and certificate prepared pursuant to this  
24 Article, the Department shall make arrangements to  
25 appropriately transport the respondent to a mental health

1 facility. In the event it is determined by the facility that  
2 the respondent is in need of commitment or treatment at another  
3 mental health facility, the Department shall make arrangements  
4 to appropriately transport the respondent to another mental  
5 health facility. The making of such arrangements and agreements  
6 with public or private entities is independent of the  
7 Department's role as a provider of mental health services and  
8 does not indicate that the respondent is admitted to any  
9 Department facility. In making such arrangements and  
10 agreements with other public or private entities, the  
11 Department shall include provisions to ensure (i) the provision  
12 of trained personnel and the use of an appropriate vehicle for  
13 the safe transport of the respondent and (ii) that the  
14 respondent's insurance carrier as well as other programs, both  
15 public and private, that provide payment for such  
16 transportation services are fully utilized to the maximum  
17 extent possible.

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

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

5 (d) The respondent and the estate of that respondent are  
6 liable for the payment of transportation costs for transporting  
7 the respondent to a mental health facility. If the respondent  
8 is a beneficiary of a trust described in Section 1213 ~~15.1~~ of  
9 the Illinois Trust Code ~~Trusts and Trustees Act~~, the trust  
10 shall not be considered a part of the respondent's estate and  
11 shall not be subject to payment for transportation costs for  
12 transporting the respondent to a mental health facility under  
13 this Section except to the extent permitted under Section 1213  
14 ~~15.1~~ of the Illinois Trust Code ~~Trusts and Trustees Act~~. If the  
15 respondent is unable to pay or if the estate of the respondent  
16 is insufficient, the responsible relatives are severally  
17 liable for the payment of those sums or for the balance due in  
18 case less than the amount owing has been paid. If the  
19 respondent is covered by insurance, the insurance carrier shall  
20 be liable for payment to the extent authorized by the  
21 respondent's insurance policy.

22 (Source: P.A. 93-770, eff. 1-1-05.)

23 (405 ILCS 5/3-819) (from Ch. 91 1/2, par. 3-819)

24 Sec. 3-819. (a) In counties with a population of 3,000,000  
25 or more, when a recipient is hospitalized upon court order, the

1 order may authorize a relative or friend of the recipient to  
2 transport the recipient to the facility if such person is able  
3 to do so safely and humanely. When the Department indicates  
4 that it has transportation to the facility available, the order  
5 may authorize the Department to transport the recipient there.  
6 The court may order the sheriff of the county in which such  
7 proceedings are held to transport the recipient to the  
8 facility. When a recipient is hospitalized upon court order,  
9 and the recipient has been transported to a mental health  
10 facility, other than a state-operated mental health facility,  
11 and it is determined by the facility that the recipient is in  
12 need of commitment or treatment at another mental health  
13 facility, the court shall determine whether a relative or  
14 friend of the recipient or the Department is authorized to  
15 transport the recipient between facilities, or whether the  
16 county sheriff is responsible for transporting the recipient  
17 between facilities. The sheriff may make arrangements with  
18 another public or private entity including a licensed ambulance  
19 service to transport the recipient to the facility. The  
20 transporting entity acting in good faith and without negligence  
21 in connection with the transportation of recipients shall incur  
22 no liability, civil or criminal, by reason of such  
23 transportation.

24 (a-5) In counties with a population under 3,000,000, when a  
25 recipient is hospitalized upon court order, the order may  
26 authorize a relative or friend of the recipient to transport

1 the recipient to the facility if the person is able to do so  
2 safely and humanely. The court may order the Department to  
3 transport the recipient to the facility. When a recipient is  
4 hospitalized upon court order, and the recipient has been  
5 transported to a mental health facility other than a  
6 State-operated mental health facility, and it is determined by  
7 the facility that the recipient is in need of commitment or  
8 treatment at another mental health facility, the court shall  
9 determine whether a relative or friend of the recipient is  
10 authorized to transport the recipient between facilities, or  
11 whether the Department is responsible for transporting the  
12 recipient between facilities. If the court determines that the  
13 Department is responsible for the transportation, the  
14 Department shall make arrangements either directly or through  
15 agreements with another public or private entity, including a  
16 licensed ambulance service, to appropriately transport the  
17 recipient to the facility. The making of such arrangements and  
18 agreements with public or private entities is independent of  
19 the Department's role as a provider of mental health services  
20 and does not indicate that the recipient is admitted to any  
21 Department facility. In making such arrangements and  
22 agreements with other public or private entities, the  
23 Department shall include provisions to ensure (i) the provision  
24 of trained personnel and the use of an appropriate vehicle for  
25 the safe transport of the recipient and (ii) that the  
26 recipient's insurance carrier as well as other programs, both

1 public and private, that provide payment for such  
2 transportation services are fully utilized to the maximum  
3 extent possible.

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

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

17 (b) The transporting entity may bill the recipient, the  
18 estate of the recipient, legally responsible relatives, or  
19 insurance carrier for the cost of providing transportation of  
20 the recipient to a mental health facility. The recipient and  
21 the estate of the recipient are liable for the payment of  
22 transportation costs for transporting the recipient to a mental  
23 health facility. If the recipient is a beneficiary of a trust  
24 described in Section 1213 15.1 of the Illinois Trust Code  
25 ~~Trusts and Trustees Act~~, the trust shall not be considered a  
26 part of the recipient's estate and shall not be subject to



1 payment for transportation costs for transporting the  
2 recipient to a mental health facility under this section,  
3 except to the extent permitted under Section 1213 ~~15.1~~ of the  
4 Illinois Trust Code ~~Trusts and Trustees Act~~. If the recipient  
5 is unable to pay or if the estate of the recipient is  
6 insufficient, the responsible relatives are severally liable  
7 for the payment of those sums or for the balance due in case  
8 less than the amount owing has been paid. If the recipient is  
9 covered by insurance, the insurance carrier shall be liable for  
10 payment to the extent authorized by the recipient's insurance  
11 policy.

