

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 53 Session of
2009INTRODUCED BY GREENLEAF, TARTAGLIONE, RAFFERTY, FERLO, BROWNE,
COSTA, O'PAKE AND KITCHEN, JANUARY 20, 2009

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, FEBRUARY 10, 2009

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in intestate succession,
3 further providing for forfeiture; in wills, further providing
4 for modification of wills; in grant of letters, further
5 providing for advertisement of grant of letters; in
6 administration and personal representatives, further
7 providing for duty of personal representative; in
8 apportionment of death taxes, further providing for
9 enforcement of contribution or exoneration of Federal estate
10 tax; in powers of attorney, further providing for
11 implementation of power of attorney; in estates, further
12 providing for applicability of rule against perpetuities and
13 for modification of conveyance by divorce and for effect of
14 divorce on designation of beneficiaries; in trusts, further
15 providing for notice of representation, for creditor's claim
16 against settlor, for actions contesting validity of revocable
17 trusts, for claims and distribution after settlor's death,
18 for trustee's duty to inform and report, for illustrative
19 powers of trustee and for limitation of action against
20 trustee; in principal and income, further providing for power
21 to convert to unitrust and for retirement benefits,
22 individual retirement accounts, deferred compensation,
23 annuities and similar payments; and making conforming
24 amendments to Title 15.

25 The General Assembly of the Commonwealth of Pennsylvania
26 hereby enacts as follows:

27 Section 1. Sections 2106(a), 2507(2), 3162, 3301(c), 3706,
28 5603(p) and (q), 6107.1, 6111.1, 6111.2, 7725 and 7745 of Title

20 of the Pennsylvania Consolidated Statutes are amended to
read:

§ 2106. Forfeiture.

(a) Spouse's share.--

(1) A spouse who, for one year or upwards previous to
the death of the other spouse, has willfully neglected or
refused to perform the duty to support the other spouse, or
who for one year or upwards has willfully and maliciously
deserted the other spouse, shall have no right or interest
under this chapter in the real or personal estate of the
other spouse.

(2) A spouse shall have no right or interest under this
chapter in the real or personal estate of the other spouse
if:

(i) the other spouse dies domiciled in this
Commonwealth during the course of divorce proceedings;

(ii) no decree of divorce has been entered pursuant
to 23 Pa.C.S. § 3323 (relating to decree of court); and

(iii) grounds have been established as provided in
23 Pa.C.S. § 3323(g).

* * *

§ 2507. Modification by circumstances.

Wills shall be modified upon the occurrence of any of the
following circumstances, among others:

* * *

(2) Divorce or pending divorce.--[If the testator is
divorced from the bonds of matrimony after making a will,
any] Any provision in [the] a testator's will in favor of or
relating to [his] the testator's spouse [so divorced] shall
[thereby] become ineffective for all purposes unless it

appears from the will that the provision was intended to survive [the divorce.] a divorce, if the testator:

(i) is divorced from such spouse after making the will; or

(ii) dies domiciled in this Commonwealth during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).

* * *

§ 3162. Advertisement of grant of letters.

(a) Notice generally.--The personal representative, immediately after the grant of letters, shall cause notice thereof to be given in one newspaper of general circulation published at or near the place where the decedent resided or, in the case of a nonresident decedent, at or near the place where the letters were granted, and in the legal periodical, if any, designated by rule of court for the publication of legal notices, once a week for three successive weeks, together with his name and address; and in every such notice, he shall request all persons having claims against the estate of the decedent to make known the same to him or his attorney, and all persons indebted to the decedent to make payment to him without delay.

(b) Proofs of advertisement to trustee.--A personal representative who has advertised the grant of letters and received the notice required by section 7780.3(c) (relating to duty to inform and report) shall promptly send copies of the proofs of that advertisement to the trustee.

§ 3301. Duty of personal representative.

* * *

1 (c) Time for filing.--The personal representative shall file
2 his inventory no later than the date he files his account or the
3 due date, including any extension, for the filing of the
4 inheritance tax return for the estate, whichever is earlier. Any
5 party in interest in the estate may request the filing of an
6 inventory at an earlier date by writing delivered to the
7 personal representative or his attorney in which event an
8 inventory shall be filed within three months after the
9 appointment of the personal representative or within 30 days
10 after the request, whichever is later. The court[, upon cause
11 shown,] may direct the [filing of] personal representative to
12 file an inventory of estate assets at any time.

