
A BILL FOR AN ACT

RELATING TO THE UNIFORM TRUST CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the Uniform Trust
2 Code is a national codification of the law of trusts, which
3 provides for greater clarity and uniformity in trust law and
4 interpretation. While there are currently a number of Hawaii
5 statutes relating to trusts, the Uniform Trust Code serves to
6 update these laws and to bring them under one comprehensive
7 umbrella.

8 The legislature further finds that the Uniform Trust Code
9 will significantly reduce the time, complexity, and expense of
10 trust proceedings and, in certain instances, allow for
11 nonjudicial resolution of trust issues that currently require
12 court intervention. At the same time, the Uniform Trust Code
13 provides ready access to a judge if either a dispute arises
14 during the course of trust administration or the interested
15 parties desire judicial supervision. The Uniform Trust Code
16 also provides greater clarity and certainty in many areas of



1 trust law that are exceedingly thin or without precedent in
2 Hawaii.

3 The purpose of this Act is to enact the Uniform Trust Code
4 (2018 version) in the State, with appropriate amendments to
5 reflect Hawaii law and practice where relevant.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 **"CHAPTER**

10 **UNIFORM TRUST CODE**

11 **PART I. GENERAL PROVISIONS AND DEFINITIONS**

12 § -101 **Short title.** This chapter may be cited as the
13 Uniform Trust Code.

14 § -102 **Scope.** This chapter applies to express trusts,
15 charitable or noncharitable, and trusts created pursuant to a
16 statute, judgment, or decree that requires the trust to be
17 administered in the manner of an express trust.

18 § -103 **Definitions.** As used in this chapter:

19 "Action", with respect to an act of a trustee, includes a
20 failure to act.



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

6 "Beneficiary" means a person who:

7 (1) Has a present or future beneficial interest in a
8 trust, vested or contingent; or

9 (2) In a capacity other than that of trustee, holds a
10 power of appointment over trust property.

11 "Charitable trust" means a trust, or portion of a trust,
12 created for a charitable purpose described in section -405(a).

13 "Conservator" means a person appointed by the court to
14 administer the estate of a minor or adult individual.

15 "Court" means the circuit court in this State having
16 jurisdiction over all subject matter relating to trusts.

17 "Environmental law" means a federal, state, or local law,
18 rule, regulation, or ordinance relating to protection of the
19 environment.

20 "Guardian" means a person appointed by the court, a parent,
21 or a spouse to make decisions regarding the support, care,



1 education, health, and welfare of a minor or adult individual.

2 "Guardian" does not include a guardian ad litem.

3 "Incapacitated" means an individual who, for reasons other
4 than age, is unable to manage property and business affairs
5 effectively because of an impairment in the ability to receive
6 and evaluate information or to make or communicate decisions,
7 even with the use of appropriate and reasonably available
8 technological assistance or because of another physical, mental,
9 or health impairment, or because the individual is missing,
10 detained, or unable to return to the United States.

11 "Interested persons" includes beneficiaries and any others
12 having a property right in or claim against a trust estate that
13 may be affected by a judicial proceeding and fiduciaries and
14 other persons representing interested persons. The meaning as
15 it relates to particular persons may vary from time to time and
16 shall be determined according to the particular purposes of, and
17 matter involved in, any proceeding.

18 "Interests of the beneficiaries" means the beneficial
19 interests provided in the terms of the trust.

20 "Jurisdiction", with respect to a geographic area, includes
21 a state or country.



1 "Person" means an individual; corporation; business trust;
2 estate; trust; partnership; limited liability company;
3 association; joint venture; government; governmental
4 subdivision, agency, or instrumentality; public corporation; or
5 any other legal or commercial entity.

6 "Power of withdrawal" means a presently exercisable general
7 power of appointment other than a power:

8 (1) Exercisable by a trustee and limited by an
9 ascertainable standard; or

10 (2) Exercisable by another person only upon consent of the
11 trustee or a person holding an adverse interest.

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

15 "Qualified beneficiary" means a beneficiary who, on the
16 date the beneficiary's qualification is determined:

17 (1) Is a distributee or permissible distributee of trust
18 income or principal;

19 (2) Would be a distributee or permissible distributee of
20 trust income or principal if the interests of the



1 distributees described in paragraph (1) terminated on
2 that date without causing the trust to terminate; or
3 (3) Would be a distributee or permissible distributee of
4 trust income or principal if the trust terminated on
5 that date.

6 "Revocable", as applied to a trust, means revocable by the
7 settlor without the consent of the trustee or a person holding
8 an adverse interest.

9 "Settlor" means a person, including a testator, who
10 creates, or contributes property to, a trust. If more than one
11 person creates or contributes property to a trust, each person
12 is a settlor of the portion of the trust property attributable
13 to that person's contribution except to the extent another
14 person has the power to revoke or withdraw that portion.

15 "Spendthrift provision" means a term of a trust that
16 restrains both voluntary and involuntary transfer of a
17 beneficiary's interest.

18 "Spouse" includes individuals who are married to each other
19 and individuals who are reciprocal beneficiaries.

20 "State" means a state of the United States, the District of
21 Columbia, Puerto Rico, the United States Virgin Islands, or any



1 territory or insular possession subject to the jurisdiction of
2 the United States. "State" includes an Indian tribe or band
3 recognized by federal law or formally acknowledged by a state.

4 "Terms of a trust" means:

5 (1) Except as otherwise provided in paragraph (2), the
6 manifestation of the settlor's intent regarding a
7 trust's provisions as:

8 (A) Expressed in the trust instrument; or

9 (B) Established by other evidence that would be
10 admissible in a judicial proceeding; or

11 (2) The trust's provisions, as established, determined, or
12 amended by:

13 (A) A trustee or other person in accordance with
14 applicable law;

15 (B) A court order; or

16 (C) A nonjudicial settlement agreement under
17 section -111.

18 "Trust instrument" means an instrument executed by the
19 settlor that contains terms of the trust, including any
20 amendments thereto.



1 "Trustee" includes an original, additional, and successor
2 trustee, and a cotrustee.

3 § -104 **Knowledge.** (a) Subject to subsection (b), a
4 person has knowledge of a fact if the person:

5 (1) Has actual knowledge of it;

6 (2) Has received a notice or notification of it; or

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

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



1 regular duties or the individual knows a matter involving the
2 trust would be materially affected by the information.

3 **§ -105 Default and mandatory rules.** (a) Except as
4 otherwise provided in the terms of the trust, this chapter
5 governs the duties and powers of a trustee, relations among
6 trustees, and the rights and interests of a beneficiary.

7 (b) The terms of a trust prevail over any provision of
8 this chapter except:

9 (1) The requirements for creating a trust;

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

13 (3) The requirement that a trust and its terms be for the
14 benefit of its beneficiaries as their interests are
15 defined by the terms of the trust and that the trust
16 have a purpose that is lawful, not contrary to public
17 policy, and possible to achieve;

18 (4) The power of the court to modify or terminate a trust
19 under sections -410 through -416;



- 1 (5) The effect of a spendthrift provision and the rights
2 of certain creditors and assignees to reach a trust as
3 provided in part V;
- 4 (6) The power of the court under section -702 to
5 require, dispense with, or modify or terminate a bond;
- 6 (7) The power of the court under section -708(b) to
7 adjust a trustee's compensation, specified in the
8 terms of the trust, that is unreasonably low or high;
- 9 (8) The duty under section -813(c)(2) and (3) to notify
10 qualified beneficiaries of an irrevocable trust of the
11 existence of the trust, of the identity of the
12 trustee, and of their right to request trustee
13 reports;
- 14 (9) The duty under section -813(b) to respond to the
15 request of a qualified beneficiary of an irrevocable
16 trust for trustee reports and other information
17 reasonably related to the administration of a trust;
- 18 (10) The effect of an exculpatory term under
19 section -1008;
- 20 (11) The rights under sections -1010 through -1013 of
21 a person other than a trustee or beneficiary;



(12) Periods of limitation for commencing a judicial proceeding;

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

(14) The subject matter jurisdiction of the court and venue for commencing a proceeding, as provided in sections -203 and -204.

§ -106 Common law of trusts; principles of equity. The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another law of this State.

§ -107 Governing law. The meaning and effect of the terms of a trust are determined by:

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

(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having



1 the most significant relationship to the matter at
2 issue.

3 § -108 **Principal place of administration.** (a) Without
4 precluding other means for establishing a sufficient connection
5 with the designated jurisdiction, terms of a trust designating
6 the principal place of administration are valid and controlling
7 if:

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

11 (2) All or part of the administration occurs in the
12 designated jurisdiction.

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

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



1 (d) The trustee shall notify the qualified beneficiaries
2 of a proposed transfer of a trust's principal place of
3 administration no less than sixty days before initiating the
4 transfer. The notice of proposed transfer shall include:

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

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

9 (3) An explanation of the reasons for the proposed
10 transfer;

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

13 (5) The date, no less than sixty days after the giving of
14 the notice, by which the qualified beneficiary shall
15 notify the trustee of an objection to the proposed
16 transfer.

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



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

5 **§ -109 Methods and waiver of notice.** (a) Notice to a
6 person under this chapter or the sending of a document to a
7 person under this chapter shall be accomplished in a manner
8 reasonably suitable under the circumstances and likely to result
9 in receipt of the notice or document. Permissible methods of
10 notice or for sending a document include first-class mail,
11 personal delivery, delivery to the person's last known place of
12 residence or place of business, or a properly directed
13 electronic message.

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

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



1 (d) Notice of a judicial proceeding shall be given as
2 provided in the Hawaii probate rules.

3 **§ -110 Others treated as qualified beneficiaries. (a)**

4 A charitable organization expressly designated to receive
5 distributions under the terms of a charitable trust has the
6 rights of a qualified beneficiary under this chapter if the
7 charitable organization, on the date the charitable
8 organization's qualification is being determined:

9 (1) Is a distributee or permissible distributee of trust
10 income or principal;

11 (2) Would be a distributee or permissible distributee of
12 trust income or principal upon the termination of the
13 interests of other distributees or permissible
14 distributees then receiving or eligible to receive
15 distributions; or

16 (3) Would be a distributee or permissible distributee of
17 trust income or principal if the trust terminated on
18 that date.

19 (b) A person appointed to enforce a trust created for the
20 care of an animal or another noncharitable purpose, as provided



1 in section -408 or -409, has the rights of a qualified
2 beneficiary under this chapter.

3 (c) The attorney general of this State has the rights of a
4 qualified beneficiary with respect to a charitable trust having
5 its principal place of administration in this State.

6 § -111 **Nonjudicial settlement agreements.** (a) Except
7 as otherwise provided in subsection (b), interested persons may
8 enter into a binding nonjudicial settlement agreement with
9 respect to any matter involving a trust.

10 (b) A nonjudicial settlement agreement is valid only to
11 the extent it does not violate a material purpose of the trust
12 and includes terms and conditions that could be properly
13 approved by the court under this chapter or other applicable
14 law.

15 (c) Matters that may be resolved by a nonjudicial
16 settlement agreement include, but are not limited to:

17 (1) The interpretation or construction of the terms of the
18 trust;

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



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

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

6 (5) Transfer of a trust's principal place of
7 administration; and

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

10 (d) Any interested person may request the court to approve
11 a nonjudicial settlement agreement, to determine whether the
12 representation as provided in part III was adequate, and to
13 determine whether the agreement contains terms and conditions
14 that the court could have properly approved.

