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HOUSE BILL 111

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Al Park

AN ACT

**RELATING TO TRUSTS; ENACTING THE UNIFORM TRUST CODE; REPEALING
SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section 101. SHORT TITLE. -- This act may be cited as the
"Uniform Trust Code".

Section 102. SCOPE. -- The Uniform Trust Code applies to
express trusts, charitable or noncharitable, and trusts created
pursuant to a statute, judgment or decree that requires the
trust to be administered in the manner of an express trust.

Section 103. DEFINITIONS. -- As used in the Uniform Trust

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Code:

(1) "action", with respect to an act of a trustee, includes a failure to act;

(2) "beneficiary" means a person that:

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

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

(3) "charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Section 405(a);

(4) "conservator" means a person appointed by the court to administer the estate of a minor or adult individual;

(5) "environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment;

(6) "guardian" means a person appointed by the court or a parent to make decisions regarding the support, care, education, health and welfare of a minor or adult individual. The term does not include a guardian ad litem;

(7) "interests of the beneficiaries" means the beneficial interests provided in the terms of the trust;

(8) "jurisdiction", with respect to a geographic area, includes a state or country;

(9) "person" means an individual, corporation,

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

5 (10) "power of withdrawal" means a presently
6 exercisable general power of appointment other than a power
7 exercisable only upon consent of the trustee or a person
8 holding an adverse interest;

9 (11) "property" means anything that may be the
10 subject of ownership, whether real or personal, legal or
11 equitable, or any interest therein;

12 (12) "qualified beneficiary" means a beneficiary
13 who, on the date the beneficiary's qualification is determined:

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

16 (B) would be a distributee or permissible
17 distributee of trust income or principal if the interests of
18 the distributees described in Subparagraph (A) terminated on
19 that date; or

20 (C) would be a distributee or permissible
21 distributee of trust income or principal if the trust
22 terminated on that date;

23 (13) "revocable", as applied to a trust, means
24 revocable by the settlor without the consent of the trustee or
25 a person holding an adverse interest;

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1 (14) "settlor" means a person, including a
2 testator, who creates or contributes property to a trust. If
3 more than one person creates or contributes property to a
4 trust, each person is a settlor of the portion of the trust
5 property attributable to that person's contribution, except to
6 the extent another person has the power to revoke or withdraw
7 that portion;

8 (15) "spendthrift provision" means a term of a
9 trust which restrains both voluntary and involuntary transfer
10 of a beneficiary's interest;

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

17 (17) "terms of a trust" means the manifestation of
18 the settlor's intent regarding a trust's provisions as
19 expressed in the trust instrument or as may be established by
20 other evidence that would be admissible in a judicial
21 proceeding;

22 (18) "trust instrument" means an instrument
23 executed by the settlor that contains terms of the trust,
24 including any amendments thereto; and

25 (19) "trustee" includes an original trustee, an

1 additional trustee, a successor trustee and a cotrustee.

2 Section 104. KNOWLEDGE. --

3 (a) Subject to Subsection (b), a person has
4 knowledge of a fact if the person:

5 (1) has actual knowledge of it;

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

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

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

25 Section 105. DEFAULT AND MANDATORY RULES. --

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

(b) The terms of a trust prevail over any provision of the Uniform Trust Code except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries;
- (4) the power of the court to modify or terminate a trust under Sections 410 through 416;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of the Uniform Trust Code;
- (6) the power of the court under Section 702 to require, dispense with or modify or terminate a bond;
- (7) the power of the court under Section 708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
- (8) the duty to notify the qualified beneficiaries of an irrevocable trust who have attained twenty-five years of age of the existence of the trust and of their right to request a trustee's reports and other information

1 reasonably related to the administration of the trust;

2 (9) the duty to respond to the request of a
3 beneficiary of an irrevocable trust for a trustee's reports and
4 other information reasonably related to the administration of a
5 trust;

6 (10) the effect of an exculpatory term under
7 Section 1008;

8 (11) the rights under Sections 1010 through
9 1013 of a person other than a trustee or beneficiary;

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

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

15 (14) the subject-matter jurisdiction of the
16 court and venue for commencing a proceeding as provided in
17 Sections 203 and 204.

18 Section 106. COMMON LAW OF TRUSTS--PRINCIPLES OF EQUITY. -

19 -The common law of trusts and principles of equity supplement
20 the Uniform Trust Code, except to the extent modified by that
21 code or another statute of this state.