13 § 3706. Enforcement of contribution or exoneration of Federal
14 estate tax.

15 (a) Duty to pay.--Parties liable for apportionment of the
16 Federal estate tax, whether residents or nonresidents of this
17 Commonwealth, shall pay the amounts apportioned against them
18 [respectively.] at the time the Federal estate tax is due,
19 without regard to any extension of time for paying such tax.

20 (b) [Duty] Power of fiduciary.--The fiduciary charged with
21 the duty to pay the Federal estate tax may recover from parties
22 liable to apportionment the amounts of Federal estate tax
23 [apportionable] apportioned to them [respectively]. If the
24 fiduciary pays the tax apportioned against another party, the
25 fiduciary may recover from the other party the tax payment so
26 advanced, together with interest of 5% per annum from the date
27 of payment.

28 (c) Suspending distribution.--Distribution or delivery of
29 property to any party, other than a fiduciary charged with a
30 duty to pay the Federal estate tax, shall not be required of any

1 fiduciary until [the Federal estate tax apportionable with
2 respect thereto is paid or, if the Federal estate tax has not
3 been determined and apportionment made, until adequate security
4 for payment is furnished to the fiduciary making the
5 distribution or delivery.] that party pays the Federal estate
6 tax apportioned to that party.

7 (d) Court decrees.--[The] Notwithstanding subsections (a)
8 and (b), the court, upon petition or at an accounting or in any
9 appropriate action or proceeding, shall make such decrees or
10 orders as it shall deem advisable apportioning the Federal
11 estate tax. The court may direct a fiduciary to collect the
12 apportioned amounts from the property or interests in his
13 possession of any parties against whom apportionment has been
14 made and may direct all other parties against whom the Federal
15 estate tax has been or may be apportioned or from whom any part
16 of the Federal estate tax may be recovered to make payment of
17 the apportioned amounts to the fiduciary. When a fiduciary holds
18 property of a party liable to apportionment insufficient to
19 satisfy the apportioned Federal estate tax, the court may direct
20 that the balance of the apportioned amount of Federal estate tax
21 shall be paid to the fiduciary by the party liable. Should an
22 overpayment of the Federal estate tax be made by any party or on
23 his behalf, the court may direct an appropriate reimbursement
24 for the overpayment. If the court apportions any part of the
25 Federal estate tax against any party interested in
26 nontestamentary property or among the respective interests
27 created by any nontestamentary instrument, the court, in its
28 discretion, may assess against those properties or interests an
29 equitable share of the expenses incurred in connection with the
30 determination and apportionment of the Federal estate tax. If

1 the fiduciary cannot recover the Federal estate tax apportioned
2 against a party benefited, the unrecovered amount shall be
3 charged in such manner as the court may determine.

4 § 5603. Implementation of power of attorney.

5 * * *

6 (p) Power to engage in insurance transactions.--A power to
7 "engage in insurance transactions" shall mean that the agent
8 may:

9 (1) Purchase, continue, renew, convert or terminate any
10 type of insurance (including, but not limited to, life,
11 accident, health, disability or liability insurance) and pay
12 premiums and collect benefits and proceeds under insurance
13 policies.

14 (2) Exercise nonforfeiture provisions under insurance
15 policies.

16 (3) In general, exercise all powers with respect to
17 insurance that the principal could if present; however, the
18 agent cannot designate himself beneficiary of a life
19 insurance policy unless the agent is the spouse, child,
20 grandchild, parent, brother or sister of the principal. An
21 agent and a beneficiary of a life insurance policy shall be
22 liable as equity and justice may require to the extent that,
23 as determined by the court, a beneficiary designation made by
24 the agent is inconsistent with the known or probable intent
25 of the principal.

26 (q) Power to engage in retirement plan transactions.--A
27 power to "engage in retirement plan transactions" shall mean
28 that the agent may contribute to, withdraw from and deposit
29 funds in any type of retirement plan (including, but not limited
30 to, any tax qualified or nonqualified pension, profit sharing,

1 stock bonus, employee savings and retirement plan, deferred
2 compensation plan or individual retirement account), select and
3 change payment options for the principal, make roll-over
4 contributions from any retirement plan to other retirement plans
5 and, in general, exercise all powers with respect to retirement
6 plans that the principal could if present. However, the agent
7 cannot designate himself beneficiary of a retirement plan unless
8 the agent is the spouse, child, grandchild, parent, brother or
9 sister of the principal. An agent and a beneficiary of a
10 retirement plan shall be liable as equity and justice may
11 require to the extent that, as determined by the court, a
12 beneficiary designation made by the agent is inconsistent with
13 the known or probable intent of the principal.