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

18 (Source: P.A. 93-770, eff. 1-1-05.)

19 (405 ILCS 5/5-105) (from Ch. 91 1/2, par. 5-105)

20 Sec. 5-105. Each recipient of services provided directly or  
21 funded by the Department and the estate of that recipient is  
22 liable for the payment of sums representing charges for  
23 services to the recipient at a rate to be determined by the  
24 Department in accordance with this Act. If a recipient is a  
25 beneficiary of a trust described in Section 1213 ~~15.1~~ of the

1 Illinois Trust Code ~~Trusts and Trustees Act~~, the trust shall  
2 not be considered a part of the recipient's estate and shall  
3 not be subject to payment for services to the recipient under  
4 this Section except to the extent permitted under Section 1213  
5 ~~15.1~~ of the Illinois Trust Code ~~Trusts and Trustees Act~~. If the  
6 recipient is unable to pay or if the estate of the recipient is  
7 insufficient, the responsible relatives are severally liable  
8 for the payment of those sums or for the balance due in case  
9 less than the amount prescribed under this Act has been paid.  
10 If the recipient is under the age of 18, the recipient and  
11 responsible relative shall be liable for medical costs on a  
12 case-by-case basis for services for the diagnosis and treatment  
13 of conditions other than that child's disabling condition. The  
14 liability shall be the lesser of the cost of medical care or  
15 the amount of responsible relative liability established by the  
16 Department under Section 5-116. Any person 18 through 21 years  
17 of age who is receiving services under the Education for All  
18 Handicapped Children Act of 1975 (Public Law 94-142) or that  
19 person's responsible relative shall only be liable for medical  
20 costs on a case-by-case basis for services for the diagnosis  
21 and treatment of conditions other than the person's disabling  
22 condition. The liability shall be the lesser of the cost of  
23 medical care or the amount of responsible relative liability  
24 established by the Department under Section 5-116. In the case  
25 of any person who has received residential services from the  
26 Department, whether directly from the Department or through a

1 public or private agency or entity funded by the Department,  
2 the liability shall be the same regardless of the source of  
3 services. The maximum services charges for each recipient  
4 assessed against responsible relatives collectively may not  
5 exceed financial liability determined from income in  
6 accordance with Section 5-116. Where the recipient is placed in  
7 a nursing home or other facility outside the Department, the  
8 Department may pay the actual cost of services in that facility  
9 and may collect reimbursement for the entire amount paid from  
10 the recipient or an amount not to exceed those amounts  
11 determined under Section 5-116 from responsible relatives  
12 according to their proportionate ability to contribute to those  
13 charges. The liability of each responsible relative for payment  
14 of services charges ceases when payments on the basis of  
15 financial ability have been made for a total of 12 years for  
16 any recipient, and any portion of that 12 year period during  
17 which a responsible relative has been determined by the  
18 Department to be financially unable to pay any services charges  
19 must be included in fixing the total period of liability. No  
20 child is liable under this Act for services to a parent. No  
21 spouse is liable under this Act for the services to the other  
22 spouse who willfully ~~wilfully~~ failed to contribute to the  
23 spouse's support for a period of 5 years immediately preceding  
24 his or her admission. Any spouse claiming exemption because of  
25 willful ~~wilful~~ failure to support during any such 5 year period  
26 must furnish the Department with clear and convincing evidence

1 substantiating the claim. No parent is liable under this Act  
2 for the services charges incurred by a child after the child  
3 reaches the age of majority. Nothing in this Section shall  
4 preclude the Department from applying federal benefits that are  
5 specifically provided for the care and treatment of a person  
6 with a disability toward the cost of care provided by a State  
7 facility or private agency.

8 (Source: P.A. 99-143, eff. 7-27-15.)

9 Section 1608. The Illinois Marriage and Dissolution of  
10 Marriage Act is amended by changing Section 513.5 as follows:

11 (750 ILCS 5/513.5)

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

14 (a) The court may award sums of money out of the property  
15 and income of either or both parties or the estate of a  
16 deceased parent, as equity may require, for the support of a  
17 child of the parties who has attained majority when the child  
18 is mentally or physically disabled and not otherwise  
19 emancipated. The sums awarded may be paid to one of the  
20 parents, to a trust created by the parties for the benefit of  
21 the non-minor child with a disability, or irrevocably to a  
22 special needs trust, established by the parties and for the  
23 sole benefit of the non-minor child with a disability, pursuant  
24 to subdivisions (d) (4) (A) or (d) (4) (C) of 42 U.S.C. 1396p,

1 Section 1213 ~~15.1~~ of the Illinois Trust Code ~~Trusts and~~  
2 ~~Trustees Act~~, and applicable provisions of the Social Security  
3 Administration Program Operating Manual System. An application  
4 for support for a non-minor disabled child may be made before  
5 or after the child has attained majority. Unless an application  
6 for educational expenses is made for a mentally or physically  
7 disabled child under Section 513, the disability that is the  
8 basis for the application for support must have arisen while  
9 the child was eligible for support under Section 505 or 513 of  
10 this Act.

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

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

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

21 (3) the financial resources of the child; and

22 (4) any financial or other resource provided to or for  
23 the child including, but not limited to, any Supplemental  
24 Security Income, any home-based support provided pursuant  
25 to the Home-Based Support Services Law for Mentally  
26 Disabled Adults, and any other State, federal, or local

1 benefit available to the non-minor disabled child.

2 (c) As used in this Section:

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

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

9 (Source: P.A. 99-90, eff. 1-1-16.)