22 Section 107. GOVERNING LAW. --The meaning and effect of
23 the terms of a trust are determined by:

24 (1) the law of the jurisdiction designated in the
25 terms unless the designation of that jurisdiction's law is

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1 contrary to a strong public policy of the jurisdiction having
2 the most significant relationship to the matter at issue; or

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

6 Section 108. PRINCIPAL PLACE OF ADMINISTRATION. --

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

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

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

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

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

25 (d) The trustee shall notify the qualified

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1 beneficiaries of a proposed transfer of a trust's principal
2 place of administration not less than sixty days before
3 initiating the transfer. The notice of proposed transfer must
4 include:

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

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

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

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

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

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

22 (f) In connection with a transfer of the trust's
23 principal place of administration, the trustee may transfer
24 some or all of the trust property to a successor trustee
25 designated in the terms of the trust or appointed pursuant to

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Section 704.

Section 109. METHODS AND WAIVER OF NOTICE. --

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

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

(c) Notice under the Uniform Trust Code or the sending of a document under that code may be waived by the person to be notified or sent the document.

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

Section 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES. --

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

1 (b) A charitable organization expressly entitled to
2 receive benefits under the terms of a charitable trust or a
3 person appointed to enforce a trust created for the care of an
4 animal or another noncharitable purpose as provided in Section
5 408 or 409 has the rights of a qualified beneficiary under the
6 Uniform Trust Code.

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

11 Section 111. NONJUDICIAL SETTLEMENT AGREEMENTS. --

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

16 (b) Except as otherwise provided in Subsection (c),
17 interested persons may enter into a binding nonjudicial
18 settlement agreement with respect to any matter involving a
19 trust.

20 (c) A nonjudicial settlement agreement is valid
21 only to the extent it does not violate a material purpose of
22 the trust and includes terms and conditions that could be
23 properly approved by the court under the Uniform Trust Code or
24 other applicable law.

25 (d) Matters that may be resolved by a nonjudicial

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settlement agreement include:

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

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

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

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

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

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

(e) Any interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in Article 3 of the Uniform Trust Code was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

Section 112. RULES OF CONSTRUCTION.--The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

1 ARTICLE 2

2 JUDICIAL PROCEEDINGS

3 Section 201. ROLE OF COURT IN ADMINISTRATION OF TRUST. --

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

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

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

13 Section 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY. --

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

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

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

4 Section 203. SUBJECT-MATTER JURISDICTION. --

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

8 (b) The district court has concurrent jurisdiction
9 with other courts of this state of other proceedings involving
10 a trust.

11 Section 204. VENUE. --

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

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

24 ARTICLE 3

25 REPRESENTATION

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Section 301. REPRESENTATION--BASIC EFFECT. --

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

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

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

Section 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT.--To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default or otherwise, are subject to the power.

Section 303. REPRESENTATION BY FIDUCIARIES AND PARENTS.--To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question

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1 or dispute:

2 (1) a conservator may represent and bind the estate
3 that the conservator controls;

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

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

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

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

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

16 Section 304. REPRESENTATION BY PERSON HAVING
17 SUBSTANTIALLY IDENTICAL INTEREST. -- Unless otherwise
18 represented, a minor, incapacitated or unborn individual, or a
19 person whose identity or location is unknown and not reasonably
20 ascertainable, may be represented by and bound by another
21 having a substantially identical interest with respect to the
22 particular question or dispute, but only to the extent there is
23 no conflict of interest between the representative and the
24 person represented.

25 Section 305. APPOINTMENT OF REPRESENTATIVE. --

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

9 (b) A representative may act on behalf of the
10 individual represented with respect to any matter arising under
11 the Uniform Trust Code, whether or not a judicial proceeding
12 concerning the trust is pending.

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

16 ARTICLE 4

17 CREATION, VALIDITY, MODIFICATION

18 AND TERMINATION OF TRUST

19 Section 401. METHODS OF CREATING TRUST.--A trust may be
20 created by:

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

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

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1 (3) exercise of a power of appointment in favor of a
2 trustee.

3 Section 402. REQUIREMENTS FOR CREATION. --

4 (a) A trust is created only if:

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

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

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

11 (A) a charitable trust;

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

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

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

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

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

22 (c) A power in a trustee to select a beneficiary
23 from an indefinite class is valid. If the power is not
24 exercised within a reasonable time, the power fails and the
25 property subject to the power passes to the persons who would

1 have taken the property had the power not been conferred.

2 Section 403. TRUSTS CREATED IN OTHER JURISDICTIONS. -- A
3 trust not created by will is validly created if its creation
4 complies with the law of the jurisdiction in which the trust
5 instrument was executed or the law of the jurisdiction in
6 which, at the time of creation:

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

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

11 (3) any trust property was located.

