

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
29 20 of the Pennsylvania Consolidated Statutes are amended to

1 read:

2 § 2106. Forfeiture.

3 (a) Spouse's share.--

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

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

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

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

18 (iii) grounds have been established as provided in
19 23 Pa.C.S. § 3323(g).

20 * * *

21 § 2507. Modification by circumstances.

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

24 * * *

25 (2) Divorce or pending divorce.--[If the testator is
26 divorced from the bonds of matrimony after making a will,
27 any] Any provision in [the] a testator's will in favor of or
28 relating to [his] the testator's spouse [so divorced] shall
29 [thereby] become ineffective for all purposes unless it
30 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.

* * *

(c) Time for filing.--The personal representative shall file

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

12 § 3706. Enforcement of contribution or exoneration of Federal
13 estate tax.

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

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

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

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

6 (d) Court decrees.--[The] Notwithstanding subsections (a)
7 and (b), the court, upon petition or at an accounting or in any
8 appropriate action or proceeding, shall make such decrees or
9 orders as it shall deem advisable apportioning the Federal
10 estate tax. The court may direct a fiduciary to collect the
11 apportioned amounts from the property or interests in his
12 possession of any parties against whom apportionment has been
13 made and may direct all other parties against whom the Federal
14 estate tax has been or may be apportioned or from whom any part
15 of the Federal estate tax may be recovered to make payment of
16 the apportioned amounts to the fiduciary. When a fiduciary holds
17 property of a party liable to apportionment insufficient to
18 satisfy the apportioned Federal estate tax, the court may direct
19 that the balance of the apportioned amount of Federal estate tax
20 shall be paid to the fiduciary by the party liable. Should an
21 overpayment of the Federal estate tax be made by any party or on
22 his behalf, the court may direct an appropriate reimbursement
23 for the overpayment. If the court apportions any part of the
24 Federal estate tax against any party interested in
25 nontestamentary property or among the respective interests
26 created by any nontestamentary instrument, the court, in its
27 discretion, may assess against those properties or interests an
28 equitable share of the expenses incurred in connection with the
29 determination and apportionment of the Federal estate tax. If
30 the fiduciary cannot recover the Federal estate tax apportioned

1 against a party benefited, the unrecovered amount shall be
2 charged in such manner as the court may determine.

3 § 5603. Implementation of power of attorney.

4 * * *

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

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

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

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

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

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

13 * * *

14 § 6107.1. Applicability of rule against perpetuities.

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

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

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

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

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

29 (2) No direction or authorization to [accumulated]
30 accumulate income shall be void as a perpetuity.

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

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

10 § 6111.1. Modification by divorce or pending divorce.

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

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

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

27 § 6111.2. Effect of divorce or pending divorce on designation
28 of beneficiaries.

29 [If a person domiciled in this Commonwealth at the time of
30 his death is divorced from the bonds of matrimony after

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

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

13 (1) is domiciled in this Commonwealth;

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

18 (3) either:

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

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

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

1 unless it appears the designation was intended to survive the
2 divorce based on:

3 (1) the wording of the designation;

4 (2) a court order; or

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

7 (c) Liability.--

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

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

15 § 7725. Notice of representation.

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

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

25 § 7745. Creditor's claim against settlor - UTC 505(a).

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

29 (1) During the lifetime of the settlor, the property of
30 a revocable trust is subject to claims of the settlor's

creditors.

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

(3) After the death of the settlor and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a revocable trust 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 the family exemption to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and exemption and no other statute specifically exempts the property from those claims.

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

§ 7754. Actions contesting validity of revocable trust.

* * *

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

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

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

* * *

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

Trustee's duty to advertise.--

(1) A trustee of a revocable trust:

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

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

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

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

(ii) The trustee's name and address.

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

* * *

§ 7780.3. Duty to inform and report.

(a) Duty to respond to requests.--A trustee shall promptly respond to a [beneficiary's] reasonable request ~~by the~~



1 settlorby:

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

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

10 * * *

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

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

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

29 (2) Each time there is a change in trusteeship of any
30 trust whose settlor is deceased or of an irrevocable trust

1 whose settlor has been adjudicated incapacitated, the trustee
2 shall notify the current beneficiaries in writing of the
3 change.

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

6 * * *

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

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

11 (2) The identity of the settlor.

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

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

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

22 * * *

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

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

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

8 (1) Applicability.--

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

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

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

20 § 7780.6. Illustrative powers of trustee.

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

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

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

30 (3) To resolve a dispute regarding the interpretation of

1 the trust or the administration of the trust by mediation,
2 arbitration or other alternative dispute resolution
3 procedures.

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

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

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

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

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

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

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

1 of involuntary conversion, shall be paid to the trustee
2 until:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (19) To operate, repair, maintain, equip and improve any
30 farm or farm operation; to purchase and sell livestock,

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

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

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

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

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

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

29 (i) the beneficiary;

30 (ii) a guardian of the beneficiary's estate;

1 (iii) an agent acting under a general power of
2 attorney for the beneficiary; or

3 (iv) if there is no agent or guardian, a relative or
4 other person having legal or physical custody or care of
5 the beneficiary.

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

9 (26) To do any of the following:

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

12 (A) the beneficiary;

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

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

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

23 (ii) Apply the funds for the beneficiary.

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

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

28 (29) To continue or participate in the operation of any
29 business or other enterprise and to effect incorporation,
30 merger, consolidation, dissolution or other change in the

1 form of the organization of the business or enterprise.

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

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

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

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

16 [(33)] (34) To execute and deliver instruments which
17 will accomplish or facilitate the exercise of the trustee's
18 powers.

19 * * *

20 § 7785. Limitation of action against trustee.

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

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

26 (i) the trustee provided the beneficiary [with a
27 written report of the trust's assets and their market
28 values if feasible, the trust's liabilities and the
29 trust's receipts and disbursements for the year in which
30 the transaction occurred and for each of the four

subsequent calendar years] at least annually with
periodic written financial reports concerning the trust;

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

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

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

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

* * *

§ 8105. Power to convert to unitrust.

* * *

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

(1) The trustee shall follow an investment policy
seeking a total return for the investments held by the trust,

whether the return is to be derived:

(i) from appreciation of capital;

(ii) from earnings and distributions from capital;

or

(iii) from both.

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

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

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

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

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

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

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

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

(4) The effect of other payments from or contributions 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) is readily ascertainable by the trustee, the internal net

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

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

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

19 * * *

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

22 § 5547. Authority to take and hold trust property.

23 * * *

24 (b) Nondiversion of certain property.--Property committed to
25 charitable purposes shall not, by any proceeding under Chapter
26 59 (relating to fundamental changes) or otherwise, be diverted
27 from the objects to which it was donated, granted or devised,
28 unless and until the board of directors or other body obtains
29 from the court an order under 20 Pa.C.S. [Ch. 61 (relating to
30 estates)] Ch. 77 Subch. D (relating to creation, validity,

1 modification and termination of trust) specifying the
2 disposition of the property.

3 § 5548. Investment of trust funds.

4 * * *

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

13 * * *

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

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

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

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

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

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

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

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

26 (i) This section.

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

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

30 (2) The remainder of this act shall take effect in 60

1 days.