14 * * *

15 § 6107.1. Applicability of rule against perpetuities.

16 (a) Traditional rule.--Sections 6104 (relating to rule
17 against perpetuities), 6105 (relating to rule against
18 perpetuities; disposition when invalidity occurs), 6106
19 (relating to income accumulations; when valid) and 6107
20 (relating to income accumulations; disposition when invalidity
21 occurs):

22 (1) shall apply to every interest created before January
23 1, 2007; but

24 (2) shall not apply to any interest created after
25 December 31, 2006.

26 (b) Modern rule.--All of the following apply to every
27 interest created after December 31, 2006:

28 (1) [No] Except as provided in paragraph (3), no
29 interest shall be void as a perpetuity.

30 (2) No direction or authorization to [accumulated]

1 accumulate income shall be void as a perpetuity.

2 (3) If a power of appointment is exercised to create a
3 new power of appointment, any interest created by the
4 exercise of the new power of appointment is invalid if it
5 does not vest within 360 years of the creation of the
6 original power of appointment, unless the exercise of the new
7 power of appointment expressly states that this provision
8 shall not apply to the interests created by the exercise.

9 (4) Void interests shall be disposed of in the manner
10 provided in section 6105.

11 § 6111.1. Modification by divorce or pending divorce.

12 [If the conveyer is divorced from the bonds of matrimony
13 after making a conveyance, any] Any provision in [the] a
14 conveyance which was revocable by [him] a conveyer at the time
15 of [his] the conveyor's death and which was to take effect at or
16 after [his] the conveyor's death in favor of or relating to [his
17 spouse so divorced shall thereby] the conveyor's spouse shall
18 become ineffective for all purposes unless it appears in the
19 governing instrument that the provision was intended to survive
20 [the divorce.] a divorce, if the conveyor:

21 (1) is divorced from such spouse after making the
22 conveyance; or

23 (2) dies domiciled in this Commonwealth during the
24 course of divorce proceedings, no decree of divorce has been
25 entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of
26 court) and grounds have been established as provided in 23
27 Pa.C.S. § 3323(g).

28 § 6111.2. Effect of divorce or pending divorce on designation
29 of beneficiaries.

30 [If a person domiciled in this Commonwealth at the time of

1 his death is divorced from the bonds of matrimony after
2 designating his spouse as beneficiary of a life insurance
3 policy, annuity contract, pension or profit-sharing plan or
4 other contractual arrangement providing for payments to his
5 spouse, any designation in favor of his former spouse which was
6 revocable by him after the divorce shall become ineffective for
7 all purposes and shall be construed as if such former spouse had
8 predeceased him unless it appears from the wording of the
9 designation, a court order or a written contract between the
10 person and such former spouse that the designation was intended
11 to survive the divorce.]

12 (a) Applicability.--This section is applicable if an
13 individual:

14 (1) is domiciled in this Commonwealth;

15 (2) designates the individual's spouse as beneficiary of
16 the individual's life insurance policy, annuity contract,
17 pension or profit-sharing plan or other contractual
18 arrangement providing for payments to the spouse; and

19 (3) either:

20 (i) at the time of the individual's death is
21 divorced from the spouse; or

22 (ii) dies during the course of divorce proceedings,
23 no decree of divorce has been entered pursuant to 23
24 Pa.C.S. § 3323 (relating to decree of court) and grounds
25 have been established as provided in 23 Pa.C.S. §
26 3323(g).

27 (b) General rule.--Any designation described in subsection
28 (a) (2) in favor of the individual's spouse or former spouse that
29 was revocable by the individual at the individual's death shall
30 become ineffective for all purposes and shall be construed as if

1 the spouse or former spouse had predeceased the individual,
2 unless it appears the designation was intended to survive the
3 divorce based on:

4 (1) the wording of the designation;

5 (2) a court order; or

6 (3) a written contract between the individual and the
7 spouse or former spouse.