10 Section 1609. The Probate Act of 1975 is amended by  
11 changing Sections 2-7 and 28-8 as follows:

12 (755 ILCS 5/2-7) (from Ch. 110 1/2, par. 2-7)

13 Sec. 2-7. Disclaimer.

14 (a) Right to Disclaim Interest in Property. A person to  
15 whom any property or interest therein passes, by whatever  
16 means, may disclaim the property or interest in whole or in  
17 part by delivering or filing a written disclaimer as  
18 hereinafter provided. A disclaimer may be of a fractional share  
19 or undivided interest, a specifically identifiable asset,  
20 portion or amount, any limited interest or estate or any  
21 property or interest derived through right of survivorship. A  
22 powerholder, as that term is defined in Section 103 of the  
23 Illinois Trust Code ~~102 of the Uniform Powers of Appointment~~  
24 ~~Act~~, with respect to property shall be deemed to be a holder of

1 an interest in such property.

2 The representative of a decedent or ward may disclaim on  
3 behalf of the decedent or ward with leave of court. The court  
4 may approve the disclaimer by a representative of a decedent if  
5 it finds that the disclaimer benefits the estate as a whole and  
6 those interested in the estate generally even if the disclaimer  
7 alters the distribution of the property, part or interest  
8 disclaimed. The court may approve the disclaimer by a  
9 representative of a ward if it finds that it benefits those  
10 interested in the estate generally and is not materially  
11 detrimental to the interests of the ward. A disclaimer by a  
12 representative of a decedent or ward may be made without leave  
13 of court if a will or other instrument signed by the decedent  
14 or ward designating the representative specifically authorizes  
15 the representative to disclaim without court approval.

16 The right to disclaim granted by this Section exists  
17 irrespective of any limitation on the interest of the  
18 disclaimant in the nature of a spendthrift provision or similar  
19 restriction.

20 (b) Form of Disclaimer. The disclaimer shall (1) describe  
21 the property or part or interest disclaimed, (2) be signed by  
22 the disclaimant or his representative and (3) declare the  
23 disclaimer and the extent thereof.

24 (c) Delivery of Disclaimer. The disclaimer shall be  
25 delivered to the transferor or donor or his representative, or  
26 to the trustee or other person who has legal title to the

1 property, part or interest disclaimed, or, if none of the  
2 foregoing is readily determinable, shall be either delivered to  
3 a person having possession of the property, part or interest or  
4 who is entitled thereto by reason of the disclaimer, or filed  
5 or recorded as hereinafter provided. In the case of an interest  
6 passing by reason of the death of any person, an executed  
7 counterpart of the disclaimer may be filed with the clerk of  
8 the circuit court in the county in which the estate of the  
9 decedent is administered, or, if administration has not been  
10 commenced, in which it could be commenced. If an interest in  
11 real property is disclaimed, an executed counterpart of the  
12 disclaimer may be recorded in the office of the recorder in the  
13 county in which the real estate lies, or, if the title to the  
14 real estate is registered under "An Act concerning land  
15 titles", approved May 1, 1897, as amended, may be filed in the  
16 office of the registrar of titles of such county.

17 (d) Effect of Disclaimer. Unless expressly provided  
18 otherwise in an instrument transferring the property or  
19 creating the interest disclaimed, the property, part or  
20 interest disclaimed shall descend or be distributed (1) if a  
21 present interest (a) in the case of a transfer by reason of the  
22 death of any person, as if the disclaimant had predeceased the  
23 decedent; (b) in the case of a transfer by revocable instrument  
24 or contract, as if the disclaimant had predeceased the date the  
25 maker no longer has the power to transfer to himself or another  
26 the entire legal and equitable ownership of the property or



1 interest; or (c) in the case of any other inter vivos transfer,  
2 as if the disclaimant had predeceased the date of the transfer;  
3 and (2) if a future interest, as if the disclaimant had  
4 predeceased the event that determines that the taker of the  
5 property or interest has become finally ascertained and his  
6 interest has become indefeasibly fixed both in quality and  
7 quantity; and in each case the disclaimer shall relate back to  
8 such date for all purposes.

9 A disclaimer of property or an interest in property shall  
10 not preclude any disclaimant from receiving the same property  
11 in another capacity or from receiving other interests in the  
12 property to which the disclaimer relates.

13 Unless expressly provided otherwise in an instrument  
14 transferring the property or creating the interest disclaimed,  
15 a future interest limited to take effect at or after the  
16 termination of the estate or interest disclaimed shall  
17 accelerate and take effect in possession and enjoyment to the  
18 same extent as if the disclaimant had died before the date to  
19 which the disclaimer relates back.

20 A disclaimer made pursuant to this Section shall be  
21 irrevocable and shall be binding upon the disclaimant and all  
22 persons claiming by, through or under the disclaimant.

23 (e) Waiver and Bar. The right to disclaim property or a  
24 part thereof or an interest therein shall be barred by (1) a  
25 judicial sale of the property, part or interest before the  
26 disclaimer is effected; (2) an assignment, conveyance,

1 encumbrance, pledge, sale or other transfer of the property,  
2 part or interest, or a contract therefor, by the disclaimant or  
3 his representative; (3) a written waiver of the right to  
4 disclaim; or (4) an acceptance of the property, part or  
5 interest by the disclaimant or his representative. Any person  
6 may presume, in the absence of actual knowledge to the  
7 contrary, that a disclaimer delivered or filed as provided in  
8 this Section is a valid disclaimer that is not barred by the  
9 preceding provisions of this paragraph.

10 A written waiver of the right to disclaim may be made by  
11 any person or his representative and an executed counterpart of  
12 a waiver of the right to disclaim may be recorded or filed, all  
13 in the same manner as provided in this Section with respect to  
14 a disclaimer.

15 In every case, acceptance must be affirmatively proved in  
16 order to constitute a bar to a disclaimer. An acceptance of  
17 property or an interest in property shall include the taking of  
18 possession, the acceptance of delivery or the receipt of  
19 benefits of the property or interest; except that (1) in the  
20 case of an interest in joint tenancy with right of survivorship  
21 such acceptance shall extend only to the fractional share of  
22 such property or interest determined by dividing the number one  
23 by the number of joint tenants, and (2) in the case of a ward,  
24 such acceptance shall extend only to property actually received  
25 by or on behalf of the ward or his representative during his  
26 minority or incapacity. The mere lapse of time or creation of

1 an interest, in joint tenancy with right of survivorship or  
2 otherwise, with or without knowledge of the interest on the  
3 part of the disclaimant, shall not constitute acceptance for  
4 purposes of this Section.