12 Section 404. TRUST PURPOSES. -- A trust may be created only
13 to the extent its purposes are lawful, not contrary to public
14 policy and possible to achieve. A trust and its terms must be
15 for the benefit of its beneficiaries.

16 Section 405. CHARITABLE PURPOSES-- ENFORCEMENT. --

17 (a) A charitable trust may be created for the relief
18 of poverty, the advancement of education or religion, the
19 promotion of health, governmental or municipal purposes or
20 other purposes the achievement of which is beneficial to the
21 community.

22 (b) If the terms of a charitable trust do not
23 indicate a particular charitable purpose or beneficiary, the
24 court may select one or more charitable purposes or
25 beneficiaries. The selection must be consistent with the

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1 settlor's intention to the extent it can be ascertained.

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

4 Section 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS
5 OR UNDUE INFLUENCE. --A trust is void to the extent its creation
6 was induced by fraud, duress or undue influence.

7 Section 407. EVIDENCE OF ORAL TRUST. --Except as required
8 by a statute other than the Uniform Trust Code, a trust need
9 not be evidenced by a trust instrument, but the creation of an
10 oral trust and its terms may be established only by clear and
11 convincing evidence.

12 Section 408. TRUST FOR CARE OF ANIMAL. --

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

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

25 (c) Property of a trust authorized by this section

1 may be applied only to its intended use, except to the extent
2 the court determines that the value of the trust property
3 exceeds the amount required for the intended use. Except as
4 otherwise provided in the terms of the trust, property not
5 required for the intended use must be distributed to the
6 settlor, if then living, otherwise to the settlor's successors
7 in interest.

8 Section 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE
9 BENEFICIARY. -- Except as otherwise provided in Section 408 or by
10 another statute, the following rules apply:

11 (1) A trust may be created for a noncharitable
12 purpose without a definite or definitely ascertainable
13 beneficiary or for a noncharitable but otherwise valid purpose
14 to be selected by the trustee. The trust may not be enforced
15 for more than twenty-one years.

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

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

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1 in interest.

2 Section 410. MODIFICATION OR TERMINATION OF TRUST--
3 PROCEEDINGS FOR APPROVAL OR DISAPPROVAL. --

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

10 (b) A proceeding to approve or disapprove a proposed
11 modification or termination under Sections 411 through 416 or
12 trust combination or division under Section 417 may be
13 commenced by a trustee or beneficiary, and a proceeding to
14 approve or disapprove a proposed modification or termination
15 under Section 411 may be commenced by the settlor. The settlor
16 of a charitable trust may maintain a proceeding to modify the
17 trust under Section 413.

18 Section 411. MODIFICATION OR TERMINATION OF NONCHARITABLE
19 IRREVOCABLE TRUST BY CONSENT. --

20 (a) A noncharitable irrevocable trust may be
21 modified or terminated upon consent of the settlor and all
22 beneficiaries, even if the modification or termination is
23 inconsistent with a material purpose of the trust. A settlor's
24 power to consent to a trust's termination may be exercised by
25 an agent under a power of attorney only to the extent expressly

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1 authorized by the power of attorney or the terms of the trust;
2 by the settlor's conservator with the approval of the court
3 supervising the conservatorship if an agent is not so
4 authorized; or by the settlor's guardian with the approval of
5 the court supervising the guardianship if an agent is not so
6 authorized and a conservator has not been appointed.

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

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

17 (d) Upon termination of a trust under Subsection (a)
18 or (b), the trustee shall distribute the trust property as
19 agreed by the beneficiaries.

20 (e) If not all of the beneficiaries consent to a
21 proposed modification or termination of the trust under
22 Subsection (a) or (b), the modification or termination may be
23 approved by the court if the court is satisfied that:

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

1 section; and

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

4 Section 412. MODIFICATION OR TERMINATION BECAUSE OF
5 UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST
6 EFFECTIVELY. --

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

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

17 (c) Upon termination of a trust under this section,
18 the trustee shall distribute the trust property in a manner
19 consistent with the purposes of the trust.

20 Section 413. CY PRES. --

21 (a) Except as otherwise provided in Subsection (b),
22 if a particular charitable purpose becomes unlawful,
23 impracticable, impossible to achieve or wasteful:

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

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

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

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

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

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

Section 414. TERMINATION OF UNECONOMIC TRUST. --

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than fifty thousand dollars (\$50,000) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

1 (c) Upon termination of a trust under this section,
2 the trustee shall distribute the trust property in a manner
3 consistent with the purposes of the trust.