8 (c) Liability.--

9 (1) Unless restrained by court order, no insurance
10 company, pension or profit-sharing plan trustee or other
11 obligor shall be liable for making payments to a spouse or
12 former spouse which would have been proper in the absence of
13 this section.

14 (2) Any spouse or former spouse to whom payment is made
15 shall be answerable to anyone prejudiced by the payment.

16 § 7725. Notice of representation.

17 A person representing another must be given written notice by
18 the trustee that the person is representing the other person.

19 [The person to whom the notice is given may decline the
20 representation by a writing that is given to the trustee no
21 later than 60 days after receipt of the trustee's notice.] A
22 person to whom the notice is given is presumed to accept the
23 representation unless the person declines the representation in
24 a writing delivered to the trustee no later than 30 days after
25 receipt of the notice.

26 § 7745. Creditor's claim against settlor - UTC 505(a).

27 Whether or not a trust instrument contains a spendthrift
28 provision and notwithstanding section 7744 (relating to
29 discretionary trusts; effect of standard - UTC 504):

30 (1) During the lifetime of the settlor, the property of

1 a revocable trust is subject to claims of the settlor's
2 creditors.

3 (2) A judgment creditor or assignee of the settlor of an
4 irrevocable trust may reach the maximum amount that can be
5 distributed to or for the settlor's benefit. If a trust has
6 more than one settlor, the creditor or assignee of a
7 particular settlor may reach the portion of the trust
8 attributable to that settlor's contribution. However, the
9 assets of an irrevocable trust are not subject to the claims
10 of a creditor of the settlor solely because of the existence
11 of the trustee's discretionary power to pay directly to the
12 taxing authorities or to reimburse the settlor for any income
13 tax payable by the settlor attributable to trust income or
14 principal.

15 (3) After the death of the settlor and subject to the
16 settlor's right to direct the source from which liabilities
17 will be paid, the property of a revocable trust is subject to
18 claims of the settlor's creditors, costs of administration of
19 the settlor's estate, the expenses of the settlor's funeral
20 and disposal of remains and the family exemption to the
21 extent the settlor's probate estate is inadequate to satisfy
22 those claims, costs, expenses and exemption and no other
23 statute specifically exempts the property from those claims.

24 Section 2. Section 7754 of Title 20 is amended by adding a
25 subsection to read:

26 § 7754. Actions contesting validity of revocable trust.

27 * * *

28 (d) Competency of witnesses.--The competency of a witness in
29 an action contesting the validity of a revocable trust shall be
30 governed by the same rules that apply in actions contesting the

1 validity of a will.

2 Section 3. Sections 7755(c), 7780.3(a), (f), (g), (i), (k)
3 and (l), 7780.6(a), 7785(a), 8105(d) and (e) and 8149(c) of
4 Title 20 are amended to read:

5 § 7755. Claims and distribution after settlor's death.

6 * * *

7 (c) [No personal representative.--If no personal
8 representative is appointed within 90 days after the settlor's
9 death, the trustee shall advertise the trust's existence and the
10 name and address of the trustee in the manner set forth in
11 section 3162 (relating to advertisement of grant of letters).]
12 Trustee's duty to advertise.--

13 (1) A trustee of a revocable trust:

14 (i) May advertise at any time after the settlor's
15 death.

16 (ii) Shall advertise if the first advertisement of
17 the grant of letters by the settlor's personal
18 representative does not occur within 90 days after the
19 settlor's death.

20 (2) Advertisements by the trustee under this subsection
21 shall be in the manner set forth in section 3162 (relating to
22 advertisement of grant of letters) and shall include:

23 (i) The fact of the trust's existence.

24 (ii) The trustee's name and address.

25 (3) The personal representative of the settlor of a
26 revocable trust shall send to the trustee copies of the proof
27 of publication of the advertisement of the grant of letters.

28 * * *

29 § 7780.3. Duty to inform and report.

30 (a) Duty to respond to requests.--A trustee shall promptly

1 respond to a [beneficiary's] reasonable request ~~by the~~

2 ~~settlor~~by:

3 (1) The settlor of a trust or by a beneficiary of an
4 irrevocable trust for information related to the trust's
5 administration.

