

## 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, 2009SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, FEBRUARY  
1, 2010

## 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 REMOVAL OF TRUSTEE, for trustee's duty to inform and  
19 report, for illustrative powers of trustee and for limitation  
20 of action against trustee; in principal and income, further  
21 providing for power to convert to unitrust and for retirement  
22 benefits, individual retirement accounts, deferred  
23 compensation, annuities and similar payments; and making  
24 conforming 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

1 20 of the Pennsylvania Consolidated Statutes are amended to  
2 read:

3 § 2106. Forfeiture.

4 (a) Spouse's share.--

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

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

15 (i) the other spouse dies domiciled in this  
16 Commonwealth during the course of divorce proceedings;  
17 (ii) no decree of divorce has been entered pursuant  
18 to 23 Pa.C.S. § 3323 (relating to decree of court); and  
19 (iii) grounds have been established as provided in  
20 23 Pa.C.S. § 3323(g).

21 \* \* \*

22 § 2507. Modification by circumstances.

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

25 \* \* \*

26 (2) Divorce or pending divorce.--[If the testator is  
27 divorced from the bonds of matrimony after making a will,  
28 any] Any provision in [the] a testator's will in favor of or  
29 relating to [his] the testator's spouse [so divorced] shall  
30 [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; OR ←

8 (4) A DESIGNATION OF A FORMER SPOUSE AS A BENEFICIARY  
9 AFTER THE DIVORCE DECREE HAS BEEN ISSUED.

10 (c) Liability.--

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

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

18 § 7725. Notice of representation.

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

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

28 § 7745. Creditor's claim against settlor - UTC 505(a).

29 Whether or not a trust instrument contains a spendthrift  
30 provision and notwithstanding section 7744 (relating to

discretionary trusts; effect of standard - UTC 504):

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

1 an action contesting the validity of a revocable trust shall be  
2 governed by the same rules that apply in actions contesting the  
3 validity of a will.

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

7 SECTION 3. SECTION 7755(C) OF TITLE 20 IS AMENDED TO READ: ←  
8 § 7755. Claims and distribution after settlor's death.

9 \* \* \*

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

16 (1) A trustee of a revocable trust:

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

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

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

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

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

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

1 \* \* \*

2 SECTION 4. SECTION 7766(B) OF TITLE 20 IS AMENDED AND THE  
3 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

4 § 7766. REMOVAL OF TRUSTEE - UTC 706.

5 \* \* \*

6 (B) WHEN COURT MAY REMOVE TRUSTEE.--THE COURT MAY REMOVE A  
7 TRUSTEE IF IT FINDS THAT REMOVAL OF THE TRUSTEE BEST SERVES THE  
8 INTERESTS OF THE BENEFICIARIES OF THE TRUST AND IS NOT  
9 INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST, A SUITABLE  
10 COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE AND:

11 (1) THE TRUSTEE HAS COMMITTED A SERIOUS BREACH OF TRUST;

12 (2) LACK OF COOPERATION AMONG COTRUSTEES SUBSTANTIALLY  
13 IMPAIRS THE ADMINISTRATION OF THE TRUST;

14 (3) THE TRUSTEE HAS NOT EFFECTIVELY ADMINISTERED THE  
15 TRUST BECAUSE OF THE TRUSTEE'S UNFITNESS, UNWILLINGNESS OR  
16 PERSISTENT FAILURES; OR

17 (4) THERE HAS BEEN A SUBSTANTIAL CHANGE OF  
18 CIRCUMSTANCES. A CORPORATE REORGANIZATION OF AN INSTITUTIONAL  
19 TRUSTEE, INCLUDING A PLAN OF MERGER OR CONSOLIDATION, IS NOT  
20 ITSELF A SUBSTANTIAL CHANGE OF CIRCUMSTANCES.

21 \* \* \*

22 (E) CROSS REFERENCE.--SEE SECTION 1608 OF THE ACT OF  
23 NOVEMBER 30, 1965 (P.L.847, NO.356), KNOWN AS THE BANKING CODE  
24 OF 1965.

25 SECTION 5. SECTIONS 7780.3(A), (F), (G), (I), (K) AND (L),  
26 7780.6(A), 7785, 8105(D) AND (E) AND 8149(C) OF TITLE 20 ARE  
27 AMENDED TO READ:

28 § 7780.3. Duty to inform and report.

