

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 Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Sections 3-605,
6 3-819, and 5-105 as follows:

7 (405 ILCS 5/3-605) (from Ch. 91 1/2, par. 3-605)

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

23 (b) The county sheriff may delegate his duties under

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

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

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

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

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

11 (d) The respondent and the estate of that respondent are
12 liable for the payment of transportation costs for
13 transporting the respondent to a mental health facility. If
14 the respondent is a beneficiary of a trust described in
15 Section 509 ~~1213~~ of the Illinois Trust Code, the trust shall
16 not be considered a part of the respondent's estate and shall
17 not be subject to payment for transportation costs for
18 transporting the respondent to a mental health facility under
19 this Section except to the extent permitted under Section 509
20 ~~1213~~ of the Illinois Trust Code. If the respondent is unable to
21 pay or if the estate of the respondent is insufficient, the
22 responsible relatives are severally liable for the payment of
23 those sums or for the balance due in case less than the amount
24 owing has been paid. If the respondent is covered by
25 insurance, the insurance carrier shall be liable for payment
26 to the extent authorized by the respondent's insurance policy.

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

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

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

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

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

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

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

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

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

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

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

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

23 (405 ILCS 5/5-105) (from Ch. 91 1/2, par. 5-105)

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

1 liable for the payment of sums representing charges for
2 services to the recipient at a rate to be determined by the
3 Department in accordance with this Act. If a recipient is a
4 beneficiary of a trust described in Section 509 ~~1213~~ of the
5 Illinois Trust Code, the trust shall not be considered a part
6 of the recipient's estate and shall not be subject to payment
7 for services to the recipient under this Section except to the
8 extent permitted under Section 509 ~~1213~~ of the Illinois Trust
9 Code. If the recipient is unable to pay or if the estate of the
10 recipient is insufficient, the responsible relatives are
11 severally liable for the payment of those sums or for the
12 balance due in case less than the amount prescribed under this
13 Act has been paid. If the recipient is under the age of 18, the
14 recipient and responsible relative shall be liable for medical
15 costs on a case-by-case basis for services for the diagnosis
16 and treatment of conditions other than that child's disabling
17 condition. The liability shall be the lesser of the cost of
18 medical care or the amount of responsible relative liability
19 established by the Department under Section 5-116. Any person
20 18 through 21 years of age who is receiving services under the
21 Education for All Handicapped Children Act of 1975 (Public Law
22 94-142) or that person's responsible relative shall only be
23 liable for medical costs on a case-by-case basis for services
24 for the diagnosis and treatment of conditions other than the
25 person's disabling condition. The liability shall be the
26 lesser of the cost of medical care or the amount of responsible

1 relative liability established by the Department under Section
2 5-116. In the case of any person who has received residential
3 services from the Department, whether directly from the
4 Department or through a public or private agency or entity
5 funded by the Department, the liability shall be the same
6 regardless of the source of services. The maximum services
7 charges for each recipient assessed against responsible
8 relatives collectively may not exceed financial liability
9 determined from income in accordance with Section 5-116. Where
10 the recipient is placed in a nursing home or other facility
11 outside the Department, the Department may pay the actual cost
12 of services in that facility and may collect reimbursement for
13 the entire amount paid from the recipient or an amount not to
14 exceed those amounts determined under Section 5-116 from
15 responsible relatives according to their proportionate ability
16 to contribute to those charges. The liability of each
17 responsible relative for payment of services charges ceases
18 when payments on the basis of financial ability have been made
19 for a total of 12 years for any recipient, and any portion of
20 that 12 year period during which a responsible relative has
21 been determined by the Department to be financially unable to
22 pay any services charges must be included in fixing the total
23 period of liability. No child is liable under this Act for
24 services to a parent. No spouse is liable under this Act for
25 the services to the other spouse who willfully failed to
26 contribute to the spouse's support for a period of 5 years

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

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

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

15 (750 ILCS 5/513.5)

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

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

1 the non-minor child with a disability, or irrevocably to a
2 trust for a beneficiary with a disability ~~special needs trust~~,
3 established by the parties and for the sole benefit of the
4 non-minor child with a disability, pursuant to subdivisions
5 (d) (4) (A) or (d) (4) (C) of 42 U.S.C. 1396p, Section 509 ~~1213~~ of
6 the Illinois Trust Code, and applicable provisions of the
7 Social Security Administration Program Operating Manual
8 System. An application for support for a non-minor disabled
9 child may be made before or after the child has attained
10 majority. Unless an application for educational expenses is
11 made for a mentally or physically disabled child under Section
12 513, the disability that is the basis for the application for
13 support must have arisen while the child was eligible for
14 support under Section 505 or 513 of this Act.