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

6 Section 415. REFORMATION TO CORRECT MISTAKES. --The court
7 may reform the terms of a trust, even if unambiguous, to
8 conform the terms to the settlor's intention if it is proved by
9 clear and convincing evidence that both the settlor's intent
10 and the terms of the trust were affected by a mistake of fact
11 or law, whether in expression or inducement.

12 Section 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX
13 OBJECTIVES. --To achieve the settlor's tax objectives, the court
14 may modify the terms of a trust in a manner that is not
15 contrary to the settlor's probable intention. The court may
16 provide that the modification has retroactive effect.

17 Section 417. COMBINATION AND DIVISION OF TRUSTS. --After
18 notice to the qualified beneficiaries, a trustee may combine
19 two or more trusts into a single trust or divide a trust into
20 two or more separate trusts, if the result does not impair
21 rights of any beneficiary or adversely affect achievement of
22 the purposes of the trust.

23 ARTICLE 5

24 CREDITOR'S CLAIMS-- SPENDTHRIFT AND DISCRETIONARY TRUSTS

25 Section 501. RIGHTS OF BENEFICIARY'S CREDITOR OR

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

8 Section 502. SPENDTHRIFT PROVISION. --

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

12 (b) A term of a trust providing that the interest of
13 a beneficiary is held subject to a "spendthrift trust", or
14 words of similar import, is sufficient to restrain both
15 voluntary and involuntary transfer of the beneficiary's
16 interest.

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

22 Section 503. EXCEPTIONS TO SPENDTHRIFT PROVISION. --

23 (a) As used in this section, "child" includes any
24 person for whom an order or judgment for child support has been
25 entered in this or another state.

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(b) Even if a trust contains a spendthrift provision, a beneficiary's child, spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

(c) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

Section 504. DISCRETIONARY TRUSTS--EFFECT OF STANDARD.--

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

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

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

(2) the trustee has abused the discretion.

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

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary

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1 for support or maintenance of the beneficiary's child, spouse
2 or former spouse; and

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

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

13 Section 505. CREDITOR'S CLAIM AGAINST SETTLOR. --

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

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

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

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

(b) For purposes of this section:

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

(2) upon the lapse, release or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, as amended, or Section 2503(b) of the Internal Revenue Code of 1986, as amended.

Section 506. OVERDUE DISTRIBUTION. -- Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income

1 or principal, including a distribution upon termination of the
2 trust, if the trustee has not made the distribution to the
3 beneficiary within a reasonable time after the required
4 distribution date.

5 Section 507. PERSONAL OBLIGATIONS OF TRUSTEE. --Trust
6 property is not subject to personal obligations of the trustee,
7 even if the trustee becomes insolvent or bankrupt.

8 ARTICLE 6

9 REVOCABLE TRUSTS

10 Section 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. --The
11 capacity required to create, amend, revoke or add property to a
12 revocable trust, or to direct the actions of the trustee of a
13 revocable trust, is the same as that required to make a will.

14
15 Section 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST. -

16 -
17 (a) Unless the terms of a trust expressly provide
18 that the trust is irrevocable, the settlor may revoke or amend
19 the trust. This subsection does not apply to a trust created
20 under an instrument executed before the effective date of the
21 Uniform Trust Code.

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

24 (1) to the extent the trust consists of
25 community property, the trust may be revoked by either spouse

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1 acting alone but may be amended only by joint action of both
2 spouses; and

3 (2) to the extent the trust consists of
4 property other than community property, each settlor may revoke
5 or amend the trust with regard to the portion of the trust
6 property attributable to that settlor's contribution.

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

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

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

14 (A) executing a later will or codicil
15 that expressly refers to the trust or specifically devises
16 property that would otherwise have passed according to the
17 terms of the trust; or

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

20 (d) Upon revocation of a revocable trust, the
21 trustee shall deliver the trust property as the settlor
22 directs.

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

1 authorized by the terms of the trust or the power.

2 (f) A conservator of the settlor or, if no
3 conservator has been appointed, a guardian of the settlor may
4 exercise a settlor's powers with respect to revocation,
5 amendment or distribution of trust property only with the
6 approval of the court supervising the conservatorship or
7 guardianship.

8 (g) A trustee who does not know that a trust has
9 been revoked or amended is not liable to the settlor or
10 settlor's successors in interest for distributions made and
11 other actions taken on the assumption that the trust had not
12 been amended or revoked.