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

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

4       ~~(2) The Department of Public Welfare for information~~  
5       ~~related to the trust's administration when the settlor,~~  
6       ~~trustee or beneficiary is a resident in a State owned~~  
7       ~~facility or an applicant for or recipient of cash or medical~~  
8       ~~assistance from the Commonwealth~~ BY THE SETTLOR OF A TRUST OR

9       BY A BENEFICIARY OF AN IRREVOCABLE TRUST FOR INFORMATION  
10       RELATED TO THE TRUST'S ADMINISTRATION. A TRUSTEE SHALL  
11       PROMPTLY RESPOND TO THE DEPARTMENT OF PUBLIC WELFARE'S  
12       REASONABLE REQUEST FOR INFORMATION RELATED TO THE TRUST'S  
13       ADMINISTRATION WHEN A SETTLOR OR BENEFICIARY IS A RESIDENT IN  
14       A STATE-OWNED FACILITY OR AN APPLICANT FOR OR RECIPIENT OF  
15       CASH OR MEDICAL ASSISTANCE FROM THE COMMONWEALTH AND THE  
16       DEPARTMENT CERTIFIES IN WRITING THAT IT HAS OBTAINED A  
17       CURRENTLY VALID CONSENT FOR THE DISCLOSURE OF SUCH  
18       INFORMATION FROM THE SETTLOR OR BENEFICIARY OF THE TRUST. A  
19       TRUSTEE MAY RELY UPON THE DEPARTMENT'S CERTIFICATION WITHOUT  
20       INVESTIGATING ITS ACCURACY.

21       \* \* \*

22       (f) Notice to current beneficiaries.--No later than 30 days  
23       after the date on which the trustee of an irrevocable trust  
24       learns that a person who did not previously receive the notice  
25       described in subsection (i) is a current beneficiary of the  
26       trust, the trustee shall send the notice described in subsection  
27       (i) to the current beneficiary if, at that time, the trustee  
28       knows that the settlor is then deceased or has been adjudicated  
29       incapacitated. With respect to a testamentary trust, the time  
30       specified in this subsection commences to run when the trust is

1 first funded, whether or not the trust is completely funded on  
2 that date.

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

7 (1) Each time there is a change in trusteeship of any  
8 trust, the trustee shall notify the settlor in writing of the  
9 change.

10 (2) Each time there is a change in trusteeship of any  
11 trust whose settlor is deceased or of an irrevocable trust  
12 whose settlor has been adjudicated incapacitated, the trustee  
13 shall notify the current beneficiaries in writing of the  
14 change.

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

17 \* \* \*

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

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

22 (2) The identity of the settlor.

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

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

26 (5) [The recipient's] Each current beneficiary's right  
27 to receive, at least annually, [a written report of the  
28 trust's assets and their market values if feasible, the  
29 trust's liabilities and the trust's receipts and  
30 disbursements since the date of the last such report] upon

1 request, periodic written financial reports concerning the  
2 trust.

3 \* \* \*

4 (k) Notice to settlor's appointee.--The settlor of a trust  
5 may in the trust instrument appoint one or more persons or a  
6 succession of persons to receive, on behalf of one or more named  
7 current beneficiaries of the trust, the notices required by this  
8 section. The trustee giving the notice required by this section  
9 to that appointee satisfies the trustee's duty to give to the  
10 named current beneficiary the notice required by this section  
11 if:

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

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

19 (l) Applicability.--

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

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

28 (3) The notice under subsection (f) shall not be  
29 required to be completed until two years after November 6,  
30 2006.



1 § 7780.6. Illustrative powers of trustee.

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

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

7 (2) To pay or contest a claim; settle a claim by or  
8 against the trust by compromise, arbitration or otherwise;  
9 and release, in whole or in part, any claim belonging to the  
10 trust.

11 (3) To resolve a dispute regarding the interpretation of  
12 the trust or the administration of the trust by mediation,  
13 arbitration or other alternative dispute resolution  
14 procedures.

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

18 (5) To abandon or decline to administer any property  
19 which is of little or no value, transfer title to abandoned  
20 property and decline to accept title to and administer  
21 property which has or may have environmental or other  
22 liability attached to it.

23 (6) To insure the assets of the trust against damage or  
24 loss and, at the expense of the trust, protect the trustee,  
25 the trustee's agents and the beneficiaries from liability to  
26 third persons arising from the administration of the trust.

27 (7) To advance money for the protection of the trust and  
28 for all expenses, losses and liability sustained in the  
29 administration of the trust or because of the holding or  
30 ownership of any trust assets. The trustee has a lien on the

1 trust assets as against the beneficiary for an advance under  
2 this paragraph, including interest on the advance.

3 (8) To pay taxes, assessments, compensation of the  
4 trustee and employees and agents of the trustee and other  
5 expenses incurred in the administration of the trust.