15 (e) For purposes of this section, "interested person"
16 means a person whose consent would be required in order to
17 achieve a binding settlement were the settlement to be approved
18 by the court.

19 § -112 Rules of construction. The rules of construction
20 that apply in this State to the interpretation of and
21 disposition of property by will also apply, as appropriate, to



1 the interpretation of the terms of a trust and the disposition
2 of the trust property.

3 **§ -113 Insurable interest of trustee.** (a) A trustee of
4 a trust has an insurable interest in the life of an individual
5 insured under a life insurance policy that is owned by the
6 trustee of the trust acting in a fiduciary capacity or that
7 designates the trust itself as the owner if, on the date the
8 policy is issued:

9 (1) The insured is:

10 (A) A settlor of the trust; or

11 (B) An individual in whom a settlor of the trust has,
12 or would have had if living when the policy was
13 issued, an insurable interest; and

14 (2) The life insurance proceeds are primarily for the
15 benefit of one or more trust beneficiaries who have an
16 insurable interest in the life of the insured.

17 (b) This section applies to any trust existing before, on,
18 or after the effective date of this section, regardless of the
19 effective date of the governing instrument under which the trust
20 was created, but only as to a life insurance policy that is in



1 force and for which an insured is alive on or after the
2 effective date of this section.

3 (c) As used in this section, "settlor" means a person that
4 executes a trust instrument. "Settlor" includes a person for
5 whom a fiduciary or agent is acting.

6 **PART II. JUDICIAL PROCEEDINGS**

7 **§ -201 Role of court in administration of trust. (a)**

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

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

13 (c) A judicial proceeding involving a trust may relate to
14 any matter involving the internal affairs of trusts, including a
15 proceeding to:

16 (1) Appoint or remove a trustee;

17 (2) Review or determine a trustee's compensation;

18 (3) Review a trustee's report or accounting or compel a
19 trustee to report or account;

20 (4) Ascertain beneficiaries;



1 (5) Determine any question arising in the administration
2 or distribution of any trust, including questions of
3 construction of trust terms;

4 (6) Request instructions to trustees; and

5 (7) Determine the existence or nonexistence of any
6 immunity, power, privilege, duty, or right.

7 (d) A judicial proceeding is initiated by filing a
8 petition in the court and giving notice pursuant to
9 section -109 to interested persons. The court may order
10 notification to additional persons.

11 **§ -202 Jurisdiction over trustee and beneficiary.** (a)

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

17 (b) With respect to their interests in the trust, the
18 beneficiaries of a trust having its principal place of
19 administration in this State are subject to the jurisdiction of
20 the courts of this State regarding any matter involving the
21 trust.



1 (c) By accepting a distribution from such a trust, the
2 recipient submits personally to the jurisdiction of the courts
3 of this State regarding any matter involving the trust.

4 (d) By accepting the delegation of a trust function from
5 the trustee of a trust having its principal place of
6 administration in this State, the agent submits to the
7 jurisdiction of the courts of this State regarding any matter
8 involving the trust.

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

12 **§ -203 Subject matter jurisdiction.** (a) The court has
13 exclusive jurisdiction of proceedings in this State concerning
14 the administration of a trust.

15 (b) The court has concurrent jurisdiction with other
16 courts of this State of actions and proceedings involving a
17 trust, including:

18 (1) Proceedings to determine the existence or nonexistence
19 of trusts created other than by will;

20 (2) Actions by or against creditors or debtors of trusts;

21 and



(3) Other actions and proceedings involving trustees and third parties.

§ -204 Venue. (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the judicial circuit of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the judicial circuit in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in:

(1) A judicial circuit of this State in which a beneficiary resides;

(2) A judicial circuit in which any trust property is located;

(3) If the trust is created by will, the judicial circuit in which the decedent's estate was or is being administered; or

(4) The judicial circuit where the nominated trustee resides or has its principal place of business.



1 **PART III. REPRESENTATION**

2 **§ -301 Representation; basic effect.** (a) Notice to a
3 person who may represent and bind another person under this part
4 has the same effect as if notice were given directly to the
5 other person.

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

11 (c) Except as otherwise provided in sections -411
12 and -602, a person who under this part may represent a settlor
13 who lacks capacity may receive notice and give a binding consent
14 on the settlor's behalf.

15 (d) A settlor shall not represent and bind a beneficiary
16 under this part with respect to the termination or modification
17 of a trust under section -411(a).

18 **§ -302 Representation by holder of power of appointment.**
19 To the extent there is no material conflict of interest between
20 the holder of a power of appointment and the persons represented
21 with respect to the particular question or dispute, the holder



1 may represent and bind persons whose interests, as permissible
2 appointees, takers in default, or otherwise, are subject to the
3 power.

4 **§ -303 Representation by fiduciaries and parents.** To
5 the extent there is no conflict of interest between the
6 representative and the person represented or among those being
7 represented with respect to a particular question or dispute:

8 (1) A conservator may represent and bind the estate that
9 the conservator controls;

10 (2) A guardian may represent and bind the ward if a
11 conservator of the ward's estate has not been
12 appointed;

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

16 (4) A trustee may represent and bind the beneficiaries of
17 the trust;

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

20 (6) A parent may represent and bind the parent's minor or
21 unborn child if a conservator or guardian for the



1 child has not been appointed. The parent entitled to
2 represent and bind the child is determined in the
3 following order of priority:

4 (A) The parent who is a lineal descendant of a
5 settlor;

6 (B) The parent who is a beneficiary of the trust that
7 is the subject of the representation;

8 (C) The parent with legal custody of the child; and

9 (D) If one parent cannot be determined pursuant to
10 the preceding criteria and if a disagreement
11 arises between the parties seeking to represent
12 the same child, a guardian ad litem shall be
13 appointed to represent the minor child; and

14 (7) A qualified beneficiary may represent and bind any
15 beneficiary who may succeed to the qualified
16 beneficiary's interest under the terms of the trust or
17 pursuant to the exercise of a power of appointment.

18 **§ -304 Representation by person having substantially**
19 **identical interest.** Unless otherwise represented, a minor,
20 incapacitated, or unborn individual, or a person whose identity
21 or location is unknown and not reasonably ascertainable, may be



1 represented by and bound by another having a substantially
2 identical interest with respect to the particular question or
3 dispute, but only to the extent that there is no material
4 conflict of interest between the representative and the person
5 represented.

6 **§ -305 Appointment of guardian ad litem.** (a) If the
7 court determines that an interest is not represented under this
8 part, or that the otherwise available representation might be
9 inadequate, the court may appoint a guardian ad litem to receive
10 notice, give consent, and otherwise represent, bind, and act on
11 behalf of a minor, incapacitated, or unborn individual, or a
12 person whose identity or location is unknown. A guardian ad
13 litem may be appointed to represent several persons or
14 interests.

15 (b) A guardian ad litem may act on behalf of the
16 individual represented with respect to any matter arising under
17 this chapter, regardless of whether a judicial proceeding
18 concerning the trust is pending.

19 (c) In making decisions, a guardian ad litem may consider
20 general benefits accruing to the living members of the
21 individual's family.



PART IV. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

§ -401 **Methods of creating trust.** A trust may be created by:

- (1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee;
- (3) Exercise of a power of appointment in favor of a trustee; or
- (4) A court pursuant to its statutory or equitable powers.

§ -402 Requirements for creation. (a) A trust is created only if:

- (1) The settlor has capacity to create a trust;
- (2) The settlor indicates an intention to create the trust;
- (3) The trust has a definite beneficiary or is:
 - (A) A charitable trust;
 - (B) A trust for the care of an animal, as provided in section -408; or



1 (C) A trust for a noncharitable purpose, as provided
2 in section -409; and

3 (4) The trustee has duties to perform.

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

7 (c) A power in a trustee, or in another person under the
8 terms of the trust, to select a beneficiary from an indefinite
9 class is valid. If the power is not exercised within a
10 reasonable time, the power fails and the property subject to the
11 power passes to the persons who would have taken the property
12 had the power not been conferred.

13 (d) Notwithstanding subsection (a)(1), a trust created by
14 an agent under power of attorney is valid if:

15 (1) The trust is created by an agent of the settlor under
16 a power of attorney that specifically authorizes the
17 creation of a trust; and

18 (2) The settlor had capacity to create a trust when the
19 power of attorney was executed.

20 § -403 **Trusts created in other jurisdictions.** A trust
21 not created by will is validly created if its creation complies



1 with the law of the jurisdiction in which the trust instrument
2 was executed, or the law of the jurisdiction in which, at the
3 time of creation:

4 (1) The settlor was domiciled, had a place of abode, or
5 was a national;

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

7 (3) Any trust property was located.

8 Unless otherwise provided in the trust instrument, this
9 section shall also apply to trust amendments.

10 § -404 **Trust purposes.** A trust may be created only to
11 the extent its purposes are lawful, not contrary to public
12 policy, and possible to achieve. A trust and its terms shall be
13 for the benefit of its beneficiaries, subject to the provisions
14 of the trust.

15 § -405 **Charitable purposes; enforcement.** (a) A
16 charitable trust may be created for the relief of poverty, the
17 advancement of education or religion, the promotion of health,
18 governmental or municipal purposes, or other purposes the
19 achievement of which is beneficial to the community.

20 (b) If the terms of a charitable trust do not indicate or
21 otherwise provide for selection of a particular charitable



1 purpose or beneficiary, the trustee or other person authorized
2 by the terms of the trust or, if none, the court may select one
3 or more charitable purposes or beneficiaries. The selection
4 shall be consistent with the settlor's intention to the extent
5 it can be ascertained.

6 (c) The settlor of a charitable trust, the trustee, a
7 designated beneficiary, if any, or the attorney general may
8 maintain a proceeding to enforce the trust.

9 § -406 **Creation of trust induced by fraud, duress, or**
10 **undue influence.** A trust is void to the extent its creation was
11 induced by fraud, duress, or undue influence.

12 § -407 **Evidence of oral trust.** (a) Except as required
13 by law other than this chapter, a trust need not be evidenced by
14 a trust instrument, but the creation of an oral trust and its
15 terms, including any amendments thereto, may be established only
16 by clear and convincing evidence.

17 (b) Except as required by law other than this chapter, a
18 trust need not be evidenced by a trust instrument, but the
19 establishment of a missing trust and its terms may be
20 established by clear and convincing evidence. In the absence of
21 clear and convincing evidence to establish the existence or



1 terms and provisions of a missing trust, the existence of or the
2 terms and provisions of a missing trust may be established by
3 court order; provided that, in the circumstances and upon
4 appropriate notice, it would be fair and equitable to do so.
5 This section does not preclude a court from ordering relief
6 otherwise allowed by law.

7 **§ -408 Trust for care of animal.** (a) A trust for the
8 care of one or more designated domestic or pet animals shall be
9 valid. The trust terminates when no living animal is covered by
10 the trust. A governing instrument shall be liberally construed
11 to bring the transfer within this section, to presume against
12 the precatory or honorary nature of its disposition, and to
13 carry out the general intent of the transferor. Extrinsic
14 evidence shall be admissible in determining the transferor's
15 intent.