13 Section 603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL. --

14 (a) While a trust is revocable and the settlor has
15 capacity to revoke the trust, rights of the beneficiaries are
16 subject to the control of, and the duties of the trustee are
17 owed exclusively to, the settlor.

18 (b) While a trust is revocable and the settlor does
19 not have capacity to revoke the trust, rights of the
20 beneficiaries are held by the beneficiaries.

21 (c) If a revocable trust has more than one settlor,
22 the duties of the trustee are owed to all of the settlors
23 having capacity to revoke the trust.

24 (d) During the period the power may be exercised,
25 the holder of a power of withdrawal has the rights of a settlor

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1 of a revocable trust under this section to the extent of the
2 property subject to the power.

3 Section 604. LIMITATION ON ACTION CONTESTING VALIDITY OF
4 REVOCABLE TRUST--DISTRIBUTION OF TRUST PROPERTY. --

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

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

9 (2) one hundred twenty days after the trustee
10 sent the person a copy of the trust instrument and a notice
11 informing the person of the trust's existence, of the trustee's
12 name and address and of the time allowed for commencing a
13 proceeding.

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

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

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

25 (c) A beneficiary of a trust that is determined to

1 have been invalid is liable to return any distribution
2 received.

3 ARTICLE 7

4 OFFICE OF TRUSTEE

5 Section 701. ACCEPTING OR DECLINING TRUSTEESHIP. --

6 (a) Except as otherwise provided in Subsection (c),
7 a person designated as trustee accepts the trusteeship:

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

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

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

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

22 (1) act to preserve the trust property if,
23 within a reasonable time after acting, the person sends a
24 rejection of the trusteeship to the settlor or, if the settlor
25 is dead or lacks capacity, to a qualified beneficiary; and

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

4 Section 702. TRUSTEE' S BOND. --

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

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

13 Section 703. COTRUSTEES. --

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

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

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

24 (d) If a cotrustee is unavailable to perform duties
25 because of absence, illness, disqualification under other law

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1 or other temporary incapacity, and prompt action is necessary
2 to achieve the purposes of the trust or to avoid injury to the
3 trust property, the remaining cotrustee or a majority of the
4 remaining cotrustees may act for the trust.

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

9 (f) Except as otherwise provided in Subsection (g),
10 a trustee who does not join in an action of another trustee is
11 not liable for the action.

12 (g) Each trustee shall exercise reasonable care to:

13 (1) prevent a cotrustee from committing a
14 serious breach of trust; and

15 (2) compel a cotrustee to redress a serious
16 breach of trust.

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

22 Section 704. VACANCY IN TRUSTEESHIP--APPOINTMENT OF
23 SUCCESSOR. --

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

25 (1) a person designated as trustee rejects the

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trusteeship;

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

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

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

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

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

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

Section 705. RESIGNATION OF TRUSTEE. --

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(a) A trustee may resign:

(1) upon at least thirty days' notice to the qualified beneficiaries and all cotrustees; or

(2) with the approval of the court.

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

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

Section 706. REMOVAL OF TRUSTEE. --

(a) The settlor, a cotrustee or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

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

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

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

(4) there has been a substantial change of

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1 circumstances or removal is requested by all of the qualified
2 beneficiaries, the court finds that removal of the trustee best
3 serves the interests of all of the beneficiaries and is not
4 inconsistent with a material purpose of the trust, and a
5 suitable cotrustee or successor trustee is available.

6 (c) Pending a final decision on a request to remove
7 a trustee, or in lieu of or in addition to removing a trustee,
8 the court may order such appropriate relief under Section
9 1001(b) as may be necessary to protect the trust property or
10 the interests of the beneficiaries.

11 Section 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE. --

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

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

22 Section 708. COMPENSATION OF TRUSTEE. --

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

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

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

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

10 Section 709. REIMBURSEMENT OF EXPENSES. --

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

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

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

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

21 ARTICLE 8

22 DUTIES AND POWERS OF TRUSTEE

23 Section 801. DUTY TO ADMINISTER TRUST. -- Upon acceptance
24 of a trusteeship, the trustee shall administer the trust in
25 good faith, in accordance with its terms and purposes and the

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1 interests of the beneficiaries and in accordance with the
2 Uniform Trust Code.

3 Section 802. DUTY OF LOYALTY. --

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

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

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

16 (2) the transaction was approved by the court;

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

19 (4) the beneficiary consented to the trustee's
20 conduct, ratified the transaction or released the trustee in
21 compliance with Section 1009; or

22 (5) the transaction involved a contract
23 entered into or claim acquired by the trustee before the person
24 became or contemplated becoming trustee.