5 This Section does not abridge the right of any person to  
6 assign, convey, release, renounce or disclaim any property or  
7 interest therein arising under any other statute or that arose  
8 under prior law.

9 Any interest in real or personal property that exists on or  
10 after the effective date of this Section may be disclaimed  
11 after that date in the manner provided herein, but no interest  
12 that has arisen prior to that date in any person other than the  
13 disclaimant shall be destroyed or diminished by any action of  
14 the disclaimant taken pursuant to this Section.

15 (Source: P.A. 100-1044, eff. 1-1-19.)

16 (755 ILCS 5/28-8) (from Ch. 110 1/2, par. 28-8)

17 Sec. 28-8. Administrative powers. An independent  
18 representative acting reasonably for the best interests of the  
19 estate has the powers granted in the will and the following  
20 powers, all exercisable without court order, except to the  
21 extent that the following powers are inconsistent with the  
22 will:

23 (a) To lease, sell at public or private sale, for cash or  
24 on credit, mortgage or pledge the personal estate of the  
25 decedent and to distribute in kind any personal estate the sale

1 of which is not necessary;

2 (b) To borrow money with or without security;

3 (c) To mortgage or pledge agricultural commodities as  
4 provided in Section 19-3;

5 (d) To continue the decedent's unincorporated business  
6 without personal liability except for malfeasance or  
7 misfeasance for losses incurred; and obligations incurred or  
8 contracts entered into by the independent representative with  
9 respect to the business are entitled to priority of payment out  
10 of the assets of the business but, without approval of the  
11 court first obtained, do not involve the estate beyond those  
12 assets;

13 (e) To settle, compound or compromise any claim or interest  
14 of the decedent in any property or exchange any such claim or  
15 interest for other claims or property; and to settle compound  
16 or compromise and pay all claims against the estate as provided  
17 in Sections 18-11 and 18-13, but claims of the independent  
18 representative or his attorney shall be subject to Section  
19 18-8;

20 (f) To perform any contract of the decedent;

21 (g) To employ agents, accountants and counsel, including  
22 legal and investment counsel; to delegate to them the  
23 performance of any act of administration, whether or not  
24 discretionary; and to pay them reasonable compensation;

25 (h) To hold stocks, bonds and other personal property in  
26 the name of a nominee as provided in Section 19-12;

1 (i) To take possession, administer and grant possession of  
2 the decedent's real estate, which term in this subsection  
3 includes oil, gas, coal and other mineral interests therein; to  
4 pay taxes on decedent's real estate whether or not in  
5 possession of the representative; to lease the decedent's real  
6 estate upon such terms and for such length of time as he deems  
7 advisable; to sell at public or private sale, for cash or on  
8 credit, or mortgage any real estate or interest therein to  
9 which the decedent had claim or title, but real estate  
10 specifically bequeathed shall not be leased, sold or mortgaged  
11 without the written consent of the legatee; and to confirm the  
12 title of any heir or legatee to real estate by recording and  
13 delivering to the heir or legatee an instrument releasing the  
14 estate's interest; and

15 (j) To retain property properly acquired, without regard to  
16 its suitability for original purchase; and to invest money of  
17 the estate (1) in any one or more of the investments described  
18 in Section 21-1 or (2) if the independent representative  
19 determines that the estate is solvent and all interested  
20 persons other than creditors approve, in any investments  
21 authorized for trustees under the prudent investor ~~man~~ rule  
22 stated in Article 9 Section 5 of the Illinois Trust Code  
23 ~~"Trusts and Trustees Act", as now or hereafter amended.~~

24 (Source: P.A. 81-213.)

25 Section 1610. The Illinois Power of Attorney Act is amended

1 by changing Section 3-4 as follows:

2 (755 ILCS 45/3-4) (from Ch. 110 1/2, par. 803-4)

3 Sec. 3-4. Explanation of powers granted in the statutory  
4 short form power of attorney for property. This Section defines  
5 each category of powers listed in the statutory short form  
6 power of attorney for property and the effect of granting  
7 powers to an agent, and is incorporated by reference into the  
8 statutory short form. Incorporation by reference does not  
9 require physical attachment of a copy of this Section 3-4 to  
10 the statutory short form power of attorney for property. When  
11 the title of any of the following categories is retained (not  
12 struck out) in a statutory property power form, the effect will  
13 be to grant the agent all of the principal's rights, powers and  
14 discretions with respect to the types of property and  
15 transactions covered by the retained category, subject to any  
16 limitations on the granted powers that appear on the face of  
17 the form. The agent will have authority to exercise each  
18 granted power for and in the name of the principal with respect  
19 to all of the principal's interests in every type of property  
20 or transaction covered by the granted power at the time of  
21 exercise, whether the principal's interests are direct or  
22 indirect, whole or fractional, legal, equitable or  
23 contractual, as a joint tenant or tenant in common or held in  
24 any other form; but the agent will not have power under any of  
25 the statutory categories (a) through (o) to make gifts of the

1 principal's property, to exercise powers to appoint to others  
2 or to change any beneficiary whom the principal has designated  
3 to take the principal's interests at death under any will,  
4 trust, joint tenancy, beneficiary form or contractual  
5 arrangement. The agent will be under no duty to exercise  
6 granted powers or to assume control of or responsibility for  
7 the principal's property or affairs; but when granted powers  
8 are exercised, the agent will be required to act in good faith  
9 for the benefit of the principal using due care, competence,  
10 and diligence in accordance with the terms of the statutory  
11 property power and will be liable for negligent exercise. The  
12 agent may act in person or through others reasonably employed  
13 by the agent for that purpose and will have authority to sign  
14 and deliver all instruments, negotiate and enter into all  
15 agreements and do all other acts reasonably necessary to  
16 implement the exercise of the powers granted to the agent.