16 (b) A trust for the care of one or more designated
17 domestic or pet animals shall be subject to the following
18 provisions:

- 19 (1) Except as expressly provided otherwise in the
20 instrument creating the trust, and notwithstanding
21 section -816, no portion of the principal or income



1 of the trust may be converted to the use of the
2 trustee or to a use contrary to the trust's purposes
3 or for the benefit of a covered animal;

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

6 (A) As directed in the trust instrument;

7 (B) If there is no direction in the trust instrument
8 and if the trust was created in a non-residuary
9 clause in the transferor's will, then under the
10 residuary clause in the transferor's will; and

11 (C) If no taker is produced by the application of
12 subparagraph (A) or (B), then to the transferor's
13 heirs, determined according to section 560:2-711;

14 (3) A trust authorized by this section may be enforced by
15 a person appointed in the terms of the trust or, if no
16 person is so appointed, by a person appointed by the
17 court. A person having an interest in the welfare of
18 the animal may request the court to appoint a person
19 to enforce the trust or to remove a person appointed;

20 (4) Except as ordered by the court or required by the
21 trust instrument, no filing, report, registration,



1 periodic accounting, separate maintenance of funds,
2 appointment, or fee shall be required by reason of the
3 existence of the fiduciary relationship of the
4 trustee;

5 (5) The court may reduce the amount of the property
6 transferred if it determines that the amount
7 substantially exceeds the amount required for the
8 intended use and the court finds that there will be no
9 substantial adverse impact in the care, maintenance,
10 health, or appearance of the designated domestic or
11 pet animal; provided that the amount of the reduction,
12 if any, shall pass as unexpended trust property under
13 paragraph (2);

14 (6) If a trustee is not designated or no designated
15 trustee is willing and able to serve, the court shall
16 name a trustee. The court may order the transfer of
17 the property to another trustee if the transfer is
18 necessary to ensure that the intended use is carried
19 out and if a successor is not designated in the trust
20 instrument or if no designated successor trustee
21 agrees to serve and is able to serve. The court may



1 also make other orders and determinations as are
2 advisable to carry out the intent of the transferor
3 and the purpose of this section; and

4 (7) The trust is exempt from the operation of chapter 525,
5 the Uniform Statutory Rule Against Perpetuities.

6 **§ -409 Noncharitable trust without ascertainable**

7 **beneficiary.** Except as otherwise provided in section -408 or
8 by other law, the following rules apply:

9 (1) A trust may be created for a noncharitable purpose
10 without a definite or definitely ascertainable
11 beneficiary or for a noncharitable but otherwise valid
12 purpose to be selected by the trustee;

13 (2) A trust authorized by this section may be enforced by
14 a person appointed in the terms of the trust or, if no
15 person is so appointed, by a person appointed by the
16 court; and

17 (3) Property of a trust authorized by this section may be
18 applied only to its intended use, except to the extent
19 the court determines that the value of the trust
20 property exceeds the amount required for the intended
21 use; provided that, except as otherwise provided in



1 the terms of the trust, property not required for the
2 intended use shall be distributed to the settlor, if
3 then living; otherwise pursuant to the terms of the
4 settlor's will; or, if none, to the settlor's
5 successors in interest.

6 § -410 Modification or termination of trust; proceedings
7 for approval or disapproval. . (a) In addition to the methods of
8 termination prescribed by sections -411 through -414, a
9 trust terminates to the extent the trust is revoked or expires
10 pursuant to its terms, no purpose of the trust remains to be
11 achieved, or the purposes of the trust have become unlawful,
12 contrary to public policy, or impossible to achieve.

13 (b) A proceeding to approve or disapprove a proposed
14 modification or termination under sections -411
15 through -416, or trust combination or division under
16 section -417, may be commenced by a trustee or beneficiary,
17 and a proceeding to approve or disapprove a proposed
18 modification or termination under section -411 may be
19 commenced by the settlor. The settlor of a charitable trust may
20 maintain a proceeding to modify the trust under section -413.



1 § -411 Modification or termination of noncharitable
2 irrevocable trust by consent. (a) A noncharitable irrevocable
3 trust may be modified or terminated upon consent of the settlor
4 and all beneficiaries, even if the modification or termination
5 is inconsistent with a material purpose of the trust. A
6 settlor's power to consent to a trust's modification or
7 termination may be exercised by:

8 (1) An agent under a power of attorney only to the extent
9 expressly authorized by the power of attorney or the
10 terms of the trust;

11 (2) The settlor's conservator with the approval of the
12 court supervising the conservatorship if an agent is
13 not so authorized; or

14 (3) The settlor's guardian with the approval of the court
15 supervising the guardianship if an agent is not so
16 authorized and a conservator has not been appointed.

17 This subsection does not apply to irrevocable trusts created
18 before or to revocable trusts that become irrevocable before the
19 effective date of this chapter.

20 (b) A noncharitable irrevocable trust may be terminated
21 upon consent of all of the beneficiaries if the court concludes



1 that continuance of the trust is not necessary to achieve any
2 material purpose of the trust. A noncharitable irrevocable
3 trust may be modified upon consent of all of the beneficiaries
4 if the court concludes that modification is not inconsistent
5 with a material purpose of the trust.

6 (c) It is a question of fact whether a spendthrift
7 provision constitutes a material purpose of the trust.

8 (d) Upon termination of a trust under subsection (a)
9 or (b), the trustee shall distribute the trust property as
10 agreed to by the beneficiaries.

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

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

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

20 § -412 Modification or termination because of
21 unanticipated circumstances or inability to administer trust



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

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

11 (c) Upon termination of a trust under this section, the
12 trustee shall distribute the trust property in a manner
13 consistent with the purposes of the trust.

14 **§ -413 Cy pres.** (a) Except as otherwise provided in
15 subsection (b), if a particular charitable purpose becomes
16 unlawful, impracticable, impossible to achieve, or wasteful:

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

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

20 (3) The court may apply cy pres to modify or terminate the
21 trust by directing that the trust property be applied



1 or distributed, in whole or in part, in a manner
2 consistent with the settlor's charitable purposes.

3 (b) Subsection (a) shall not apply if the document
4 creating the charitable interest expressly provides for an
5 alternate disposition of the charitable interest if the
6 charitable purpose becomes unlawful, impracticable, impossible
7 to achieve, or wasteful. A general residuary disposition by
8 trust shall not be considered an express provision for an
9 alternate disposition. In addition, if the alternative plan is
10 also a charitable trust and that trust fails, the intention
11 shown in the original plan shall prevail in the application of
12 this section.

13 (c) In every cy pres proceeding, the attorney general
14 shall be notified and given an opportunity to be heard.

15 **§ -414 Modification or termination of uneconomic trust.**

16 (a) After notice to the qualified beneficiaries, the trustee of
17 a trust consisting of trust property having a total value of
18 less than \$100,000 may terminate the trust if the trustee
19 concludes that the value of the trust property is insufficient
20 to justify the cost of administration.



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

5 (c) Upon termination of a trust under this section, the
6 trustee shall distribute the trust property in a manner
7 consistent with the purposes of the trust.

8 (d) This section shall not apply to an easement for
9 conservation or preservation.

10 **§ -415 Reformation to correct mistakes.** The court may
11 reform the terms of a trust, even if unambiguous, to conform the
12 terms to the settlor's intention if it is proved by clear and
13 convincing evidence what the settlor's intention was and that
14 the terms of the trust were affected by a mistake of fact or
15 law, whether in expression or inducement.

16 **§ -416 Modification to achieve settlor's tax objectives.**
17 To achieve the settlor's tax objectives, the court may modify
18 the terms of a trust in a manner that is not contrary to the
19 settlor's probable intention. The court may provide that the
20 modification has retroactive effect.



1 § -417 **Combination and division of trusts.** After notice
2 to the qualified beneficiaries, a trustee may combine two or
3 more trusts into a single trust or divide a trust into two or
4 more separate trusts, if the result does not impair rights of
5 any beneficiary or adversely affect achievement of the purposes
6 of the trust. Two or more trusts may be combined into a single
7 trust if the interests of each beneficiary in the trust
8 resulting from the combination are substantially the same as the
9 combined interests of the beneficiary in the trusts before the
10 combination. The terms of each new trust created by a division
11 under this section shall provide, in the aggregate, for the same
12 succession of interests and beneficiaries as are provided in the
13 original trust.

14 **PART V. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS**

15 § -501 **Rights of beneficiary's creditor or assignee.** To
16 the extent a beneficiary's interest is not subject to a
17 spendthrift provision, the court may authorize a creditor or
18 assignee of the beneficiary to reach the beneficiary's interest
19 by attachment of present or future distributions to or for the
20 benefit of the beneficiary or other means. The court may limit
21 the award to relief as is appropriate under the circumstances.



1 **§ -502 Spendthrift provision.** (a) A spendthrift

2 provision is valid only if it restrains both voluntary and
3 involuntary transfer of a beneficiary's interest.

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

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

13 **§ -503 Exceptions to spendthrift provision.** (a) A
14 spendthrift provision is unenforceable against:

15 (1) A beneficiary's child who has a judgment or court
16 order against the beneficiary for support or
17 maintenance; and

18 (2) A claim of this State or the United States to the
19 extent a law of this State or federal law so provides.

20 (b) A claimant against which a spendthrift provision
21 cannot be enforced may obtain from a court an order attaching



1 present or future distributions to or for the benefit of the
2 beneficiary. The court may limit the award to relief as is
3 appropriate under the circumstances.

4 **§ -504 Discretionary trusts; effect of standard. (a)**

5 Except as otherwise provided in subsection (b), regardless of
6 whether a trust contains a spendthrift provision, a creditor of
7 a beneficiary shall not compel a distribution that is subject to
8 the trustee's discretion, even if:

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

11 (2) The trustee has abused the discretion.

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

14 (1) A distribution may be ordered by the court to satisfy
15 a judgment or court order against the beneficiary for
16 support or maintenance of the beneficiary's child; and

17 (2) The court shall direct the trustee to pay to or for
18 the benefit of the beneficiary's child, an amount as
19 is equitable under the circumstances but no more than
20 the amount the trustee would have been required to
21 distribute to or for the benefit of the beneficiary



1 had the trustee complied with the standard or not
2 abused the discretion.

3 (c) This section shall not limit the right of a
4 beneficiary to maintain a judicial proceeding against a trustee
5 for an abuse of discretion or failure to comply with a standard
6 for distribution.

7 (d) If the trustee's or cotrustee's discretion to make
8 distributions for the trustee's or cotrustee's own benefit is
9 limited by an ascertainable standard, a creditor shall not reach
10 or compel distribution of the beneficial interest except to the
11 extent the interest would be subject to the creditor's claim
12 were the beneficiary not acting as trustee or cotrustee.

13 **§ -505 Creditor's claim against settlor. (a)**

14 Regardless of whether the terms of a trust contain a spendthrift
15 provision, the following rules shall apply:

16 (1) During the lifetime of the settlor, the property of a
17 revocable trust is subject to claims of the settlor's
18 creditors;

19 (2) Except as provided in chapter 554G, with respect to an
20 irrevocable trust, a creditor or assignee of the
21 settlor may reach the maximum amount that can be



1 distributed to or for the settlor's benefit. If a
2 trust has more than one settlor, the amount the
3 creditor or assignee of a particular settlor may reach
4 shall not exceed the settlor's interest in the portion
5 of the trust attributable to that settlor's
6 contribution; and

7 (3) After the death of a settlor, and subject to the
8 settlor's right to direct the source from which
9 liabilities will be paid, the property of a trust that
10 was revocable at the settlor's death is subject to
11 claims of the settlor's creditors, costs of
12 administration of the settlor's estate, the expenses
13 of the settlor's funeral and disposal of remains, and
14 statutory allowances to a surviving spouse or
15 reciprocal beneficiary and children to the extent the
16 settlor's probate estate is inadequate to satisfy
17 those claims, costs, expenses, and allowances.