25 (c) A sale, encumbrance or other transaction

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1 involving the investment or management of trust property is
2 presumed to be affected by a conflict between personal and
3 fiduciary interests if it is entered into by the trustee with:

- 4 (1) the trustee's spouse;
- 5 (2) the trustee's descendants, siblings,
6 parents or the spouse of any of them;
- 7 (3) an agent or attorney of the trustee; or
- 8 (4) a corporation or other person or
9 enterprise in which the trustee, or a person that owns a
10 significant interest in the trustee, has an interest that might
11 affect the trustee's best judgment.

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

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

24 (f) An investment by a trustee in securities of an
25 investment company or investment trust to which the trustee, or

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1 its affiliate, provides services in a capacity other than as
2 trustee is not presumed to be affected by a conflict between
3 personal and fiduciary interests if the investment complies
4 with the prudent investor rule of Article 9 of the Uniform
5 Trust Code. The trustee may be compensated by the investment
6 company or investment trust for providing those services out of
7 fees charged to the trust if the trustee at least annually
8 notifies the persons entitled under Section 813 to receive a
9 copy of the trustee's annual report of the rate and method by
10 which the compensation was determined.

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

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

- 20 (1) an agreement between a trustee and a
21 beneficiary relating to the appointment or compensation of the
22 trustee;
- 23 (2) payment of reasonable compensation to the
24 trustee;
- 25 (3) a transaction between a trust and another

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1 trust, decedent's estate or conservatorship of which the
2 trustee is a fiduciary or in which a beneficiary has an
3 interest;

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

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

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

11 Section 803. IMPARTIALITY.--If a trust has two or more
12 beneficiaries, the trustee shall act impartially in investing,
13 managing and distributing the trust property, giving due regard
14 to the beneficiaries' respective interests.

15 Section 804. PRUDENT ADMINISTRATION.--A trustee shall
16 administer the trust as a prudent person would, by considering
17 the purposes, terms, distributional requirements and other
18 circumstances of the trust. In satisfying this standard, the
19 trustee shall exercise reasonable care, skill and caution.

20 Section 805. COSTS OF ADMINISTRATION.--In administering a
21 trust, the trustee may incur only costs that are reasonable in
22 relation to the trust property, the purposes of the trust and
23 the skills of the trustee.

24 Section 806. TRUSTEE'S SKILLS.--A trustee who has special
25 skills or expertise, or is named trustee in reliance upon the

1 trustee's representation that the trustee has special skills or
2 expertise, shall use those special skills or expertise.

3 Section 807. DELEGATION BY TRUSTEE. --

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

8 (1) selecting an agent;

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

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

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

18 (c) A trustee who complies with Subsection (a) is
19 not liable to the beneficiaries or to the trust for an action
20 of the agent to whom the function was delegated.

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

25 Section 808. POWERS TO DIRECT. --

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

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

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

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

Section 809. CONTROL AND PROTECTION OF TRUST PROPERTY. -- A trustee shall take reasonable steps to take control of and protect the trust property.

Section 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY. --

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

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

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

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

13 Section 811. ENFORCEMENT AND DEFENSE OF CLAIMS.--A
14 trustee shall take reasonable steps to enforce claims of the
15 trust and to defend claims against the trust.

16 Section 812. COLLECTING TRUST PROPERTY.--A trustee shall
17 take reasonable steps to compel a former trustee or other
18 person to deliver trust property to the trustee and to redress
19 a breach of trust known to the trustee to have been committed
20 by a former trustee.

21 Section 813. DUTY TO INFORM AND REPORT.--

22 (a) A trustee shall keep the qualified beneficiaries
23 of the trust reasonably informed about the administration of
24 the trust and of the material facts necessary for them to
25 protect their interests. Unless unreasonable under the

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1 circumstances, a trustee shall promptly respond to a
2 beneficiary's request for information related to the
3 administration of the trust.