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

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

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

25 (3) the financial resources of the child; and

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

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

6 (c) As used in this Section:

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

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

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

14 Section 10. The Illinois Trust Code is amended by changing
15 Sections 103, 105, 107, 111, 301, 302, 401, 402, 403, 408, 416,
16 505, 605, 808, 813.1, 813.2, 817, 913, 1103, 1202, 1211, 1215,
17 1302, 1324, and 1506 as follows:

18 (760 ILCS 3/103)

19 Sec. 103. Definitions. In this Code:

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

22 (1.5) "Appointive property" means the property or property
23 interest subject to a power of appointment.

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

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

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

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

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

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

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

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

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

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

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

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

4 (5) "Charitable organization" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (22.5) "Permissible appointee" means a person in whose
20 favor a powerholder may exercise a power of appointment.

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

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

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

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

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

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

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

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

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

20 (i) the occurrence of the specified event;

21 (ii) the satisfaction of the ascertainable
22 standard; or

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

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

26 (28) "Presumptive remainder beneficiary" means a

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

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

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

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

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

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

1 ~~that date.~~

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

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

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

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

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

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

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

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

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

5 (i) expressed in the trust instrument; or

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

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

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

12 (ii) a court order; or

13 (iii) a nonjudicial settlement agreement under
14 Section 111.

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

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

26 (39) "Trust instrument" means the written instrument

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

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

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

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

12 (760 ILCS 3/105)

13 Sec. 105. Default and mandatory rules.

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

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

24 (1) the requirements for creating a trust;

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

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

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

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

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

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

12 (8) the requirement under subsection (e) of Section
13 602 that an agent under a power of attorney must have
14 express authorization in the agency to exercise a
15 settlor's powers with respect to a revocable trust;

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

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

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

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

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

13 (13) the effect of an exculpatory term under Section
14 1008;

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

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

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

21 (760 ILCS 3/107)

22 Sec. 107. Governing law.

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

25 (1) the law of the jurisdiction designated in the

1 trust instrument; or

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

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

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

10 (760 ILCS 3/111)

11 Sec. 111. Nonjudicial settlement agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (760 ILCS 3/301)

19 Sec. 301. Representation: basic effect.

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

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

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

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

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

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

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

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

22 (2) the holder of a power of appointment under Section
23 302;

24 (3) a designated representative under Section 307;

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

1 subsection (b) of Section 303;

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

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

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

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

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

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

19 (760 ILCS 3/302)

20 Sec. 302. Representation by holders of certain powers.

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

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

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

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

16 (1) any matter determined by the court to involve
17 fraud or bad faith by the trustee; or

18 (2) a power of appointment held by a person while the
19 person is the sole trustee.

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

21 (760 ILCS 3/401)

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

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

- 1 disposition taking effect upon the settlor's death;
- 2 (2) declaration by the owner of property that the
- 3 owner holds identifiable property as trustee; ~~or~~
- 4 (3) exercise of a power of appointment in favor of a
- 5 trustee;
- 6 (4) order of a court; or
- 7 (5) exercise by an authorized fiduciary of the powers
- 8 granted in Article 12.

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

10 (760 ILCS 3/402)

11 Sec. 402. Requirements for creation.

12 (a) A trust is created only if:

13 (1) the settlor or other person creating the trust has

14 capacity to create a trust;

15 (2) the settlor or other person creating the trust

16 indicates an intention to create the 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

25 beneficiary.

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

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

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

10 (760 ILCS 3/403)

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

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

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

20 (3) any trust property was located.

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

22 (760 ILCS 3/408)

23 Sec. 408. Trusts for domestic or pet animals.

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

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

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

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

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

17 (A) as directed in the trust instrument;

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

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

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

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

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

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

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

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

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

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

2 (760 ILCS 3/416)

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

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

10 (760 ILCS 3/505)

11 Sec. 505. Creditor's claim against settlor.

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

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

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

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

10 (4) Paragraph (2) does not apply to the assets of an
11 irrevocable trust established for the benefit of a person
12 with a disability that meets the requirements of 42 U.S.C.
13 1396p(d)(4) or similar federal law governing the transfer
14 to such a trust.