18 (b) For purposes of this section:

19 (1) During the period the power may be exercised, the
20 holder of a power of withdrawal is treated in the same



1 manner as the settlor of a revocable trust to the
2 extent of the property subject to the power; and

3 (2) Upon the lapse, release, or waiver of the power, the
4 holder is treated as the settlor of the trust only to
5 the extent the value of the property affected by the
6 lapse, release, or waiver exceeds the greater of the
7 amount specified in section 2041(b)(2) or 2514(e) of
8 the Internal Revenue Code of 1986, as amended, or
9 section 2503(b) of the Internal Revenue Code of 1986,
10 as amended, in each case as in effect on the effective
11 date of this chapter.

12 (c) This section shall not apply to trusts created under
13 chapter 554G.

14 **§ -506 Overdue distribution.** (a) Regardless of whether
15 a trust contains a spendthrift provision, a creditor or assignee
16 of a beneficiary may reach a mandatory distribution of income or
17 principal, including a distribution upon termination of the
18 trust, if the trustee has not made the distribution to the
19 beneficiary within a reasonable time after the designated
20 distribution date.



(b) As used in this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust.

"Mandatory distribution" does not include a distribution subject to the exercise of the trustee's discretion even if:

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

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

§ -507 Personal obligations of trustee. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

PART VI. REVOCABLE TRUSTS

§ -601 Capacity of settlor of revocable trust. The capacity required to create or add property to a revocable trust is the same as that required to make a will. Unless otherwise altered by the terms of the trust pursuant to section -602(c), the capacity required to amend, revoke, or direct the actions of



1 the trustee of a revocable trust is also the same as that
2 required to make a will.

3 **§ -602 Revocation or amendment of revocable trust. (a)**

4 Unless the terms of a trust expressly provide that the trust is
5 irrevocable, the settlor may revoke or amend the trust. This
6 subsection shall not apply to a trust created under an
7 instrument executed before the effective date of this chapter.

8 (b) Unless the terms of a trust expressly provide
9 otherwise, if a revocable trust is created or funded by more
10 than one settlor:

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

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

20 (3) Upon the revocation or amendment of the trust by fewer
21 than all of the settlors, the trustee shall promptly



1 notify the other settlors of the revocation or
2 amendment.

3 (c) The settlor may revoke or amend a revocable trust by
4 substantial compliance with a method provided in the terms of
5 the trust, including requiring a higher level of capacity to
6 amend or revoke, or, if the terms of the trust do not provide a
7 method of amendment or revocation, by any written and signed
8 method manifesting clear and convincing evidence of the
9 settlor's intent.

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

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

16 (f) A conservator of the settlor may exercise a settlor's
17 powers with respect to revocation, amendment, or distribution of
18 trust property only with the approval of the court supervising
19 the conservatorship.

20 (g) A trustee who does not have actual knowledge that a
21 trust has been revoked or amended is not liable to the settlor



1 or settlor's successors in interest for distributions made and
2 other actions taken on the assumption that the trust had not
3 been amended or revoked.

4 **§ -603 Settlor's powers; powers of withdrawal. (a)**

5 While the settlor of a revocable trust is alive, rights of the
6 beneficiaries are subject to the control of the settlor, the
7 duties of the trustee are owed exclusively to the settlor, and
8 beneficiaries other than the settlor have no right to receive
9 notice, information, or reports under section -813.

10 (b) The rights of the beneficiaries with respect to
11 property that is subject to a power of withdrawal are subject to
12 the control of the holder of the power during the period that
13 the power may be exercised, and the duties of the trustee are
14 owed exclusively to the holder of a power of withdrawal with
15 respect to the property that is subject to the power.

16 **§ -604 Limitation on action contesting validity of**

17 **revocable trust; distribution of trust property. (a)** A person
18 may commence a judicial proceeding after the settlor's death to
19 contest the validity of a trust that was revocable at the
20 settlor's death within the earlier of:



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

2 (2) Ninety days after the trustee sent the person a copy
3 of the trust instrument and a notice informing the
4 person of the trust's existence, of the trustee's name
5 and address, and of the time allowed for commencing a
6 proceeding.

7 (b) Upon the death of the settlor of a trust that was
8 revocable at the settlor's death, the trustee may proceed to
9 distribute the trust property in accordance with the terms of
10 the trust. The trustee shall not be subject to liability for
11 doing so unless:

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

14 (2) A potential contestant has notified the trustee of a
15 possible judicial proceeding to contest the trust and
16 a judicial proceeding is commenced within sixty days
17 after the contestant sent the notification.

18 (c) A beneficiary of a trust that is determined to have
19 been invalid is liable to return any distribution received.



PART VII. OFFICE OF TRUSTEE

§ -701 Accepting or declining trusteeship. (a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

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

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

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

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

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a



1 rejection of the trusteeship to the settlor or, if the
2 settlor is dead or lacks capacity, to the designated
3 cotrustee, or, if none, to the successor trustee, or,
4 if none or unknown, to a qualified beneficiary; and

5 (2) Inspect or investigate trust property to determine
6 potential liability under environmental or other law
7 or for any other purpose.

8 § -702 **Trustee's bond.** (a) A trustee shall give bond
9 to secure performance of the trustee's duties only if the court
10 finds that a bond is needed to protect the interests of the
11 beneficiaries or is required by the terms of the trust and the
12 court has not dispensed with the requirement.

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

16 (c) A bank or trust company qualified under chapter 412 to
17 do trust business in this State need not give bond, even if
18 required by the terms of the trust.

19 § -703 **Cotrustees.** (a) Cotrustees who are unable to
20 reach a unanimous decision after consultation among all the
21 cotrustees may act by majority decision.



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

3 (c) Subject to the settlor's powers to direct under
4 section -808, a cotrustee shall participate in the
5 performance of a trustee's function unless the cotrustee is
6 unavailable to perform the function because of absence, illness,
7 disqualification under other law, or other temporary incapacity,
8 or the cotrustee has properly delegated the performance of the
9 function to another trustee.

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

16 (e) A cotrustee who has a conflict of interest in
17 performing any duty shall notify the other cotrustee or
18 cotrustees of the conflict and may recuse itself from the
19 transaction and the remaining cotrustee or a majority of the
20 remaining cotrustees may act for the trust.



1 (f) A trustee shall not delegate to a cotrustee the
2 performance of a function the settlor intended the trustees to
3 perform jointly. A trustee may revoke a delegation previously
4 made.

5 (g) Except as otherwise provided in subsection (h), a
6 trustee who does not join in an action of another trustee is not
7 liable for the action.

8 (h) Subject to the settlor's powers to direct under
9 section -808, each trustee shall exercise reasonable care to:

10 (1) Prevent a cotrustee from committing a serious breach
11 of trust; and

12 (2) Compel a cotrustee to redress a serious breach of
13 trust.

14 (i) A dissenting trustee who joins in an action at the
15 direction of the majority of the trustees and who notified the
16 cotrustee or cotrustees in writing of the dissent at or before
17 the time of the action shall not be liable for the action unless
18 the action is a serious breach of trust.



1 **§ -704 Vacancy in trusteeship; appointment of successor.**

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

3 (1) A person designated as trustee rejects the
4 trusteeship;

5 (2) A person designated as trustee cannot be identified,
6 cannot be located, or does not exist;

7 (3) A trustee resigns;

8 (4) A trustee is disqualified, incapacitated, or removed;

9 (5) A trustee dies; or

10 (6) A guardian or conservator is appointed for an
11 individual serving as trustee.

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

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

18 (1) By a person designated in the terms of the trust to
19 act as successor trustee or a person named in the
20 trust who has authority to appoint a successor
21 trustee;



1 (2) By a person selected by unanimous agreement of the
2 qualified beneficiaries; or

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

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

7 (1) By a person designated in the terms of the trust to
8 act as successor trustee or a person named in the
9 trust who has authority to appoint a successor
10 trustee;

11 (2) By a person selected by the charitable organizations
12 expressly designated to receive distributions under
13 the terms of the trust if the attorney general concurs
14 in the selection; or

15 (3) By a person appointed by the court.

16 (e) Regardless of whether a vacancy in a trusteeship
17 exists or is required to be filled, the court may appoint an
18 additional trustee or special fiduciary whenever the court
19 considers the appointment necessary for the administration of
20 the trust.



1 § -705 **Resignation of trustee.** (a) A trustee may
2 resign:

3 (1) For a revocable trust, upon at least thirty days'
4 notice to the settlor, if living, or if incapacitated,
5 to the settlor's duly appointed agent or conservator,
6 if any, and all cotrustees or, if none, to the
7 designated successor trustee or trustees;

8 (2) For an irrevocable trust, upon at least thirty days'
9 notice to the qualified beneficiaries, the settlor, if
10 living, and all cotrustees or, if none, to the
11 designated successor trustee or trustees; or

12 (3) With the approval of the court.

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

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

20 (d) A trustee may seek release and discharge directly from
21 the beneficiaries or the court.



1 § -706 Removal of trustee. (a) For an irrevocable
2 trust, a cotrustee or a qualified beneficiary, or in the case of
3 a charitable trust, the attorney general, may request the court
4 to remove a trustee, or a trustee may be removed by the court on
5 its own initiative. In the case of an irrevocable trust in
6 which the settlor has a retained interest, the settlor, the
7 settlor's conservator or guardian, or the settlor's duly
8 authorized agent under a durable power of attorney may also
9 request the court to remove a trustee.

10 (b) For a revocable trust, the settlor, the settlor's
11 conservator or guardian, the settlor's duly authorized agent
12 under a durable power of attorney, or a cotrustee may request
13 the court to remove a trustee, or a trustee may be removed by
14 the court on its own initiative.

15 (c) The court may remove a trustee if:

16 (1) The trustee has committed a serious breach of trust;

17 (2) Lack of cooperation among cotrustees substantially
18 impairs the administration of the trust;

19 (3) Because of unfitness, unwillingness, persistent
20 failure of the trustee to administer the trust

21 effectively, or any other reason, the court determines



1 removal of the trustee best serves the interests of
2 the beneficiaries; or

3 (4) Removal of the trustee best serves the interests of
4 all beneficiaries and:

5 (A) There has been a substantial change of
6 circumstances or removal is requested by all of
7 the qualified beneficiaries;

8 (B) Removal is not inconsistent with a material
9 purpose of the trust; and

10 (C) A suitable cotrustee or successor trustee is
11 available.

12 (d) Pending a final decision on a request to remove a
13 trustee, or in lieu of or in addition to removing a trustee, the
14 court may order appropriate relief under section -1001(b) as
15 may be necessary to protect the trust property or the interests
16 of the beneficiaries.

17 **§ -707 Delivery of property by former trustee. (a)**

18 Unless a cotrustee remains in office or the court otherwise
19 orders, and until the trust property is delivered to a successor
20 trustee, or other person entitled to it, a trustee who has



1 resigned or been removed has the duties of a trustee and the
2 powers necessary to protect the trust property.

3 (b) A trustee who has resigned or been removed shall,
4 within a reasonable time, deliver the trust property within the
5 trustee's possession to the cotrustee, successor trustee, or
6 other person entitled to it.