4 (b) A trustee:

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

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

12 (3) within sixty days after the date the
13 trustee acquires knowledge of the creation of an irrevocable
14 trust, or the date the trustee acquires knowledge that a
15 formerly revocable trust has become irrevocable, whether by the
16 death of the settlor or otherwise, shall notify the qualified
17 beneficiaries of the trust's existence, of the identity of the
18 settlor or settlors, of the right to request a copy of the
19 trust instrument and of the right to a trustee's report as
20 provided in Subsection (c); and

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

24 (c) A trustee shall send to the distributees or
25 permissible distributees of trust income or principal, and to

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1 other qualified or nonqualified beneficiaries who request it,
2 at least annually and at the termination of the trust, a report
3 of the trust property, liabilities, receipts and disbursements,
4 including the source and amount of the trustee's compensation,
5 a listing of the trust assets and, if feasible, their
6 respective market values. Upon a vacancy in a trusteeship,
7 unless a cotrustee remains in office, a report must be sent to
8 the qualified beneficiaries by the former trustee. A personal
9 representative, conservator or guardian may send the qualified
10 beneficiaries a report on behalf of a deceased or incapacitated
11 trustee.

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

17 Section 814. DISCRETIONARY POWERS--TAX SAVINGS.--

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

24 (b) Subject to Subsection (d), and unless the terms
25 of the trust expressly indicate that a rule in this subsection

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1 does not apply:

2 (1) a person other than a settlor who is a
3 beneficiary and trustee of a trust that confers on the trustee
4 a power to make discretionary distributions to or for the
5 trustee's personal benefit may exercise the power only in
6 accordance with an ascertainable standard relating to the
7 trustee's individual health, education, support or maintenance
8 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of
9 the Internal Revenue Code of 1986, as amended; and

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

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

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

20 (1) a power held by the settlor's spouse who
21 is the trustee of a trust for which a marital deduction, as
22 defined in Section 2056(b)(5) or 2523(b)(5) of the Internal
23 Revenue Code of 1986, as amended, was previously allowed;

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

1 (3) a trust if contributions to the trust
2 qualify for the annual exclusion under Section 2503(c) of the
3 Internal Revenue Code of 1986, as amended.

4 Section 815. GENERAL POWERS OF TRUSTEE. --

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

7 (1) powers conferred by the terms of the
8 trust; or

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

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

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

17 (C) any other powers conferred by the
18 Uniform Trust Code.

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

21 Section 816. SPECIFIC POWERS OF TRUSTEE. -- Without
22 limiting the authority conferred by Section 815, a trustee may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 of the trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (20) appoint a trustee to act in another
23 jurisdiction with respect to trust property located in the
24 other jurisdiction, confer upon the appointed trustee all of
25 the powers and duties of the appointing trustee, require that

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1 the appointed trustee furnish security and remove any trustee
2 so appointed;

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

8 (A) paying it to the beneficiary's conservator
9 or, if the beneficiary does not have a conservator, the
10 beneficiary's guardian;

11 (B) paying it to the beneficiary's custodian
12 under the Uniform Transfers to Minors Act or custodial trustee
13 under the Uniform Custodial Trust Act, and, for that purpose,
14 creating a custodianship or custodial trust;

15 (C) if the trustee does not know of a
16 conservator, guardian, custodian or custodial trustee, paying
17 it to an adult relative or other person having legal or
18 physical care or custody of the beneficiary, to be expended on
19 the beneficiary's behalf; or

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

23 (22) on distribution of trust property or the
24 division or termination of a trust, make distributions in
25 divided or undivided interests, allocate particular assets in

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1 proportionate or disproportionate shares, value the trust
2 property for those purposes and adjust for resulting
3 differences in valuation;

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

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

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

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

18 Section 817. DISTRIBUTION UPON TERMINATION. --

19 (a) Upon termination or partial termination of a
20 trust, the trustee may send to the beneficiaries a proposal for
21 distribution. The right of any beneficiary to object to the
22 proposed distribution terminates if the beneficiary does not
23 notify the trustee of an objection within thirty days after the
24 proposal was sent, but only if the proposal informed the
25 beneficiary of the right to object and of the time allowed for

1 objection.

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

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

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

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

15 ARTICLE 9 is reserved.

16 ARTICLE 10

17 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH
18 TRUSTEES

19 Section 1001. REMEDIES FOR BREACH OF TRUST. --

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

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

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

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

Section 1002. DAMAGES FOR BREACH OF TRUST. --

- (a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:
 - (1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
 - (2) the profit the trustee made by reason of the breach.

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

Section 1003. DAMAGES IN ABSENCE OF BREACH. --

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

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

Section 1004. ATTORNEY'S FEES AND COSTS. -- In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Section 1005. LIMITATION OF ACTION AGAINST TRUSTEE. --

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

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

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

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

Section 1006. RELIANCE ON TRUST INSTRUMENT. --A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Section 1007. EVENT AFFECTING ADMINISTRATION OR

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1 DISTRIBUTION. -- If the happening of an event, including
2 marriage, divorce, performance of educational requirements or
3 death, affects the administration or distribution of a trust, a
4 trustee who has exercised reasonable care to ascertain the
5 happening of the event is not liable for a loss resulting from
6 the trustee's lack of knowledge.