17 (a) Real estate transactions. The agent is authorized to:  
18 buy, sell, exchange, rent and lease real estate (which term  
19 includes, without limitation, real estate subject to a land  
20 trust and all beneficial interests in and powers of direction  
21 under any land trust); collect all rent, sale proceeds and  
22 earnings from real estate; convey, assign and accept title to  
23 real estate; grant easements, create conditions and release  
24 rights of homestead with respect to real estate; create land  
25 trusts and exercise all powers under land trusts; hold,  
26 possess, maintain, repair, improve, subdivide, manage, operate

1 and insure real estate; pay, contest, protest and compromise  
2 real estate taxes and assessments; and, in general, exercise  
3 all powers with respect to real estate which the principal  
4 could if present and under no disability.

5 (b) Financial institution transactions. The agent is  
6 authorized to: open, close, continue and control all accounts  
7 and deposits in any type of financial institution (which term  
8 includes, without limitation, banks, trust companies, savings  
9 and building and loan associations, credit unions and brokerage  
10 firms); deposit in and withdraw from and write checks on any  
11 financial institution account or deposit; and, in general,  
12 exercise all powers with respect to financial institution  
13 transactions which the principal could if present and under no  
14 disability. This authorization shall also apply to any Totten  
15 Trust, Payable on Death Account, or comparable trust account  
16 arrangement where the terms of such trust are contained  
17 entirely on the financial institution's signature card,  
18 insofar as an agent shall be permitted to withdraw income or  
19 principal from such account, unless this authorization is  
20 expressly limited or withheld under paragraph 2 of the form  
21 prescribed under Section 3-3. This authorization shall not  
22 apply to accounts titled in the name of any trust subject to  
23 the provisions of the Illinois Trust Code ~~Trusts and Trustees~~  
24 ~~Act~~, for which specific reference to the trust and a specific  
25 grant of authority to the agent to withdraw income or principal  
26 from such trust is required pursuant to Section 2-9 of the



1 Illinois Power of Attorney Act and subsection (n) of this  
2 Section.

3 (c) Stock and bond transactions. The agent is authorized  
4 to: buy and sell all types of securities (which term includes,  
5 without limitation, stocks, bonds, mutual funds and all other  
6 types of investment securities and financial instruments);  
7 collect, hold and safekeep all dividends, interest, earnings,  
8 proceeds of sale, distributions, shares, certificates and  
9 other evidences of ownership paid or distributed with respect  
10 to securities; exercise all voting rights with respect to  
11 securities in person or by proxy, enter into voting trusts and  
12 consent to limitations on the right to vote; and, in general,  
13 exercise all powers with respect to securities which the  
14 principal could if present and under no disability.

15 (d) Tangible personal property transactions. The agent is  
16 authorized to: buy and sell, lease, exchange, collect, possess  
17 and take title to all tangible personal property; move, store,  
18 ship, restore, maintain, repair, improve, manage, preserve,  
19 insure and safekeep tangible personal property; and, in  
20 general, exercise all powers with respect to tangible personal  
21 property which the principal could if present and under no  
22 disability.

23 (e) Safe deposit box transactions. The agent is authorized  
24 to: open, continue and have access to all safe deposit boxes;  
25 sign, renew, release or terminate any safe deposit contract;  
26 drill or surrender any safe deposit box; and, in general,

1 exercise all powers with respect to safe deposit matters which  
2 the principal could if present and under no disability.

3 (f) Insurance and annuity transactions. The agent is  
4 authorized to: procure, acquire, continue, renew, terminate or  
5 otherwise deal with any type of insurance or annuity contract  
6 (which terms include, without limitation, life, accident,  
7 health, disability, automobile casualty, property or liability  
8 insurance); pay premiums or assessments on or surrender and  
9 collect all distributions, proceeds or benefits payable under  
10 any insurance or annuity contract; and, in general, exercise  
11 all powers with respect to insurance and annuity contracts  
12 which the principal could if present and under no disability.

13 (g) Retirement plan transactions. The agent is authorized  
14 to: contribute to, withdraw from and deposit funds in any type  
15 of retirement plan (which term includes, without limitation,  
16 any tax qualified or nonqualified pension, profit sharing,  
17 stock bonus, employee savings and other retirement plan,  
18 individual retirement account, deferred compensation plan and  
19 any other type of employee benefit plan); select and change  
20 payment options for the principal under any retirement plan;  
21 make rollover contributions from any retirement plan to other  
22 retirement plans or individual retirement accounts; exercise  
23 all investment powers available under any type of self-directed  
24 retirement plan; and, in general, exercise all powers with  
25 respect to retirement plans and retirement plan account  
26 balances which the principal could if present and under no

1 disability.

2 (h) Social Security, unemployment and military service  
3 benefits. The agent is authorized to: prepare, sign and file  
4 any claim or application for Social Security, unemployment or  
5 military service benefits; sue for, settle or abandon any  
6 claims to any benefit or assistance under any federal, state,  
7 local or foreign statute or regulation; control, deposit to any  
8 account, collect, receipt for, and take title to and hold all  
9 benefits under any Social Security, unemployment, military  
10 service or other state, federal, local or foreign statute or  
11 regulation; and, in general, exercise all powers with respect  
12 to Social Security, unemployment, military service and  
13 governmental benefits which the principal could if present and  
14 under no disability.

15 (i) Tax matters. The agent is authorized to: sign, verify  
16 and file all the principal's federal, state and local income,  
17 gift, estate, property and other tax returns, including joint  
18 returns and declarations of estimated tax; pay all taxes;  
19 claim, sue for and receive all tax refunds; examine and copy  
20 all the principal's tax returns and records; represent the  
21 principal before any federal, state or local revenue agency or  
22 taxing body and sign and deliver all tax powers of attorney on  
23 behalf of the principal that may be necessary for such  
24 purposes; waive rights and sign all documents on behalf of the  
25 principal as required to settle, pay and determine all tax  
26 liabilities; and, in general, exercise all powers with respect

1 to tax matters which the principal could if present and under  
2 no disability.