7 **§ -708 Compensation of trustee.** (a) A trustee's
8 compensation shall be as set forth in sections 607-18
9 and 607-20, as appropriate.

10 (b) On petition of an interested person, after notice to
11 all interested persons, the court may review the propriety of
12 employment of any person by a trustee, including any attorney,
13 auditor, investment advisor, or other specialized agent or
14 assistant; the reasonableness of the compensation of any person
15 so employed; the reasonableness of the determination of trust
16 estate value or income made by the trustee for the purpose of
17 computing the fee allowed by sections 607-18 and 607-20; and the
18 reasonableness of any additional compensation for special
19 services under sections 607-18 and 607-20. Any person who has
20 received excessive compensation from a trust may be ordered to
21 make appropriate refunds.



1 **§ -709 Reimbursement of expenses.** (a) A trustee or
2 designated trustee who acts in good faith is entitled to
3 reimbursement out of the trust property, with interest as
4 appropriate, for:

5 (1) Expenses that were properly incurred in the
6 administration of the trust, including the defense or
7 prosecution of any action, whether successful or not,
8 unless the trustee is determined to have wilfully or
9 wantonly committed a material breach of trust; or

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

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

17 **PART VIII. DUTIES AND POWERS OF TRUSTEE**

18 **§ -801 Duty to administer trust.** Upon acceptance of a
19 trusteeship, the trustee shall administer the trust in good
20 faith, in accordance with its terms and purposes and the



1 interests of the beneficiaries, and in accordance with this
2 chapter.

3 **§ -802 Duty of loyalty.** (a) A trustee shall administer
4 the trust solely in the interests of the beneficiaries.

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

13 (1) The transaction was authorized by the terms of the
14 trust;

15 (2) The transaction was approved by the court;

16 (3) The beneficiary did not commence a judicial proceeding
17 within the time allowed by section -1005;

18 (4) The beneficiary consented to the trustee's conduct,
19 ratified the transaction, or released the trustee in
20 compliance with section -1009; or



1 (5) The transaction involves a contract entered into or
2 claim acquired by the trustee before the person became
3 or contemplated becoming a trustee.

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

8 (1) The trustee's spouse, or the spouse's descendants,
9 siblings, or ancestors, and their spouses;

10 (2) The trustee's descendants, siblings, ancestors, or
11 their spouses;

12 (3) An agent or attorney of the trustee;

13 (4) A corporation or other person or enterprise in which
14 the trustee has such a substantial interest that it
15 might affect the trustee's best judgment; or

16 (5) A corporation or other person or enterprise that has
17 such a substantial interest in the trustee that it
18 might affect the trustee's best judgment.

19 (d) A transaction not concerning trust property in which
20 the trustee engages in the trustee's individual capacity
21 involves a conflict between personal and fiduciary interests if



1 the transaction concerns an opportunity properly belonging to
2 the trust.

3 (e) An investment by a trustee in securities of an
4 investment company or investment trust to which the trustee or
5 its affiliate provides services in a capacity other than as
6 trustee is not presumed to be affected by a conflict between
7 personal and fiduciary interests if the investment otherwise
8 complies with the prudent investor rule of part IX. In addition
9 to its compensation for acting as trustee, the trustee or its
10 affiliate may be compensated by the investment company or
11 investment trust for providing those services out of fees
12 charged to the trust. If the trustee or its affiliate receives
13 compensation from the investment company or investment trust for
14 providing investment advisory or investment management services,
15 the trustee shall at least annually notify the persons entitled
16 under section -813 to receive a copy of the trustee's annual
17 report of the rate and method by which that compensation was
18 determined.

19 (f) In voting shares of stock or in exercising powers of
20 control over similar interests in other forms of business
21 entities, the trustee shall act in the best interests of the



1 beneficiaries. If the trust is the sole owner of a corporation
2 or another form of a business entity, the trustee shall elect or
3 appoint directors or other managers who will manage the
4 corporation or business entity in the best interests of the
5 beneficiaries.

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

8 (1) An agreement between a trustee and a beneficiary
9 relating to the appointment or compensation of the
10 trustee;

11 (2) Payment of reasonable compensation to the trustee;

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

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

19 (5) An advance by the trustee of money for the protection
20 of the trust.



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

4 § -803 **Impartiality.** If a trust has two or more
5 beneficiaries, the trustee shall act impartially in investing,
6 managing, and distributing the trust property, giving due regard
7 to the beneficiaries' respective interests.

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

13 § -805 **Costs of administration.** In administering a
14 trust, the trustee may incur only costs that are reasonable in
15 relation to the trust property, the purposes of the trust, and
16 the skills of the trustee.

17 § -806 **Trustee's skills.** A trustee who has special
18 skills or expertise or is named trustee in reliance upon the
19 trustee's representation that the trustee has special skills or
20 expertise shall use those special skills or expertise.



1 § -807 **Delegation by trustee.** (a) A trustee may
2 delegate duties and powers that a prudent trustee of comparable
3 skills could properly delegate under the circumstances. The
4 trustee shall exercise reasonable care, skill, and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust;
8 and

9 (3) Periodically reviewing the agent's actions to monitor
10 the agent's performance and compliance with the terms
11 of the delegation.

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

15 (c) A trustee who complies with subsection (a) shall not
16 be liable to the beneficiaries or to the trust for an action of
17 the agent to whom the function was delegated.

18 (d) By accepting a delegation of powers or duties from the
19 trustee of a trust that is subject to the law of this State, an
20 agent submits to the jurisdiction of the courts of this State,
21 even if the agency agreement provides otherwise, and the agent



1 may be made a party to any action or proceeding if the issues
2 relate to a decision, action, or inaction of the agent.

3 (e) Upon petition of a qualified beneficiary, after notice
4 to all qualified beneficiaries, the trustee, and the agent of
5 the trustee, the court may review the employment of any agent by
6 the trustee and the reasonableness of the agent's compensation.
7 Any agent who is found to have received excess compensation from
8 a trust may be ordered to make appropriate refunds.

9 § -808 Powers to direct. (a) While a trust is
10 revocable and the settlor has capacity, the trustee may follow a
11 written direction of the settlor that is contrary to the terms
12 of the trust.

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

16 (c) Whenever the terms of a trust direct that an advisor,
17 rather than the trustee, shall have authority for certain
18 fiduciary actions, the standard of care and performance for
19 actions that are within the scope of the advisor's authority
20 under the terms of a trust shall be as follows:



1 (1) Where one or more persons are given authority by the
2 terms of a trust and accept this authority to direct,
3 consent to, or disapprove a trustee's actual or
4 proposed investment decisions, distribution decisions,
5 or any other decision of the trustee, those persons
6 shall be considered to be advisors and shall have the
7 duties and obligations of fiduciaries when exercising
8 the given authority, unless the trust provides
9 otherwise;

10 (2) If a trust provides that a trustee is to follow the
11 direction of an advisor and the trustee acts in
12 accordance with the advisor's direction, then, except
13 in cases of wilful misconduct or gross negligence on
14 the part of the trustee so directed, the trustee shall
15 not be liable for any loss resulting directly or
16 indirectly from any such act;

17 (3) If a trust provides that a trustee is to make
18 decisions with the consent of an advisor, then, except
19 in cases of wilful misconduct or gross negligence on
20 the part of the trustee, the trustee shall not be
21 liable for any loss resulting directly or indirectly



1 from any act taken or omitted as a result of the
2 advisor's failure to provide consent after having been
3 requested to do so by the trustee; and

4 (4) Whenever a trust provides that a trustee is to follow
5 the direction of an advisor with respect to investment
6 decisions, distribution decisions, or any other
7 decision of the trustee, then, except to the extent
8 that the terms of the trust provide otherwise, the
9 trustee shall have no duty to:

10 (A) Monitor the conduct of the advisor;

11 (B) Provide advice to the advisor or consult with the
12 advisor; or

13 (C) Communicate with, warn, or apprise any
14 beneficiary or third party concerning instances
15 in which the trustee would or might have
16 exercised the trustee's own discretion in a
17 manner different from the manner directed by the
18 advisor.

19 Absent clear and convincing evidence to the contrary, the
20 actions of the trustee pertaining to matters within the scope of
21 the advisor's authority, such as confirming that the advisor's



1 directions have been carried out and recording and reporting
2 actions taken at the advisor's direction, shall be presumed to
3 be administrative actions taken by the trustee solely to allow
4 the trustee to perform the duties assigned to the trustee under
5 the trust, and the administrative actions shall not be deemed to
6 constitute an undertaking by the trustee to monitor the advisor
7 or otherwise participate in actions within the scope of the
8 advisor's authority.

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

15 (e) For purposes of this section:

16 "Advisor" includes a protector that has been granted powers
17 and authority by the terms of a trust, including the power to:

18 (1) Remove and appoint trustees, advisors, trust committee
19 members, and other protectors;



(2) Modify or amend the trust to achieve a favorable tax status or to facilitate the efficient administration of the trust; and

(3) Modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust.

"Investment decision" means the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in any investment, or the valuation of nonpublicly traded investments.

§ -809 Control and protection of trust property. A trustee shall take reasonable steps to take control of and protect the trust property.

§ -810 Recordkeeping and identification of trust property. (a) A trustee shall keep adequate records of the administration of the trust.

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

(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in



1 records maintained by a party other than a trustee or
2 beneficiary.

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

6 § -811 Enforcement and defense of claims. (a) A
7 trustee shall take reasonable steps to enforce claims of the
8 trust and to defend claims against the trust.

9 (b) A trustee may abandon or assign to one or more of the
10 beneficiaries of the trust any claim that it believes is not
11 prudent to enforce.

12 § -812 Collecting trust property. (a) A trustee shall
13 take reasonable steps to compel a former trustee or other person
14 to deliver trust property to the trustee and to redress a breach
15 of trust known to the trustee to have been committed by a former
16 trustee or other person, unless the beneficiaries consent to,
17 release, or ratify the actions of the former trustee or other
18 person under section -1009.

19 (b) In addition to any other legal or equitable remedies,
20 a person who receives a distribution from a trust shall be
21 liable to return the distribution to the extent that the trustee



1 or a court subsequently determines that the person was not
2 entitled to the distribution.

3 **§ -813 Duty to inform and report.** (a) During the
4 lifetime of the settlor of a revocable trust, regardless of
5 whether the settlor has capacity to revoke the trust, the
6 trustee's duties under this section are owed exclusively to the
7 settlor. If the settlor lacks capacity to revoke the trust, a
8 trustee may satisfy the trustee's duties under this section by
9 providing information and reports to any one or more of the
10 following in the order of preference listed:

11 (1) The person or persons designated by the settlor in the
12 trust to receive information and reports on the
13 settlor's behalf;

14 (2) The settlor's conservator;

15 (3) The settlor's guardian;

16 (4) The settlor's agent under durable power of attorney;

17 or

18 (5) The settlor's spouse; provided that the spouse is a
19 beneficiary under the trust.

20 If the settlor lacks capacity to revoke the trust and there
21 are no persons listed in this subsection to whom the trustee may



1 provide information and reports, the trustee shall satisfy its
2 duties under this section by providing information and reports
3 to the qualified beneficiaries.

4 (b) After the settlor's death, a trustee shall keep the
5 qualified beneficiaries of the trust reasonably informed about
6 the administration of the trust and of the material facts
7 necessary for them to protect their interests. Unless
8 unreasonable under the circumstances, a trustee shall promptly
9 respond to a qualified beneficiary's request for information
10 related to the administration of the trust.