6 (2) THE DEPARTMENT OF PUBLIC WELFARE FOR INFORMATION
7 RELATED TO THE TRUST'S ADMINISTRATION WHEN THE SETTLOR,
8 TRUSTEE OR BENEFICIARY IS A RESIDENT IN A STATE-OWNED
9 FACILITY OR AN APPLICANT FOR OR RECIPIENT OF CASH OR MEDICAL
10 ASSISTANCE FROM THE COMMONWEALTH.

11 * * *

12 (f) Notice to current beneficiaries.--No later than 30 days
13 after the date on which the trustee of an irrevocable trust
14 learns that a person who did not previously receive the notice
15 described in subsection (i) is a current beneficiary of the
16 trust, the trustee shall send the notice described in subsection
17 (i) to the current beneficiary if, at that time, the trustee
18 knows that the settlor is then deceased or has been adjudicated
19 incapacitated. With respect to a testamentary trust, the time
20 specified in this subsection commences to run when the trust is
21 first funded, whether or not the trust is completely funded on
22 that date.

23 (g) Change in trusteeship.--[Apart from the other
24 requirements of this section, the trustee shall send the notice
25 described in subsection (i) to the current beneficiaries each
26 time there is a change in trusteeship.]

27 (1) Each time there is a change in trusteeship of any
28 trust, the trustee shall notify the settlor in writing of the
29 change.

30 (2) Each time there is a change in trusteeship of any

1 trust whose settlor is deceased or of an irrevocable trust
2 whose settlor has been adjudicated incapacitated, the trustee
3 shall notify the current beneficiaries in writing of the
4 change.

5 (3) Notice under this subsection shall include the
6 trustee's name, address and telephone number.

7 * * *

8 (i) Contents of notice.--[Any] Except as provided in
9 subsection (g), any notice under this section shall be written
10 and convey the following information:

11 (1) The fact of the trust's existence.

12 (2) The identity of the settlor.

13 (3) The trustee's name, address and telephone number.

14 (4) The recipient's right to receive upon request a copy
15 of the trust instrument.

16 (5) [The recipient's] Each current beneficiary's right
17 to receive, at least annually, [a written report of the
18 trust's assets and their market values if feasible, the
19 trust's liabilities and the trust's receipts and
20 disbursements since the date of the last such report] upon
21 request, periodic written financial reports concerning the
22 trust.

23 * * *

24 (k) Notice to settlor's appointee.--The settlor of a trust
25 may in the trust instrument appoint one or more persons or a
26 succession of persons to receive, on behalf of one or more named
27 current beneficiaries of the trust, the notices required by this
28 section. The trustee giving the notice required by this section
29 to that appointee satisfies the trustee's duty to give to the
30 named current beneficiary the notice required by this section

1 if:

2 (1) the trustee notifies the appointee that the notice
3 is being given to the appointee as representing the named
4 current beneficiary; and

5 (2) the appointee does not decline to receive the notice
6 in a writing [that is given] delivered to the trustee no
7 later than [60] 30 days after receipt of the trustee's
8 notice.

9 (1) Applicability.--

10 (1) If the death or adjudication of incapacity described
11 in subsection (b), (c), (d) or (e) occurs on or after
12 November 6, 2006, the time limit for notice set forth in that
13 subsection shall apply.

14 (2) If the death or adjudication of incapacity described
15 in subsection (b), [(c),] (d) or (e) has occurred before
16 November 6, 2006, the time limit for notice set forth in that
17 subsection shall be November 6, 2008.

18 (3) The notice under subsection (f) shall not be
19 required to be completed until two years after November 6,
20 2006.

21 § 7780.6. Illustrative powers of trustee.

22 (a) Listing.--The powers which a trustee may exercise
23 pursuant to section 7780.5 (relating to powers of trustees - UTC
24 815) include the following powers:

25 (1) To accept, hold, invest in and retain investments as
26 provided in Chapter 72 (relating to prudent investor rule).

27 (2) To pay or contest a claim; settle a claim by or
28 against the trust by compromise, arbitration or otherwise;
29 and release, in whole or in part, any claim belonging to the
30 trust.

1 (3) To resolve a dispute regarding the interpretation of
2 the trust or the administration of the trust by mediation,
3 arbitration or other alternative dispute resolution
4 procedures.

5 (4) To prosecute or defend actions, claims or
6 proceedings for the protection of trust assets and of the
7 trustee in the performance of the trustee's duties.