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

1 conditions:

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

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

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

1 revocable trust.

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

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

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

16 (b) For purposes of this Section:

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

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

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

2 (760 ILCS 3/605)

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

5 (a) As used in this Section:

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

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

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

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

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

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

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

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

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

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

1 (760 ILCS 3/808)

2 Sec. 808. Directed trusts.

3 (a) In this Section:

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

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

1 or existing trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (i) Other required notices.

7 (1) A directing party shall:

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

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

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

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

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

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

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

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

15 (2) any existing or future trust that:

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

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

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

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

6 (760 ILCS 3/813.1)

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

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

24 (b) General principles.

25 (1) The trustee shall notify each qualified

1 beneficiary:

2 (A) of the trust's existence;

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

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

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

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

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

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

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

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

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

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

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

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

11 (d) Other required notices.

12 (1) A trustee shall:

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

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

1 determining the trustee's compensation; and

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

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

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

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

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

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

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

1 Article 3 for the qualified beneficiary.

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

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

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

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

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

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

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

11 (760 ILCS 3/813.2)

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

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

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

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

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

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

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

23 (760 ILCS 3/817)

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

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

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

20 (760 ILCS 3/913)

21 Sec. 913. Life insurance.

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

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

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

8 (A) the type of insurance contract;

9 (B) the quality of the insurance contract;

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

11 (D) the investments held within the insurance
12 contract;

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

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

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

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

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

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

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

24 (760 ILCS 3/1103)

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

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

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

7 (760 ILCS 3/1202)

8 Sec. 1202. Definitions. In this Article:

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

11 (2) "Authorized fiduciary" means:

12 (A) a trustee or other fiduciary, other than a
13 settlor, that has discretion to distribute or direct a
14 trustee to distribute part or all of the principal of the
15 first trust 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
24 trusts or to modify the terms of the first trust.

25 (5) "Expanded distributive discretion" means a

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

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

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

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

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

15 (10) "Second trust" means:

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

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

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

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

23 (760 ILCS 3/1211)

24 Sec. 1211. Decanting power under expanded distributive
25 discretion.

1 (a) In this Section:

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

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

14 (3) "Vested interest" means:

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

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

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

26 (D) a presently exercisable general power of

1 appointment; or

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

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

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

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

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

23 (3) reduce or eliminate a vested interest.

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

1 any jurisdiction and may:

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

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

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

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

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

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

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

2 (760 ILCS 3/1215)

3 Sec. 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
19 of a first trust, a spendthrift provision ~~clause~~, or a clause
20 restraining the voluntary or involuntary transfer of a
21 beneficiary's interest does not preclude exercise of the
22 decanting power.

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

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

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

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

9 (760 ILCS 3/1302)

10 Sec. 1302. Definitions. In this Article:

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

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

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

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

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

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

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

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

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

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

8 (7) "Instrument" means a writing.

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

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

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

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

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

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

1 (760 ILCS 3/1324)

2 Sec. 1324. Disposition of trust property subject to power.

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

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

18 (760 ILCS 3/1506)

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

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

24 (2) This Code applies to all judicial proceedings

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

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

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

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

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

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

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

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

1 INDEX

2 Statutes amended in order of appearance

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

4 760 ILCS 3/103

5 760 ILCS 3/105

6 760 ILCS 3/107

7 760 ILCS 3/111

8 760 ILCS 3/301

9 760 ILCS 3/302

10 760 ILCS 3/401

11 760 ILCS 3/402

12 760 ILCS 3/403

13 760 ILCS 3/408

14 760 ILCS 3/416

15 760 ILCS 3/505

16 760 ILCS 3/605

17 760 ILCS 3/808

18 760 ILCS 3/813.1

19 760 ILCS 3/813.2

20 760 ILCS 3/817

21 760 ILCS 3/913

22 760 ILCS 3/1103

23 760 ILCS 3/1202

24 760 ILCS 3/1211

25 760 ILCS 3/1215

HB1795 Enrolled

- 76 -

LRB102 10214 LNS 15537 b

- 1 760 ILCS 3/1302
- 2 760 ILCS 3/1324
- 3 760 ILCS 3/1506