11 (c) After the settlor's death, a trustee:

12 (1) Upon request of a qualified beneficiary, shall
13 promptly furnish to the qualified beneficiary a copy
14 of the trust instrument;

15 (2) Within sixty days after accepting a trusteeship, shall
16 notify the qualified beneficiaries of the acceptance
17 and of the trustee's name, address, and telephone
18 number;

19 (3) Within sixty days after the date the trustee acquires
20 knowledge of the creation of an irrevocable trust or
21 the date the trustee acquires knowledge that a



1 formerly revocable trust has become irrevocable,
2 whether by the death of the settlor or otherwise,
3 shall notify the qualified beneficiaries of the
4 trust's existence, of the identity of the settlor or
5 settlers, of the right to request a copy of the trust
6 instrument, and of the right to a trustee's report as
7 provided in subsection (d); and

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

11 (d) A trustee shall send to the distributees or
12 permissible distributees of trust income or principal and other
13 qualified beneficiaries who request it, at least annually and at
14 the termination of the trust, a report of the trust property,
15 liabilities, receipts, and disbursements, including the source
16 and amount of the trustee's compensation, and a listing of the
17 trust assets and, if feasible, their respective market values.
18 Upon a vacancy in a trusteeship, unless a cotrustee remains in
19 office, a report shall be sent to the qualified beneficiaries by
20 the former trustee. A personal representative, conservator, or



1 guardian may send the qualified beneficiaries a report on behalf
2 of a deceased or incapacitated trustee.

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

8 (f) A trustee may charge a reasonable fee to a qualified
9 beneficiary for providing information under this section.

10 (g) Every trustee acting under appointment of any court or
11 under any appointment requiring the approval of any court shall,
12 except where the prior trustee, if any, was not required by
13 statute or the instrument creating the trust or appointing the
14 trustee to file an account, file annually with the court having
15 jurisdiction thereof an account showing in detail all receipts
16 and disbursements, together with a full and detailed inventory
17 of all property in the trustee's possession or under the
18 trustee's control; provided that the court, when it deems it
19 advisable in the interests of the beneficiaries, may permit the
20 accounts to be filed biennially or triennially instead of
21 annually or, if they are filed annually, may permit them to



1 accumulate to be passed upon biennially or triennially; provided
2 further that the court on its own examination or that of its
3 clerk shall, without reference to a master, pass upon the
4 accounts when the annual income does not exceed \$1,000, except
5 in the case of a final account when the court may refer the same
6 to a master, irrespective of the amount of the annual income, if
7 for any reason it is deemed proper or necessary. If any trustee
8 fails to file an account as required in this section, the clerk
9 of the court in which the trustee is required to file the
10 account shall notify the trustee promptly of the failure, and if
11 the trustee fails to file the account within thirty days after
12 the notification, the trustee shall be cited to appear before
13 the court and be required to show cause why the trustee should
14 not be punished for contempt of court as provided by
15 section 710-1077, and the trustee shall be subject to all of the
16 penalties provided in that section. The court may also, in its
17 discretion, remove the trustee.

18 (h) Unless otherwise required by the instrument creating
19 the trust, nothing in this section shall be construed to require
20 the filing of an annual account either by a trustee or trustees
21 appointed by the court as additional trustee or trustees to



1 serve with or in the place and stead of a trustee or trustees
2 appointed in the instrument creating a trust or by a trustee
3 whose appointment is made in accordance with or pursuant to the
4 instrument creating the trust where the appointment has been
5 confirmed by any court in proceedings brought to secure the
6 confirmation or approval thereof.

7 (i) Subsection (c) (2) and (3) shall not apply to:

8 (1) A trustee who accepts a trusteeship before the
9 effective date of this chapter;

10 (2) An irrevocable trust created before the effective date
11 of this chapter; or

12 (3) A revocable trust that becomes irrevocable before the
13 effective date of this chapter.

14 **§ -814 Discretionary powers; tax savings. (a)**

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



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

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

9 (2) A trustee shall not exercise a power to make
10 discretionary distributions to satisfy a legal
11 obligation of support that the trustee personally owes
12 another person.

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

19 (d) Subsection (b) shall not apply to:

20 (1) A power held by the settlor's spouse who is the
21 trustee of a trust for which a marital deduction, as



defined in section 2056(b) (5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter was previously allowed;

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

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

§ -815 General powers of trustee. (a) A trustee, without authorization by the court, may exercise:

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

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

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

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

(C) Any other powers conferred by this chapter.



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

3 § -816 **Specific powers of trustee.** Without limiting the
4 authority conferred by section -815, a trustee may:

5 (1) Collect trust property, accept or reject additions to
6 the trust property from a settlor or any other person,
7 and retain trust property, even if the trustee has a
8 personal interest in the property, until in the
9 judgment of the trustee, disposition of the property
10 should be made;

11 (2) Invest and reinvest trust assets and acquire or sell
12 property for cash or on credit at a public or private
13 sale;

14 (3) Exchange, partition, or otherwise change the character
15 of trust property;

16 (4) Deposit trust money in an account in a regulated
17 financial services institution, including a financial
18 institution operated by the trustee, if the deposit is
19 adequately insured or secured;

20 (5) Borrow money, with or without security, including from
21 a corporate trustee's lending department, and mortgage



1 or pledge trust property for a period within or
2 extending beyond the duration of the trust; or advance
3 money for the protection of the trust and for all
4 expenses, losses, and liabilities sustained in the
5 administration of the trust or because of the holding
6 or ownership of any trust assets;

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

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

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



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

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

(D) Deposit the securities with a depositary or other regulated financial services institution;

(8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use, with or without consideration, or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or



1 without the option to purchase or renew, for a period
2 within or extending beyond the duration of the trust;

3 (10) Grant an option involving a sale, lease, or other
4 disposition of trust property or acquire an option for
5 the acquisition of property, including an option
6 exercisable beyond the duration of the trust, and
7 exercise an option so acquired;

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

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

15 (13) With respect to possible liability for violation of
16 environmental law:

17 (A) Inspect or investigate property the trustee holds
18 or has been asked to hold, or property owned or
19 operated by an organization in which the trustee
20 holds or has been asked to hold an interest, for



1 the purpose of determining the application of
2 environmental law with respect to the property;

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

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

13 (D) Compromise claims against the trust that may be
14 asserted for an alleged violation of
15 environmental law; and

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

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



- 1 (15) Pay taxes, assessments, compensation of the trustee
2 and of employees and agents of the trust, and other
3 expenses incurred in the administration of the trust;
4 (16) Exercise elections with respect to federal, state, and
5 local taxes;
6 (17) Select a mode of payment under any employee benefit or
7 retirement plan, annuity, or life insurance payable to
8 the trustee, exercise rights thereunder, including
9 exercise of the right to indemnification for expenses
10 and against liabilities, and take appropriate action
11 to collect the proceeds;
12 (18) Make loans out of trust property, including loans to a
13 beneficiary on terms and conditions the trustee
14 considers to be fair and reasonable under the
15 circumstances, and the trustee has a lien on future
16 distributions for repayment of those loans;
17 (19) Pledge trust property to guarantee loans made by
18 others to the beneficiary or to an entity in which the
19 trust or beneficiary has an ownership interest;
20 provided that this power shall not apply to any



beneficiary whose interest is subject to a spendthrift provision;

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

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

(A) Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) Paying it to the beneficiary's custodian under chapter 553A, the Hawaii Uniform Transfers to Minors Act, or custodial trustee under chapter 554B, the Hawaii Uniform Custodial Trust



1 Act, and, for that purpose, creating a
2 custodianship or custodial trust;

3 (C) If the trustee does not know of a conservator,
4 guardian, custodian, or custodial trustee, paying
5 it to an adult relative or other person having
6 legal or physical care or custody of the
7 beneficiary, to be expended on the beneficiary's
8 behalf;

9 (D) Managing it as a separate fund on the
10 beneficiary's behalf, subject to the
11 beneficiary's continuing right to withdraw the
12 distribution; or

13 (E) Creating or funding a plan under section 529 of
14 the Internal Revenue Code of 1986, in effect on
15 July 1, 2003, for the beneficiary's benefit;

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



- 1 (23) Resolve a dispute concerning the interpretation of the
2 trust or its administration by mediation, arbitration,
3 or other procedure for alternative dispute resolution;
4 (24) Prosecute or defend an action, claim, or judicial
5 proceeding in any jurisdiction to protect trust
6 property and the trustee in the performance of the
7 trustee's duties, including petitioning the court for
8 approval of accounts and termination and discharge of
9 the trustee;
10 (25) Sign and deliver contracts and other instruments that
11 are useful to achieve or facilitate the exercise of
12 the trustee's powers;
13 (26) On termination of the trust, exercise the powers
14 appropriate to wind up the administration of the trust
15 and distribute the trust property to the persons
16 entitled to it;
17 (27) Divide, sever, or separate a single trust into two or
18 more separate trusts or merge two or more separate
19 trusts into a single trust for administration or tax
20 purposes, including the allocation of the
21 generation-skipping transfer exemption; provided that



1 the terms of the new trust provide, in the aggregate,
2 for the same succession of interests and beneficiaries
3 as are provided in the original trust; and
4 (28) Employ persons, including attorneys, auditors,
5 investment advisors, or agents, even if they are
6 associated with the trustee, to advise or assist the
7 trustee in performance of the trustee's administrative
8 duties; act without independent investigation upon
9 their recommendations; and rather than acting
10 personally, employ one or more agents to perform any
11 administrative acts, regardless of whether the acts
12 are discretionary.

13 § -817 **Distribution upon termination.** (a) Upon
14 termination or partial termination of a trust, the trustee may
15 send to the beneficiaries a proposal for distribution. The
16 right of any beneficiary to object to the proposed distribution
17 terminates if the beneficiary does not notify the trustee of an
18 objection within sixty days after the proposal was sent but only
19 if the proposal informed the beneficiary of the right to object
20 and of the time allowed for objection.



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

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

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

10 (2) The trustee failed to adequately disclose to the
11 beneficiary, at the time of the release, the material
12 facts relating to the breach or sufficient information
13 to enable the beneficiary to know of a potential claim
14 or to inquire into the existence of a breach or
15 potential claim.

16 (d) A person who receives a distribution from a trust that
17 has terminated shall be liable to return the distribution to the
18 extent that it is subsequently determined that the person was
19 not entitled to the distribution.



1 **PART IX. UNIFORM PRUDENT INVESTOR ACT**

2 **§ -901 Prudent investor rule.** (a) Except as otherwise
3 provided in subsection (b), a trustee who invests and manages
4 trust assets owes a duty to the beneficiaries of the trust to
5 comply with the prudent investor rule set forth in this part.

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

11 **§ -902 Standard of care; portfolio strategy; risk and**
12 **return objectives.** (a) A trustee shall invest and manage trust
13 assets as a prudent investor would by considering the purposes,
14 terms, distribution requirements, and other circumstances of the
15 trust. In satisfying this standard, the trustee shall exercise
16 reasonable care, skill, and caution.

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



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

4 (1) General economic conditions;

5 (2) The possible effect of inflation or deflation;

6 (3) The expected tax consequences of investment decisions
7 or strategies;

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

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

15 (6) Other resources of the beneficiaries;

16 (7) Needs for liquidity, regularity of income, and
17 preservation or appreciation of capital; and

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



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

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

5 § -903 **Diversification.** A trustee shall diversify the
6 investments of the trust unless the trustee reasonably
7 determines that, because of special circumstances or directives
8 of the trust, the purposes of the trust are better served
9 without diversifying.