3 (j) Claims and litigation. The agent is authorized to:  
4 institute, prosecute, defend, abandon, compromise, arbitrate,  
5 settle and dispose of any claim in favor of or against the  
6 principal or any property interests of the principal; collect  
7 and receipt for any claim or settlement proceeds and waive or  
8 release all rights of the principal; employ attorneys and  
9 others and enter into contingency agreements and other  
10 contracts as necessary in connection with litigation; and, in  
11 general, exercise all powers with respect to claims and  
12 litigation which the principal could if present and under no  
13 disability. The statutory short form power of attorney for  
14 property does not authorize the agent to appear in court or any  
15 tribunal as an attorney-at-law for the principal or otherwise  
16 to engage in the practice of law without being a licensed  
17 attorney who is authorized to practice law in Illinois under  
18 applicable Illinois Supreme Court Rules.

19 (k) Commodity and option transactions. The agent is  
20 authorized to: buy, sell, exchange, assign, convey, settle and  
21 exercise commodities futures contracts and call and put options  
22 on stocks and stock indices traded on a regulated options  
23 exchange and collect and receipt for all proceeds of any such  
24 transactions; establish or continue option accounts for the  
25 principal with any securities or futures broker; and, in  
26 general, exercise all powers with respect to commodities and

1 options which the principal could if present and under no  
2 disability.

3 (l) Business operations. The agent is authorized to:  
4 organize or continue and conduct any business (which term  
5 includes, without limitation, any farming, manufacturing,  
6 service, mining, retailing or other type of business operation)  
7 in any form, whether as a proprietorship, joint venture,  
8 partnership, corporation, trust or other legal entity;  
9 operate, buy, sell, expand, contract, terminate or liquidate  
10 any business; direct, control, supervise, manage or  
11 participate in the operation of any business and engage,  
12 compensate and discharge business managers, employees, agents,  
13 attorneys, accountants and consultants; and, in general,  
14 exercise all powers with respect to business interests and  
15 operations which the principal could if present and under no  
16 disability.

17 (m) Borrowing transactions. The agent is authorized to:  
18 borrow money; mortgage or pledge any real estate or tangible or  
19 intangible personal property as security for such purposes;  
20 sign, renew, extend, pay and satisfy any notes or other forms  
21 of obligation; and, in general, exercise all powers with  
22 respect to secured and unsecured borrowing which the principal  
23 could if present and under no disability.

24 (n) Estate transactions. The agent is authorized to:  
25 accept, receipt for, exercise, release, reject, renounce,  
26 assign, disclaim, demand, sue for, claim and recover any

1 legacy, bequest, devise, gift or other property interest or  
2 payment due or payable to or for the principal; assert any  
3 interest in and exercise any power over any trust, estate or  
4 property subject to fiduciary control; establish a revocable  
5 trust solely for the benefit of the principal that terminates  
6 at the death of the principal and is then distributable to the  
7 legal representative of the estate of the principal; and, in  
8 general, exercise all powers with respect to estates and trusts  
9 which the principal could if present and under no disability;  
10 provided, however, that the agent may not make or change a will  
11 and may not revoke or amend a trust revocable or amendable by  
12 the principal or require the trustee of any trust for the  
13 benefit of the principal to pay income or principal to the  
14 agent unless specific authority to that end is given, and  
15 specific reference to the trust is made, in the statutory  
16 property power form.

17 (o) All other property transactions. The agent is  
18 authorized to: exercise all possible authority of the principal  
19 with respect to all possible types of property and interests in  
20 property, except to the extent limited in subsections (a)  
21 through (n) of this Section 3-4 and to the extent that the  
22 principal otherwise limits the generality of this category (o)  
23 by striking out one or more of categories (a) through (n) or by  
24 specifying other limitations in the statutory property power  
25 form.

26 (Source: P.A. 96-1195, eff. 7-1-11.)

1           Section 1611. The Common Trust Fund Act is amended by  
2 changing Section 3 as follows:

3           (760 ILCS 45/3) (from Ch. 17, par. 2103)

4           Sec. 3. Establishment of common trust fund. Any bank or  
5 trust company may, at and during such time as it is qualified  
6 to act as a fiduciary in this State, establish, maintain, and  
7 administer one or more common trust funds for the purpose of  
8 furnishing investments to itself as a fiduciary, or to itself  
9 and another or others as co-fiduciaries. An investment in a  
10 common trust fund does not constitute an investment in the  
11 various securities composing the common trust fund, but is an  
12 investment in the fund as an entity. A bank or trust company,  
13 in its capacity as a fiduciary or co-fiduciary, whether that  
14 fiduciary capacity arose before or is created after this Act  
15 takes effect, may invest funds that it holds for investment in  
16 that capacity in interests in one or more common trust funds,  
17 subject to the following limitations:

18           (1) In the case of a fiduciary other than an  
19 administrator, the investment may be made in a common trust  
20 fund if such an investment is not expressly prohibited by  
21 the instrument, judgment, or order creating the fiduciary  
22 relationship, or by an amendment thereof, and if, under the  
23 instrument, judgment, or order creating the fiduciary  
24 relationship, or an amendment thereof, the funds so held

1 for investment might properly be invested in an investment  
2 with the overall investment characteristics of the common  
3 trust fund, considered as an entity, and if, in the case of  
4 co-fiduciaries, the bank or trust company procures the  
5 consent of its co-fiduciary or co-fiduciaries to the  
6 investment in those interests. If the instrument creating  
7 the fiduciary relationship gives to the bank or trust  
8 company the exclusive right to select investments, the  
9 consent of the co-fiduciary shall not be required. Any  
10 person acting as co-fiduciary with any such bank or trust  
11 company is hereby authorized to consent to the investment  
12 in those interests.

13 (2) In the case of an administrator, the investment may  
14 be made upon approval by the court.