7 Section 1008. EXCULPATION OF TRUSTEE. --

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

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

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

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

24 Section 1009. BENEFICIARY'S CONSENT, RELEASE OR
25 RATIFICATION. -- A trustee is not liable to a beneficiary for

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1 breach of trust if the beneficiary, while having capacity,
2 consented to the conduct constituting the breach, released the
3 trustee from liability for the breach or ratified the
4 transaction constituting the breach, unless:

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

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

10 Section 1010. LIMITATION ON PERSONAL LIABILITY OF
11 TRUSTEE. --

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

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

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

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

4 Section 1011 is reserved.

5 Section 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE. -

6 -

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

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

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

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

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

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

3 Section 1013. CERTIFICATION OF TRUST. --

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

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

10 (2) the identity of the settlor;

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

13 (4) the powers of the trustee;

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

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

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

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

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

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1 (c) A certification of trust must state that the
2 trust has not been revoked, modified or amended in any manner
3 that would cause the representations contained in the
4 certification of trust to be incorrect.

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

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

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

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

25 (h) A person making a demand for the trust

1 instrument in addition to a certification of trust or excerpts
2 is liable for damages if the court determines that the person
3 did not act in good faith in demanding the trust instrument.

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

7 ARTICLE 11

8 MISCELLANEOUS PROVISIONS

9 Section 1101. UNIFORMITY OF APPLICATION AND
10 CONSTRUCTION. -- In applying and construing the Uniform Trust
11 Code, consideration must be given to the need to promote
12 uniformity of the law with respect to its subject matter among
13 states that enact it.

14 Section 1102. ELECTRONIC RECORDS AND SIGNATURES. -- The
15 provisions of the Uniform Trust Code governing the legal
16 effect, validity or enforceability of electronic records or
17 electronic signatures, and of contracts formed or performed
18 with the use of such records or signatures, conform to the
19 requirements of Section 102 of the federal Electronic
20 Signatures in Global and National Commerce Act and supersede,
21 modify and limit the requirements of the federal Electronic
22 Signatures in Global and National Commerce Act.

23 Section 1103. REPEAL. -- Sections 45-7-101 through 45-7-401
24 and 46-2-1 through 46-2-19 NMSA 1978 (being Laws 1975, Chapter
25 257, Sections 7-101, 7-105, 7-201, 7-202, 7-205, 7-206, 7-301,
. 134208. 2ms

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1 7-302, 7-303, 7-304, 7-305, 7-306, 7-307 and 7-401; Laws 1951,
2 Chapter 193, Sections 1 through 3; Laws 1995, Chapter 190,
3 Section 2; Laws 1951, Chapter 193, Section 5; Laws 1995,
4 Chapter 190, Section 3; Laws 1951, Chapter 193, Sections 7
5 through 11 and 15 through 22, as amended) are repealed.

6 Section 1104. SEVERABILITY CLAUSE. --If any provision of
7 the Uniform Trust Code or its application to any person or
8 circumstances is held invalid, the invalidity does not affect
9 other provisions or applications of that code which can be
10 given effect without the invalid provision or application, and
11 to this end the provisions of the code are severable.

12 Section 1105. APPLICATION TO EXISTING RELATIONSHIPS. --

13 (a) Except as otherwise provided in the Uniform
14 Trust Code, on the effective date of the Uniform Trust Code:

15 (1) the Uniform Trust Code applies to all
16 trusts created before, on or after its effective date;

17 (2) the Uniform Trust Code applies to all
18 judicial proceedings concerning trusts commenced on or after
19 its effective date;

20 (3) the Uniform Trust Code applies to judicial
21 proceedings concerning trusts commenced before its effective
22 date, unless the court finds that application of a particular
23 provision of the Uniform Trust Code would substantially
24 interfere with the effective conduct of the judicial
25 proceedings or prejudice the rights of the parties, in which

1 case the particular provision of the Uniform Trust Code does
2 not apply and the superseded law applies;

3 (4) any rule of construction or presumption
4 provided in the Uniform Trust Code applies to trust instruments
5 executed before the effective date of the Uniform Trust Code
6 unless there 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
9 the Uniform Trust Code is not affected by the Uniform Trust
10 Code.

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

16 Section 1106. EFFECTIVE DATE. -- The effective date of the
17 provisions of this act is July 1, 2001.

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