8 (5) To abandon or decline to administer any property
9 which is of little or no value, transfer title to abandoned
10 property and decline to accept title to and administer
11 property which has or may have environmental or other
12 liability attached to it.

13 (6) To insure the assets of the trust against damage or
14 loss and, at the expense of the trust, protect the trustee,
15 the trustee's agents and the beneficiaries from liability to
16 third persons arising from the administration of the trust.

17 (7) To advance money for the protection of the trust and
18 for all expenses, losses and liability sustained in the
19 administration of the trust or because of the holding or
20 ownership of any trust assets. The trustee has a lien on the
21 trust assets as against the beneficiary for an advance under
22 this paragraph, including interest on the advance.

23 (8) To pay taxes, assessments, compensation of the
24 trustee and employees and agents of the trustee and other
25 expenses incurred in the administration of the trust.

26 (9) To receive additions to the assets of the trust.

27 (10) To sell or exchange any real or personal property
28 at public or private sale, without obligation to repudiate an
29 otherwise binding agreement in favor of better offers. If the
30 trustee has been required to give bond, no proceeds of the

1 sale of real estate, including proceeds arising by the reason
2 of involuntary conversion, shall be paid to the trustee
3 until:

4 (i) the court has made an order excusing the trustee
5 from entering additional security; or

6 (ii) the court has made an order requiring
7 additional security and the trustee has entered the
8 additional security.

9 (11) To enter for any purpose into a lease as lessor or
10 lessee with or without option to purchase or renew for a term
11 within or extending beyond the term of the trust.

12 (12) To grant options for sales or leases of a trust
13 asset and acquire options for the acquisition of assets,
14 including options exercisable after the trust terminates.

15 (13) To join in any reorganization, consolidation,
16 merger, dissolution, liquidation, voting trust plan or other
17 concerted action of securityholders and to delegate
18 discretionary duties with respect thereto.

19 (14) To vote a security, in person or by general or
20 limited proxy, with or without power of substitution.

21 (15) To borrow funds and mortgage or pledge trust assets
22 as security for repayment of the funds borrowed, including
23 repayments after the trust terminates.

24 (16) To make loans to and buy property from the personal
25 representatives of the settlor and the settlor's spouse.
26 Loans under this paragraph shall be adequately secured, and
27 the purchases under this paragraph shall be for fair market
28 value.

29 (17) To partition, subdivide, repair, improve or develop
30 real estate; enter into agreements concerning the partition,

1 subdivision, repair, improvement, development, zoning or
2 management of real estate; impose or extinguish restrictions
3 on real estate; dedicate land and easements to public use;
4 adjust boundaries; and do anything else regarding real estate
5 which is commercially reasonable or customary under the
6 circumstances.

7 (18) With respect to possible liability for violation of
8 environmental law:

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

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

20 (iii) to decline to accept property into trust or
21 disclaim a power with respect to property that is or may
22 be burdened with liability for violation of environmental
23 law;

24 (iv) to compromise claims against the trust which
25 may be asserted for an alleged violation of environmental
26 law; and

27 (v) to pay the expense of inspection, review,
28 abatement or remedial action to comply with environmental
29 law.

30 (19) To operate, repair, maintain, equip and improve any

1 farm or farm operation; to purchase and sell livestock,
2 crops, feed and other property that is normally perishable;
3 and to purchase, use and dispose of farm equipment and employ
4 one or more farm managers and others in connection with farm
5 equipment and pay them reasonable compensation.

6 (20) To make ordinary or extraordinary repairs or
7 alterations in buildings or other structures; demolish
8 improvements; and raze existing or erect new party walls or
9 buildings.

10 (21) To enter into a lease or arrangements for
11 exploration and removal of minerals or other natural
12 resources or enter into a pooling or utilization agreement.

13 (22) To exercise all rights and incidents of ownership
14 of life insurance policies held by the trust, including
15 borrowing on policies, entering into and terminating split-
16 dollar plans, exercising conversion privileges and rights to
17 acquire additional insurance and selecting settlement
18 options.

19 (23) To employ a custodian; hold property unregistered
20 or in the name of a nominee, including the nominee of any
21 institution employed as custodian, without disclosing the
22 fiduciary relationship and without retaining possession and
23 control of securities or other property so held or
24 registered; and pay reasonable compensation to the custodian.