15 (3) A bank or trust company in establishing,  
16 maintaining and administering one or more common trust  
17 funds for the purpose of furnishing investments to itself  
18 as fiduciary shall have a duty to invest and manage such  
19 common trust fund assets as follows:

20 (A) The bank or trust company has a duty to invest  
21 and manage common trust fund assets as a prudent  
22 investor would considering the purposes, terms,  
23 distribution requirements, and other circumstances of  
24 the common trust fund. This standard requires the  
25 exercise of reasonable care, skill, and caution and is  
26 to be applied to investments not in isolation, but in



1           the context of the common trust fund portfolio as a  
2           whole and as a part of an overall investment strategy  
3           that should incorporate risk and return objectives  
4           reasonably suitable to the common trust fund.

5           (B) No specific investment or course of action is,  
6           taken alone, prudent or imprudent. The bank or trust  
7           company may invest in every kind of property and type  
8           of investment, subject to this Section. The bank or  
9           trust company's investment decisions and actions are  
10          to be judged in terms of the bank or trust company's  
11          reasonable business judgment regarding the anticipated  
12          effect on the common trust fund portfolio as a whole  
13          under the facts and circumstances prevailing at the  
14          time of the decision or action. The standard set forth  
15          in this paragraph (3) is a test of conduct and not of  
16          resulting performance.

17          (C) The circumstances that the bank or trust  
18          company may consider in making investment decisions  
19          include, without limitation, the general economic  
20          conditions, the possible effect of inflation, the role  
21          each investment or course of action plays within the  
22          overall portfolio, and the expected total return.

23          (D) The bank or trust company may invest and  
24          reinvest common trust fund assets in interests in any  
25          open-end or closed-end management type investment  
26          company or investment trust (hereafter referred to as a

1 "mutual fund") registered under the Investment Company  
2 Act of 1940 or may retain, sell, or exchange those  
3 interests, provided that the portfolio of the mutual  
4 fund, as an entity, is appropriate under the provisions  
5 of this Act. The bank or trust company is not  
6 prohibited from investing, reinvesting, retaining, or  
7 exchanging as common fund assets any interests in any  
8 mutual fund for which the bank or trust company or an  
9 affiliate acts as advisor or manager solely on the  
10 basis that the bank or trust company (or its affiliate)  
11 provides services to the mutual fund and receives  
12 reasonable remuneration for those services. A bank or  
13 trust company or its affiliate is not required to  
14 reduce or waive its compensation for services provided  
15 in connection with the administration, investment, and  
16 management of the common trust fund or a participant in  
17 the common trust fund because the bank or trust company  
18 invests, reinvests, or retains common trust fund  
19 assets in a mutual fund, if the total compensation paid  
20 by a participant to the bank or trust company and its  
21 affiliates, directly or indirectly, including any  
22 common trust fund fees, mutual fund fees, advisory  
23 fees, and management fees, is reasonable. However, a  
24 bank or trust company may receive fees equal to the  
25 amount of those fees that would be paid to any other  
26 party under Securities and Exchange Commission Rule

1 12b-1.

2 (4) A bank or trust company may not delegate the  
3 investment functions of a common trust fund established or  
4 operating under Section 584 of the Internal Revenue Code  
5 pursuant to Section 807 5.1 of the Illinois Trust Code  
6 ~~Trusts and Trustees Act~~ except as authorized by the Bureau  
7 of the Comptroller of the Currency of the U. S. Department  
8 of the Treasury. A bank or trust company may hire one or  
9 more agents to give the trustee advice with respect to  
10 investments of a common trust fund and pay reasonable and  
11 appropriate compensation to the agent provided that the  
12 final investment decisions and the exclusive management of  
13 the common trust fund remain with the bank or trust  
14 company.

15 (5) On or after the effective date of this amendatory  
16 Act of 1991, this Section applies to all existing and  
17 future common trust funds, but only as to actions or  
18 inactions occurring after that effective date.

19 (Source: P.A. 89-344, eff. 8-17-95.)

20 Section 1612. The Religious Corporation Act is amended by  
21 changing Section 46j as follows:

22 (805 ILCS 110/46j) (from Ch. 32, par. 185)

23 Sec. 46j. Any church, congregation, society or  
24 corporation, heretofore or hereafter formed for religious

1 purposes or for the purpose of religious worship under any of  
2 the provisions of this Act or under any law of this State  
3 incorporating or for the incorporation of religious  
4 corporations or societies, may receive land by gift, legacy or  
5 purchase and make, erect, and build thereon such houses,  
6 buildings, or other improvements as may be necessary for the  
7 convenience, comfort and welfare of such church, congregation,  
8 society or corporation, and may lay out and maintain thereon a  
9 cemetery or cemeteries, or a burying ground or grounds and may  
10 maintain and build thereon schools, orphan asylums, or such  
11 other improvements or buildings as may be necessary for the  
12 educational, eleemosynary, cemetery and religious purposes of  
13 such congregation, church, society or corporation; but no such  
14 property shall be used except in the manner expressed in the  
15 gift, grant or legacy. However, this limitation on the  
16 disposition of real property does not apply to the extent that  
17 a restriction imposed by a donor on the use of an institutional  
18 fund may be released by the governing board of an institution  
19 under the Uniform Prudent Management of Institutional Funds  
20 Act. Or if no use or trust is so expressed, no such property  
21 shall be used except for the benefit of the congregation,  
22 corporation, church or society, for which it was intended, or  
23 for such religious, educational or eleemosynary purpose as may  
24 be approved by such congregation, church, society or  
25 corporation or the ecclesiastical body having jurisdiction or  
26 patronage of or charge over such congregation, corporation,

1 church or society.