10 § -904 **Duties at inception of trusteeship.** Within a
11 reasonable time after accepting a trusteeship or receiving trust
12 assets, a trustee shall review the trust assets and make and
13 implement decisions concerning the retention and disposition of
14 assets to bring the trust portfolio into compliance with the
15 purposes, terms, distribution requirements, and other
16 circumstances of the trust and with the requirements of this
17 part.

18 § -905 **Reviewing compliance.** Compliance with the
19 prudent investor rule is determined in light of the facts and
20 circumstances existing at the time of a trustee's decision or
21 action and not by hindsight.



§ -906 Language invoking standard of part. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this part: "authorized investments"; "investments permissible by law for investment of trust funds"; "legal investments"; "prudent investor rule"; "prudent man rule"; "prudent person rule"; "prudent trustee rule"; and "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital".

PART X. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING
WITH TRUSTEE

§ -1001 Remedies for breach of trust. (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust. A breach of trust may occur by reason of an action or by reason of a failure to act.

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



- 1 (1) Compel the trustee to perform the trustee's duties;
- 2 (2) Enjoin the trustee from committing a breach of trust;
- 3 (3) Compel the trustee to redress a breach of trust by
- 4 paying money, restoring property, or other means;
- 5 (4) Order a trustee to account;
- 6 (5) Appoint a special fiduciary to take possession of the
- 7 trust property and administer the trust;
- 8 (6) Suspend the trustee;
- 9 (7) Remove the trustee as provided in section -706;
- 10 (8) Reduce or deny compensation to the trustee;
- 11 (9) Subject to section -1012, void an act of the
- 12 trustee, impose a lien or a constructive trust on
- 13 trust property, or trace trust property wrongfully
- 14 disposed of and recover the property or its proceeds;
- 15 (10) Order that the trustee, not the trust, shall bear the
- 16 trustee's attorney's fees and those incurred by other
- 17 parties to the trust; or
- 18 (11) Order any other appropriate relief, including punitive
- 19 damages.
- 20 (c) The court, for cause shown, may relieve a trustee from
- 21 liability for any breach of trust or wholly or partly excuse a



1 trustee who has acted honestly and reasonably from liability for
2 a breach of trust.

3 **§ -1002 Damages for breach of trust.** (a) A trustee who
4 commits a breach of trust is liable to the beneficiaries
5 affected for the greater of:

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

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

10 (b) Except as otherwise provided in this subsection, if
11 more than one trustee is liable to the beneficiaries for a
12 breach of trust, a trustee is entitled to contribution from the
13 other trustee or trustees. In determining the amount of
14 contribution, the court shall consider the degree of fault of
15 each trustee and whether any trustee or trustees acted in bad
16 faith or with reckless indifference to the purposes of the trust
17 or the interests of the beneficiaries. A trustee who received a
18 benefit from the breach of trust is not entitled to contribution
19 from another trustee to the extent of the benefit received.

20 **§ -1003 No damages in absence of breach.** Absent a
21 breach of trust, a trustee shall not be liable to a beneficiary



1 for a loss or depreciation in the value of trust property or for
2 not having made a profit.

3 **§ -1004 Attorney's fees and costs.** (a) In a judicial
4 proceeding involving the administration, interpretation, or
5 validity of a trust, the court may award reasonable attorney's
6 fees, costs, and expenses to any party to the trust who has
7 acted in the best interest of the trust as a whole, to be paid
8 by another party or from the trust that is the subject of the
9 controversy.

10 (b) If a trustee, a nominated trustee, or a beneficiary,
11 if a trustee or a nominated trustee refuses to act, defends or
12 prosecutes any proceeding regarding the validity of a trust in
13 good faith, whether successful or not, that person is entitled
14 to receive from the trust reasonable costs, expenses, and
15 disbursements, including reasonable attorney's fees, regardless
16 of whether counsel has been retained on a contingency fee basis.

17 **§ -1005 Limitation of action against trustee.** (a) A
18 beneficiary shall not commence a proceeding against a trustee
19 for breach of trust more than one year after the date the
20 beneficiary or a representative of the beneficiary, as described
21 in part III, was sent a report that adequately disclosed the



1 existence of a potential claim for breach of trust and informed
2 the beneficiary of the time allowed for commencing a proceeding.

3 (b) A report adequately discloses the existence of a
4 potential claim for breach of trust if it provides sufficient
5 information so that the beneficiary or representative knows or
6 has reason to know of the potential claim or should have
7 inquired into its existence.

8 (c) If subsection (a) does not apply, a judicial
9 proceeding by a beneficiary against a trustee for breach of
10 trust shall be commenced within three years after the first to
11 occur of:

12 (1) The removal or resignation of the trustee;

13 (2) The termination of the beneficiary's interest in the
14 trust; or

15 (3) The termination of the trust.

16 (d) If subsection (a) does not apply, a judicial
17 proceeding by a beneficiary against a deceased trustee for
18 breach of trust shall be commenced within the time frames set
19 forth in section 560:3-803(a).

20 § -1006 **Reliance on trust instrument.** A trustee who
21 acts in reasonable reliance on the terms of the trust as



1 expressed in the trust instrument shall not be liable to a
2 beneficiary for a breach of trust to the extent the breach
3 resulted from the reliance.

4 **§ -1007 Event affecting administration or distribution.**

5 If the happening of an event, including marriage, divorce,
6 performance of educational requirements, or attainment of a
7 specific age, birth, or death, affects the administration or
8 distribution of a trust, a trustee who has exercised reasonable
9 care to ascertain the happening of the event shall not be liable
10 for a loss resulting from the trustee's lack of knowledge.

11 **§ -1008 Exculpation of trustee.** A term of a trust

12 relieving a trustee of liability for breach of trust is
13 unenforceable to the extent that it:

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

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



1 **§ -1009 Beneficiary's consent, release, or ratification.**

2 A trustee is not liable to a beneficiary for breach of trust if
3 the beneficiary or the representative of the beneficiary, as
4 described in part III, consented to the conduct constituting the
5 breach, released the trustee from liability for the breach, or
6 ratified the transaction constituting the breach, unless:

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

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

14 **§ -1010 Limitation on personal liability of trustee.**

15 (a) Except as otherwise provided in the contract, a trustee
16 shall not be personally liable on a contract properly entered
17 into in the trustee's fiduciary capacity in the course of
18 administering the trust if the trustee in the contract disclosed
19 the fiduciary capacity.

20 (b) A trustee shall be personally liable for torts
21 committed in the course of administering a trust or for



1 obligations arising from ownership or control of trust property,
2 including liability for violation of environmental law, only if
3 the trustee is personally at fault.

4 (c) A claim based on a contract entered into by a trustee
5 in the trustee's fiduciary capacity, on an obligation arising
6 from ownership or control of trust property, or on a tort
7 committed in the course of administering a trust, may be
8 asserted in a judicial proceeding against the trustee in the
9 trustee's fiduciary capacity, regardless of whether the trustee
10 is personally liable for the claim.

11 (d) Any judgment obtained against the trustee in the
12 trustee's fiduciary capacity may be collected against the trust
13 estate. The questions of liability as between the trust estate
14 and the trustee personally may be determined in a proceeding for
15 accounting, surcharge, or indemnification or other appropriate
16 proceeding.

17 **§ -1011 Interest as general partner.** (a) Unless
18 personal liability is imposed in the contract, a trustee who
19 holds an interest as a general partner in a general or limited
20 partnership shall not be personally liable on a contract entered
21 into by the partnership after the trust's acquisition of the



1 interest if the fiduciary capacity was disclosed in the contract
2 or in a statement previously filed pursuant to part IV of
3 chapter 425, the Uniform Partnership Act, or chapter 425E,
4 Uniform Limited Partnership Act.

5 (b) A trustee who holds an interest as a general partner
6 shall not be personally liable for torts committed by the
7 partnership or for obligations arising from ownership or control
8 of the interest unless the trustee is personally at fault.

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

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

18 **§ -1012 Protection of person dealing with trustee. (a)**

19 A person, other than a beneficiary, who in good faith assists a
20 trustee or who in good faith and for value deals with a trustee,
21 without actual knowledge that the trustee is exceeding or



1 improperly exercising the trustee's powers, shall be protected
2 from liability as if the trustee properly exercised the power.

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

7 (c) A person who in good faith delivers assets to a
8 trustee shall not be required to ensure their proper
9 application.

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

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

19 § -1013 **Certification of trust.** (a) Instead of
20 furnishing a copy of the trust instrument to a person other than



1 a beneficiary, the trustee may furnish to the person a
2 certification of trust containing the following information:

3 (1) That the trust exists, the date the trust instrument
4 was executed, and the name of the trust;

5 (2) The identity of the settlor;

6 (3) The identity and address of the currently acting
7 trustee;

8 (4) The powers of the trustee;

9 (5) The revocability or irrevocability of the trust and
10 the identity of any person holding a power to revoke
11 the trust;

12 (6) The authority of cotrustees to sign or otherwise
13 authenticate and whether all or less than all are
14 required to exercise powers of the trustee; and

15 (7) If an action is to be undertaken through an agent,
16 that delegation of the action to an agent is not
17 prohibited by the trust instrument.

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

20 (c) A certification of trust shall state that the trust
21 has not been revoked, modified, or amended in any manner that



1 would cause the representations contained in the certification
2 of trust to be incorrect.

3 (d) A certification of trust shall not be required to
4 contain the dispositive terms of a trust.

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

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

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



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

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

PART XI. MISCELLANEOUS PROVISIONS

§ -1101 Uniformity of application and construction. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ -1102 Electronic records and signatures. The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of those records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.



1 § -1103 **Severability clause.** If any provision of this
2 chapter or its application to any person or circumstances is
3 held invalid, the invalidity does not affect other provisions or
4 applications of this chapter that can be given effect without
5 the invalid provision or application, and to this end the
6 provisions of this chapter are severable.

7 § -1104 **Application to existing relationships.** (a)
8 Except as otherwise provided in this chapter, on the effective
9 date of this chapter:

10 (1) This chapter applies to all trusts created before, on,
11 or after its effective date;

12 (2) This chapter applies to all judicial proceedings
13 concerning trusts commenced on or after its effective
14 date;

15 (3) This chapter applies to judicial proceedings
16 concerning trusts commenced before its effective date
17 unless the court finds that application of a
18 particular provision of this chapter would
19 substantially interfere with the effective conduct of
20 the judicial proceedings or prejudice the rights of
21 the parties, in which case the particular provision of



1 this chapter shall not apply and the superseded law
2 applies;

3 (4) Any rule of construction or presumption provided in
4 this chapter applies to trust instruments executed
5 before the effective date of the chapter unless there
6 is a clear indication of a contrary intent in the
7 terms of the trust; and

8 (5) An act done before the effective date of the chapter
9 is not affected by this chapter.

10 (b) If a right is acquired, extinguished, or barred upon
11 the expiration of a prescribed period that has commenced to run
12 under any other statute before the effective date of the
13 chapter, that statute continues to apply to the right even if it
14 has been repealed or superseded."