25 (24) To apply funds distributable to a beneficiary who
26 is, in the trustee's opinion, disabled by illness or other
27 cause and unable properly to manage the funds directly for
28 the beneficiary's benefit or to pay such funds for
29 expenditure on the beneficiary's behalf to:

30 (i) the beneficiary;

- (ii) a guardian of the beneficiary's estate;
- (iii) an agent acting under a general power of attorney for the beneficiary; or
- (iv) if there is no agent or guardian, a relative or other person having legal or physical custody or care of the beneficiary.

(25) To pay funds distributable to a minor beneficiary to the minor or to a guardian of the minor's estate or to apply the funds directly for the minor's benefit.

(26) To do any of the following:

(i) Pay any funds distributable to a beneficiary who is not 21 years of age or older to:

(A) the beneficiary;

(B) an existing custodian for the beneficiary under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or under any other state's version of the Uniform Transfers to Minors Act;

(C) an existing custodian for the beneficiary under the former Pennsylvania Uniform Gifts to Minors Act or under any other state's version of the Uniform Gifts to Minors Act; or

(D) a custodian for the beneficiary appointed by the trustee under Chapter 53.

(ii) Apply the funds for the beneficiary.

(27) To pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(28) To sell or exercise stock subscription or conversion rights.

(29) To continue or participate in the operation of any business or other enterprise and to effect incorporation,

merger, consolidation, dissolution or other change in the form of the organization of the business or enterprise.

(30) To select a mode of payment under a qualified employee benefit plan or a retirement plan payable to the trustee and exercise rights under the plan.

(31) To distribute in cash or in kind or partly in each and allocate particular assets in proportionate or disproportionate shares.

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

(33) To exercise elections with respect to Federal, State and local taxes.

[(33)] (34) To execute and deliver instruments which will accomplish or facilitate the exercise of the trustee's powers.

* * *

§ 7785. Limitation of action against trustee.

(a) Imposed by trustee's written reports.--

(1) A beneficiary [may not challenge a transaction or assert] is barred from challenging a transaction or asserting a claim against a trustee for breach of trust [on the basis of a transaction] if:

(i) the trustee provided the beneficiary [with a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements for the year in which

1 the transaction occurred and for each of the four
2 subsequent calendar years] at least annually with
3 periodic written financial reports concerning the trust;

4 (ii) the transaction was disclosed [in the first of
5 the five reports] in a report to which subparagraph (i)
6 refers or such report provided sufficient information so
7 that the beneficiary knew or should have known of the
8 potential claim or should have inquired into its
9 existence;

10 (iii) [the beneficiary did not notify the trustee in
11 writing within six months after receiving the fifth
12 annual report that the beneficiary objects to the
13 transaction and provide the basis in writing for that
14 objection] in the 30 months after a report to which
15 subparagraph (ii) refers was sent by the trustee to the
16 beneficiary, the beneficiary did not notify the trustee
17 in writing that the beneficiary challenges the
18 transaction or asserts a claim and provides in writing
19 the basis for that challenge or assertion; and

20 (iv) all reports were accompanied by a conspicuous
21 written statement describing the effect of this
22 paragraph.

23 (2) A claim not barred by paragraph (1) may nevertheless
24 be barred by subsection (b).

25 * * *

26 § 8105. Power to convert to unitrust.

27 * * *

28 (d) Post conversion.--After a trust is converted to a
29 unitrust, all of the following apply:

30 (1) The trustee shall follow an investment policy

1 seeking a total return for the investments held by the trust,
2 whether the return is to be derived:

3 (i) from appreciation of capital;

4 (ii) from earnings and distributions from capital;

5 or

6 (iii) from both.

7 (2) The trustee shall make regular distributions in
8 accordance with the governing instrument construed in
9 accordance with the provisions of this section.

10 (3) The term "income" in the governing instrument shall
11 mean an annual distribution (the unitrust distribution) equal
12 to 4% (the payout percentage) of the net fair market value of
13 the trust's assets, whether such assets would be considered
14 income or principal under other provisions of this chapter,
15 averaged over the lesser of:

16 (i) the [three] preceding years in the smoothing
17 period selected by the trustee; or

18 (ii) the period during which the trust has been in
19 existence.