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

7 (10) To sell or exchange any real or personal property  
8 at public or private sale, without obligation to repudiate an  
9 otherwise binding agreement in favor of better offers. If the  
10 trustee has been required to give bond, no proceeds of the  
11 sale of real estate, including proceeds arising by the reason  
12 of involuntary conversion, shall be paid to the trustee  
13 until:

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

16 (ii) the court has made an order requiring  
17 additional security and the trustee has entered the  
18 additional security.

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

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

25 (13) To join in any reorganization, consolidation,  
26 merger, dissolution, liquidation, voting trust plan or other  
27 concerted action of securityholders and to delegate  
28 discretionary duties with respect thereto.

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

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

4           (16) To make loans to and buy property from the personal  
5 representatives of the settlor and the settlor's spouse.  
6 Loans under this paragraph shall be adequately secured, and  
7 the purchases under this paragraph shall be for fair market  
8 value.

9           (17) To partition, subdivide, repair, improve or develop  
10 real estate; enter into agreements concerning the partition,  
11 subdivision, repair, improvement, development, zoning or  
12 management of real estate; impose or extinguish restrictions  
13 on real estate; dedicate land and easements to public use;  
14 adjust boundaries; and do anything else regarding real estate  
15 which is commercially reasonable or customary under the  
16 circumstances.

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

19               (i) to inspect or investigate property the trustee  
20 holds or has been asked to hold or property owned or  
21 operated by an organization in which the trustee holds or  
22 has been asked to hold an interest, for the purpose of  
23 determining the application of environmental law with  
24 respect to the property;

25               (ii) to take action to prevent, abate or otherwise  
26 remedy any actual or potential violation of environmental  
27 law affecting property held directly or indirectly by the  
28 trustee, whether taken before or after the assertion of a  
29 claim or the initiation of governmental enforcement;

30               (iii) to decline to accept property into trust or

1           disclaim a power with respect to property that is or may  
2           be burdened with liability for violation of environmental  
3           law;

4           (iv) to compromise claims against the trust which  
5           may be asserted for an alleged violation of environmental  
6           law; and

7           (v) to pay the expense of inspection, review,  
8           abatement or remedial action to comply with environmental  
9           law.

10          (19) To operate, repair, maintain, equip and improve any  
11          farm or farm operation; to purchase and sell livestock,  
12          crops, feed and other property that is normally perishable;  
13          and to purchase, use and dispose of farm equipment and employ  
14          one or more farm managers and others in connection with farm  
15          equipment and pay them reasonable compensation.

16          (20) To make ordinary or extraordinary repairs or  
17          alterations in buildings or other structures; demolish  
18          improvements; and raze existing or erect new party walls or  
19          buildings.

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

23          (22) To exercise all rights and incidents of ownership  
24          of life insurance policies held by the trust, including  
25          borrowing on policies, entering into and terminating split-  
26          dollar plans, exercising conversion privileges and rights to  
27          acquire additional insurance and selecting settlement  
28          options.

29          (23) To employ a custodian; hold property unregistered  
30          or in the name of a nominee, including the nominee of any

1 institution employed as custodian, without disclosing the  
2 fiduciary relationship and without retaining possession and  
3 control of securities or other property so held or  
4 registered; and pay reasonable compensation to the custodian.

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

10 (i) the beneficiary;

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

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

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

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

20 (26) To do any of the following:

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

23 (A) the beneficiary;

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

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

1           Gifts to Minors Act; or

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

4           (ii) Apply the funds for the beneficiary.

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

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

9           (29) To continue or participate in the operation of any  
10          business or other enterprise and to effect incorporation,  
11          merger, consolidation, dissolution or other change in the  
12          form of the organization of the business or enterprise.

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

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

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

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

27          [(33)] (34) To execute and deliver instruments which  
28          will accomplish or facilitate the exercise of the trustee's  
29          powers.

30          \* \* \*

1 § 7785. Limitation of action against trustee.

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

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

7 (i) the trustee provided the beneficiary [with a  
8 written report of the trust's assets and their market  
9 values if feasible, the trust's liabilities and the  
10 trust's receipts and disbursements for the year in which  
11 the transaction occurred and for each of the four  
12 subsequent calendar years] at least annually with  
13 periodic written financial reports concerning the trust;

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

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

30 (iv) all reports were accompanied by a conspicuous

1 written statement describing the effect of this  
2 paragraph.