2 Any corporation, heretofore or hereafter formed for  
3 religious purposes under any of the provisions of this Act or  
4 under any other law of this State incorporating or for the  
5 incorporation of religious corporations or societies, which  
6 now or hereafter owns, operates, maintains or controls a  
7 cemetery or cemeteries, or a burial ground or grounds, is  
8 hereby authorized and empowered to accept by gift, grant,  
9 contribution, payment, or legacy, or pursuant to contract, any  
10 sum of money, funds, securities or property of any kind, or the  
11 income or avails thereof, and to hold the same in trust in  
12 perpetuity for the care of such cemetery or cemeteries, burial  
13 ground or grounds, or for the care of any lot, grave or crypt  
14 therein; or for the special care of any lot, grave or crypt or  
15 of any family mausoleum or memorial, marker, or monument in  
16 such cemetery or cemeteries, burial ground or grounds. No gift,  
17 grant, legacy, payment or other contribution shall be invalid  
18 by reason of any indefiniteness or uncertainty as to the  
19 beneficiary designated in the instrument creating the gift,  
20 grant, legacy, payment or other contribution. If any gift,  
21 grant, legacy, payment or other contribution consists of  
22 non-income producing property, such corporation is authorized  
23 and empowered to sell such property and to invest the funds  
24 obtained in accordance with the provisions of the Uniform  
25 Prudent Management of Institutional Funds Act, or the  
26 provisions of the next succeeding paragraph.

1           The trust funds authorized by this Section shall be held  
2 intact and, unless otherwise restricted by the terms of the  
3 gift, grant, legacy, contribution, payment, contract or other  
4 payment shall be invested, from time to time reinvested, and  
5 kept invested by such corporation in such investments as are  
6 authorized by the Uniform Prudent Management of Institutional  
7 Funds Act<sup>7</sup> and according to such standards as are prescribed<sup>7</sup>  
8 for trustees under that Act and the Illinois Trust Code ~~"Trusts  
9 and Trustees Act"~~, approved September 10, 1973, as amended, and  
10 the net income only from such investments shall be allocated  
11 and used for the purposes set forth in the paragraph  
12 immediately preceding; but the trust funds authorized by this  
13 Section may be commingled and may also be commingled with any  
14 other trust funds received by such corporation for the care of  
15 the cemetery or cemeteries, or burial ground or grounds, or for  
16 the care or special care of any lot, grave, crypt, private  
17 mausoleum, memorial, marker, or monument whether received by  
18 gift, grant, legacy, contribution, payment, contract or other  
19 conveyance heretofore or hereafter made to such corporation.

20           The trust funds authorized by this Section, and the income  
21 therefrom, shall be exempt from taxation and exempt from the  
22 operation of the laws against perpetuities and accumulations.

23           (Source: P.A. 96-29, eff. 6-30-09.)

24           Section 1613. The Illinois Pre-Need Cemetery Sales Act is  
25 amended by changing Section 16 as follows:

1 (815 ILCS 390/16) (from Ch. 21, par. 216)

2 Sec. 16. Trust funds; disbursements.

3 (a) A trustee shall make no disbursements from the trust  
4 fund except as provided in this Act.

5 (b) A trustee has a duty to invest and manage the trust  
6 assets pursuant to the Illinois Prudent Investor Law ~~Rule~~ under  
7 Article 9 of the Illinois Trust Code ~~Trusts and Trustees Act~~.

8 Whenever the seller changes trustees pursuant to this Act, the  
9 trustee must provide written notice of the change in trustees  
10 to the Comptroller no less than 28 days prior to the effective  
11 date of such a change in trustee. The trustee has an ongoing  
12 duty to provide the Comptroller with a current and true copy of  
13 the trust agreement under which the trust funds are held  
14 pursuant to this Act.

15 (c) The trustee may rely upon certifications and affidavits  
16 made to it under the provisions of this Act, and shall not be  
17 liable to any person for such reliance.

18 (d) A trustee shall be allowed to withdraw from the trust  
19 funds maintained pursuant to this Act a reasonable fee pursuant  
20 to the Illinois Trust Code ~~Trusts and Trustees Act~~.

21 (e) The trust shall be a single-purpose trust fund. In the  
22 event of the seller's bankruptcy, insolvency or assignment for  
23 the benefit of creditors, or an adverse judgment, the trust  
24 funds shall not be available to any creditor as assets of the  
25 seller or to pay any expenses of any bankruptcy or similar

1 proceeding, but shall be distributed to the purchasers or  
2 managed for their benefit by the trustee holding the funds.  
3 Except in an action by the Comptroller to revoke a license  
4 issued pursuant to this Act and for creation of a receivership  
5 as provided in this Act, the trust shall not be subject to  
6 judgment, execution, garnishment, attachment, or other seizure  
7 by process in bankruptcy or otherwise, nor to sale, pledge,  
8 mortgage, or other alienation, and shall not be assignable  
9 except as approved by the Comptroller. The changes made by this  
10 amendatory Act of the 91st General Assembly are intended to  
11 clarify existing law regarding the inability of licensees to  
12 pledge the trust.

13 (f) Because it is not known at the time of deposit or at  
14 the time that income is earned on the trust account to whom the  
15 principal and the accumulated earnings will be distributed, for  
16 purposes of determining the Illinois Income Tax due on these  
17 trust funds, the principal and any accrued earnings or losses  
18 relating to each individual account shall be held in suspense  
19 until the final determination is made as to whom the account  
20 shall be paid.

21 (g) A trustee shall at least annually furnish to each  
22 purchaser a statement identifying: (1) the receipts,  
23 disbursements, and inventory of the trust, including an  
24 explanation of any fees or expenses charged by the trustee  
25 under paragraph (d) of this Section or otherwise, (2) an  
26 explanation of the purchaser's right to a refund, if any, under



1 this Act, and (3) the primary regulator of the trust as a  
2 corporate fiduciary under state or federal law.

3 (Source: P.A. 96-879, eff. 2-2-10.)

4 Article 99. Effective Date.

5 Section 9999. Effective date. This Act takes effect January  
6 1, 2020.

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10	30 ILCS 160/2	from Ch. 127, par. 4002
11	60 ILCS 1/135-20	
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22	750 ILCS 5/513.5	
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- 1 760 ILCS 45/3 from Ch. 17, par. 2103
- 2 805 ILCS 110/46j from Ch. 32, par. 185
- 3 815 ILCS 390/16 from Ch. 21, par. 216