15 SECTION 3. Section 415A-2, Hawaii Revised Statutes, is
16 amended by amending the definition of "professional service" to
17 read as follows:

18 ""Professional service" means any service [~~which~~] that
19 lawfully may be rendered only by persons licensed under
20 chapters 442, 448, 453, 455, 457, 459, 461, 463E, 465, 466, 471,
21 and 605[, ~~and section 554-2~~]."



1 SECTION 4. Section 554G-4.5, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Notwithstanding subsection (b), whenever there is a
4 dispute, deadlock, or difference of opinion between a trustee
5 and an advisor, the transferor may direct that the determination
6 of the advisor shall be binding upon the trustee; provided that
7 the trustee shall bear no liability or accountability for any
8 act or transaction entered into or omitted as a result of the
9 enforcement of the advisor's determination. The trustee's
10 administrative and non-administrative fiduciary duty to the
11 beneficiaries shall be waived as to the specific act or
12 transaction entered into or omitted as a result of the
13 enforcement of the advisor's determination; provided that:

14 (1) The trustee dissents in writing:

15 (A) Before the act or transaction is completed;

16 (B) To a failure to act; or

17 (C) In a reasonably timely manner to enter into a
18 transaction; or

19 (2) If the advisor is appointed by the transferor under
20 the terms of the trust and section ~~[560:7-302]~~

21 -808(c) applies to the trust and the advisor, the



1 trustee is not required to dissent in writing for the
2 waiver of the trustee's administrative and
3 ~~[nonadministrative]~~ non-administrative fiduciary
4 duties to the beneficiaries to take effect."

5 SECTION 5. Section 556A-2, Hawaii Revised Statutes, is
6 amended by amending the definition of "court" to read as
7 follows:

8 "Court" means the circuit court in this State having
9 jurisdiction in matters relating to powers of attorney, in the
10 case of a fiduciary or agent acting under a will or power of
11 attorney; a circuit court in this State having jurisdiction in
12 matters relating to the affairs of decedents, in the case of a
13 personal representative; a circuit court in this State having
14 jurisdiction in matters relating to the affairs of decedents or
15 the family court, depending on which court has subject matter
16 jurisdiction under section 560:5-106, in the case of a
17 conservatorship; or a court that has jurisdiction under
18 section ~~[560:7-204,]~~ _____-202, in the case of a trustee acting
19 under a trust."

20 SECTION 6. Section 560:3-703, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) A personal representative is a fiduciary who shall
2 observe the standards of care applicable to trustees as
3 described by [~~section 560:7-302.~~] sections -804, -806,
4 and -808(c). A personal representative is under a duty to
5 settle and distribute the estate of the decedent in accordance
6 with the terms of any probated and effective will and this
7 chapter, and as expeditiously and efficiently as is consistent
8 with the best interests of the estate. The personal
9 representative shall use the authority conferred upon the
10 personal representative by this chapter, the terms of the will,
11 if any, and any order in proceedings to which the personal
12 representative is party for the best interests of successors to
13 the estate."

14 SECTION 7. Section 560:3-913, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Before distributing to a trustee, the personal
17 representative may require that the trust be registered if the
18 [~~State~~] state in which it is to be administered provides for
19 registration and that the trustee inform the beneficiaries as
20 provided in section [~~560:7-303.~~] -813."



1 SECTION 8. Section 560:8-101, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Except as provided elsewhere in this chapter, on the
4 effective date of this chapter:

5 (1) The chapter applies to any wills of decedents dying
6 thereafter;

7 (2) The chapter applies to any proceedings in court then
8 pending or thereafter commenced regardless of the time
9 of the death of decedent except to the extent that in
10 the opinion of the court the former procedure should
11 be made applicable in a particular case in the
12 interest of justice or because of infeasibility of
13 application of the procedure of this chapter;

14 (3) Every executor of a will admitted to a probate [~~prior~~
15 ~~to~~] before July 1, 1977, in this State and every
16 administrator appointed [~~prior to~~] before July 1,
17 1977, by a court of this State shall be a supervised
18 personal representative with respect to the estate,
19 and every guardian of the property appointed [~~prior~~
20 ~~to~~] before July 1, 1976, by a court of this State
21 shall be a guardian of the property, with only the



1 powers conferred by this chapter and subject to the
2 duties imposed by this chapter with respect to any act
3 occurring or done thereafter. Every guardian of a
4 person holding an appointment on that date continues
5 to hold the appointment but has only the powers
6 conferred by this chapter and is subject to the duties
7 imposed by this chapter with respect to any act
8 occurring or done thereafter;

9 (4) The consequences of an act done before the applicable
10 effective date in any proceeding and any accrued right
11 is not impaired by this chapter. If a right is
12 acquired, extinguished, or barred upon the expiration
13 of a prescribed period of time which has commenced to
14 run by the provisions of any statute before July 1,
15 1977, the provisions of [~~such~~] the statute shall
16 remain in force with respect to that right;

17 (5) Any rule of construction or presumption provided in
18 this chapter applies to instruments executed and
19 multiple-party accounts opened before July 1, 1976,
20 unless there is a clear indication of a contrary
21 intent; and



(6) Notwithstanding any of the above, this chapter shall not affect any property or other rights accrued under the case and statutory law of this State, including but not limited to the law relating to intestacy, dower and curtesy (chapters 532 and 533), which became vested [~~prior to~~] before July 1, 1977[+]

~~(7) Section 560:7-501 applies to governing instruments executed on or after June 24, 2005]."~~

SECTION 9. Chapter 554A, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 554C, Hawaii Revised Statutes, is repealed.

SECTION 11. Article VII of chapter 560, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 554-2, Hawaii Revised Statutes, is repealed.

~~["554-2 Nomination by beneficiaries; appointment of trustees. (a) Whenever any appointment of a trustee under a private trust is made by any court of record, if, prior to such appointment, beneficiaries who constitute a majority both in number and interest of the beneficiaries of the trust (as~~



1 ~~hereinafter defined) nominate for the trusteeship by an~~
2 ~~instrument or instruments in writing filed in the court any~~
3 ~~qualified person or corporation worthy in the opinion of the~~
4 ~~court to be appointed, the court shall appoint the nominee as~~
5 ~~the trustee, unless the express terms of the trust provide an~~
6 ~~effective method of nomination or appointment. No person so~~
7 ~~nominated as trustee by the beneficiaries of any such trust~~
8 ~~shall be held disqualified to be appointed or to act as the~~
9 ~~trustee for the sole reason that the person is a beneficiary or~~
10 ~~a possible beneficiary under the trust estate.~~

11 ~~(b) The term "majority both in number and interest of the~~
12 ~~beneficiaries of the trust," as used in this section, means a~~
13 ~~majority of the competent adult beneficiaries holding more than~~
14 ~~one-half of the value of the then vested interests held by all~~
15 ~~the competent adult beneficiaries in the trust, provided that if~~
16 ~~the guardian of any spendthrift, non compos person, or minor,~~
17 ~~owning such a vested interest, when the guardian is not an adult~~
18 ~~beneficiary, or married to an adult beneficiary, of the trust,~~
19 ~~executes or joins in the execution of any instrument of~~
20 ~~nomination and presents the same to the court (each such~~
21 ~~guardian being hereby authorized in the guardian's discretion~~



1 ~~either to execute or to refrain from executing the instrument of~~
2 ~~nomination, as in the guardian's judgment shall be in the best~~
3 ~~interest of the guardian's ward), then the spendthrift, non~~
4 ~~compos person, or minor, and the value of the spendthrift's, non~~
5 ~~compos person's, or minor's interest shall be included in~~
6 ~~determining the majority both in number and interest of the~~
7 ~~beneficiaries of the trust. The value of the then vested~~
8 ~~interests shall be determined as of the date of the presentation~~
9 ~~of the instrument or instruments of nomination to the court, in~~
10 ~~the manner provided for the appraisal of similar interests under~~
11 ~~the laws of the State for inheritance tax purposes and as the~~
12 ~~same would be valued for the purposes if the trust had been~~
13 ~~created by instrument made in contemplation of the death of the~~
14 ~~person who created the trust and the trust had come into~~
15 ~~existence and the death had occurred on the date of presentation~~
16 ~~of the instrument or instruments of nomination. When more than~~
17 ~~one instrument is presented to the court designating the same~~
18 ~~nominee, the date of presentation for the purposes of this~~
19 ~~section shall be deemed to be the date when the last instrument~~
20 ~~is so presented.~~



1 ~~(c) This section applies to trusts created before, as well~~
2 ~~as to those created after April 28, 1943."]~~

3 SECTION 13. Section 554-4, Hawaii Revised Statutes, is
4 repealed.

5 ~~["§554-4 Annual account; trustees to file. Every trustee~~
6 ~~acting under appointment of any court or under any appointment~~
7 ~~requiring the approval of any court, shall, except in cases~~
8 ~~where the prior trustee, if any, was not required by statute or~~
9 ~~the instrument creating the trust or appointing the trustee to~~
10 ~~file such an account, file annually with the court having~~
11 ~~jurisdiction thereof an account showing in detail all receipts~~
12 ~~and disbursements, together with a full and detailed inventory~~
13 ~~of all property in the trustee's possession or under the~~
14 ~~trustee's control; provided that the court in cases in which it~~
15 ~~deems it advisable in the interests of the beneficiaries may~~
16 ~~permit the accounts to be filed biennially or triennially~~
17 ~~instead of annually or, if they are filed annually, may permit~~
18 ~~them to accumulate to be passed upon biennially or triennially;~~
19 ~~and provided further that the court on its own examination or~~
20 ~~that of its clerk, shall, without reference to a master, pass~~
21 ~~upon the accounts in cases in which the annual income does not~~



1 ~~exceed \$1,000, except in the case of a final account when the~~
2 ~~court may refer the same to a master, irrespective of the amount~~
3 ~~of the annual income, if for any reason it is deemed proper or~~
4 ~~necessary. If any such trustee fails to file an account as~~
5 ~~herein required, the clerk of the court in which the trustee is~~
6 ~~required to file the account, shall notify the trustee promptly~~
7 ~~of such failure, and, if the trustee fails to file the account~~
8 ~~within thirty days after such notification, the trustee shall be~~
9 ~~cited to appear before the court and be required to show cause~~
10 ~~why the trustee should not be punished for contempt of court as~~
11 ~~provided by section 710-1077 and the trustee shall be subject to~~
12 ~~all of the penalties in such section provided. The court may~~
13 ~~also, in its discretion, remove any such trustee.~~

14 ~~Unless otherwise required by the instrument creating the~~
15 ~~trust, nothing in this section shall be construed to require the~~
16 ~~filing of an annual account by a trustee or trustees appointed~~
17 ~~by the court as additional trustee or trustees to serve with or~~
18 ~~in the place and stead of a trustee or trustees appointed in the~~
19 ~~instrument creating a trust, nor by a trustee whose appointment~~
20 ~~is made in accordance with or pursuant to the instrument~~
21 ~~creating the trust where such appointment has been confirmed by~~



1 ~~any court in proceedings brought to secure the confirmation or~~
2 ~~approval thereof. This provision applies to trusts existing on~~
3 ~~May 13, 1935, and appointments made thereunder as well as to~~
4 ~~future trusts."]~~

5 SECTION 14. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 15. This Act shall take effect on January 1, 2050.



Report Title:

Judiciary Package; Uniform Trust Code

Description:

Enacts the 2018 Uniform Trust Code. Repeals the Uniform Trustees' Powers Act, Uniform Prudent Investor Act, and laws regarding trust administration under the Uniform Probate Code. Effective 1/1/2050. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