20 (e) Discretion of trustee.--The trustee may, in the
21 trustee's discretion from time to time, determine all of the
22 following:

23 (1) The effective date of a conversion to a unitrust.

24 (2) The provisions for prorating a unitrust distribution
25 for a short year in which a beneficiary's right to payments
26 commences or ceases.

27 (3) The frequency of unitrust distributions during the
28 year.

29 (4) The effect of other payments from or contributions
30 to the trust on the trust's valuation.

(5) Whether to value the trust's assets annually or more frequently.

(5.1) Whether to average the net assets of the trust over a smoothing period of three, four or five years.

(6) What valuation dates to use.

(7) How frequently to value nonliquid assets and whether to estimate their value.

(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(9) Any other matters necessary for the proper functioning of the unitrust.

* * *

§ 8149. Retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments.

* * *

(c) Allocation when internal net income of fund is readily ascertained.--

(1) If no portion of a payment from a separate fund held exclusively for the benefit of the trust is allocable to income under subsections (a) and (b) but the internal net income of the fund determined as if the fund were a separate trust subject to Subchapters [B (relating to decedent's estate or terminating income interest) through] A (relating to preliminary provisions; power to adjust; power to convert to unitrust), B (relating to decedent's estate or terminating income interest), C (relating to apportionment at beginning and end of income interest), D (relating to allocation of receipts during administration of trust) and E (relating to allocation of disbursements during administration of trust)

1 is readily ascertainable by the trustee, the internal net
2 income of the fund shall be considered to be the income
3 earned by the fund, and the portion of the payment equal to
4 the then undistributed net income of the fund realized since
5 the trust acquired its interest in the fund shall be deemed
6 to be a distribution of such income and shall be allocated to
7 the trust income account.

8 (2) The balance of any such payment shall be allocated
9 to principal.

10 (3) The power to adjust under section 8104 (relating to
11 trustee's power to adjust), the power to convert to a
12 unitrust under section 8105 (relating to power to convert to
13 unitrust) and the provisions governing express trusts under
14 section 8107 (relating to express trusts) shall apply to
15 retirement benefits covered by this subsection which are
16 payable to a trust. These powers may be exercised separately
17 and independently by the payee trustee or in the governing
18 instrument as between the retirement benefits and the trust
19 as if they were separate trusts subject to this chapter.

20 * * *

21 Section 4. Sections 5547(b) and 5548(b) of Title 15 are
22 amended to read:

23 § 5547. Authority to take and hold trust property.

24 * * *

25 (b) Nondiversion of certain property.--Property committed to
26 charitable purposes shall not, by any proceeding under Chapter
27 59 (relating to fundamental changes) or otherwise, be diverted
28 from the objects to which it was donated, granted or devised,
29 unless and until the board of directors or other body obtains
30 from the court an order under 20 Pa.C.S. [Ch. 61 (relating to

1 estates)] Ch. 77 Subch. D (relating to creation, validity,
2 modification and termination of trust) specifying the
3 disposition of the property.

4 § 5548. Investment of trust funds.

5 * * *

6 (b) Use and management.--Except as otherwise permitted under
7 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D
8 (relating to creation, validity, modification and termination of
9 trust), the board of directors or other body shall apply all
10 assets thus received to the purposes specified in the trust
11 instrument. The directors or other body shall keep accurate
12 accounts of all trust funds, separate and apart from the
13 accounts of other assets of the corporation.

14 * * *

15 Section 5. The amendment of 20 Pa.C.S. § 6107.1 shall apply
16 to any interest created after December 31, 2006.

17 Section 6. (a) The following provisions shall be
18 retroactive to November 6, 2006:

19 (1) The amendment of 20 Pa.C.S. § 7745.

20 (2) The amendment of 20 Pa.C.S. § 7780.3(1)(2).

21 (3) The amendment of 20 Pa.C.S. § 7780.6(a).

22 (b) The amendment of 20 Pa.C.S. § 6107.1 shall be
23 retroactive to January 1, 2007.

24 Section 7. This act shall take effect as follows:

25 (1) The following provisions shall take effect
26 immediately:

27 (i) This section.

28 (ii) Sections 5 and 6 of this act.

29 (iii) The amendment of 20 Pa.C.S. §§ 6107.1, 7745,
30 7780.3(1)(2) and 7780.6(a).

1 (2) The remainder of this act shall take effect in 60
2 days.