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

5 \* \* \*

6 (B) FIVE-YEAR ABSOLUTE BAR.--IF NOT PREVIOUSLY BARRED BY  
7 SUBSECTION (A) OR SECTION 7798 (RELATING TO FAILURE TO PRESENT  
8 CLAIM AT AUDIT):

9 (1) EXCEPT AS PROVIDED IN PARAGRAPH (1.1), (2) OR (3), A  
10 CLAIM BY A BENEFICIARY AGAINST A TRUSTEE, INCLUDING A CLAIM  
11 PRESERVED BY THE BENEFICIARY NOTIFYING THE TRUSTEE IN THE  
12 MANNER DESCRIBED IN SUBSECTION (A), SHALL BE BARRED FIVE  
13 YEARS AFTER THE FIRST TO OCCUR OF THE FOLLOWING EVENTS:

14 (I) THE DATE AFTER THE REMOVAL, RESIGNATION OR DEATH  
15 OF THE TRUSTEE ON WHICH THE BENEFICIARY WAS GIVEN THE  
16 NOTICE REQUIRED BY SECTION 7780.3(G) (RELATING TO DUTY TO  
17 INFORM AND REPORT);

18 (II) THE TERMINATION OF THE BENEFICIARY'S INTEREST  
19 IN THE TRUST; OR

20 (III) THE TERMINATION OF THE TRUST.

21 (1.1) A BENEFICIARY WHO HAS CHALLENGED A TRANSACTION OR  
22 ASSERTED A CLAIM AS PROVIDED IN SUBSECTION (A) (1) (III) MAY  
23 NOT CHALLENGE THE TRANSACTION OR ASSERT THE CLAIM AGAINST THE  
24 TRUSTEE IN A COURT OR AN ARBITRATION PROCEEDING COMMENCED  
25 MORE THAN FIVE YEARS AFTER THE DATE THE TRUSTEE SENT THE  
26 BENEFICIARY THE REPORT DESCRIBED IN SUBSECTION (A) (1) (I) AND  
27 (II).

28 (2) EXCEPT AS SET FORTH IN PARAGRAPH (3), IF THE FIRST  
29 TO OCCUR OF THE EVENTS SET FORTH IN PARAGRAPH (1) OCCURRED  
30 BEFORE NOVEMBER 6, 2006, A CLAIM DESCRIBED IN PARAGRAPH (1)



1 SHALL BE BARRED FIVE YEARS AFTER NOVEMBER 6, 2006.

2 (3) A CLAIM DESCRIBED IN PARAGRAPH (1) OR (1.1) IS NOT  
3 BARRED IF, PRIOR TO THE RESPECTIVE DATE SET FORTH IN EITHER  
4 PARAGRAPH (1) OR (2), THE TRUSTEE HAS FILED AN ACCOUNT WITH  
5 THE COURT OR THE BENEFICIARY HAS PETITIONED THE COURT TO  
6 COMPEL THE TRUSTEE TO FILE AN ACCOUNT.

7 § 8105. Power to convert to unitrust.

8 \* \* \*

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

11 (1) The trustee shall follow an investment policy  
12 seeking a total return for the investments held by the trust,  
13 whether the return is to be derived:

14 (i) from appreciation of capital;

15 (ii) from earnings and distributions from capital;

16 or

17 (iii) from both.

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

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

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

29 (ii) the period during which the trust has been in  
30 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

1 exclusively for the benefit of the trust is allocable to  
2 income under subsections (a) and (b) but the internal net  
3 income of the fund determined as if the fund were a separate  
4 trust subject to Subchapters [B (relating to decedent's  
5 estate or terminating income interest) through] A (relating  
6 to preliminary provisions; power to adjust; power to convert  
7 to unitrust), B (relating to decedent's estate or terminating  
8 income interest), C (relating to apportionment at beginning  
9 and end of income interest), D (relating to allocation of  
10 receipts during administration of trust) and E (relating to  
11 allocation of disbursements during administration of trust)  
12 is readily ascertainable by the trustee, the internal net  
13 income of the fund shall be considered to be the income  
14 earned by the fund, and the portion of the payment equal to  
15 the then undistributed net income of the fund realized since  
16 the trust acquired its interest in the fund shall be deemed  
17 to be a distribution of such income and shall be allocated to  
18 the trust income account.

19 (2) The balance of any such payment shall be allocated  
20 to principal.

21 (3) The power to adjust under section 8104 (relating to  
22 trustee's power to adjust), the power to convert to a  
23 unitrust under section 8105 (relating to power to convert to  
24 unitrust) and the provisions governing express trusts under  
25 section 8107 (relating to express trusts) shall apply to  
26 retirement benefits covered by this subsection which are  
27 payable to a trust. These powers may be exercised separately  
28 and independently by the payee trustee or in the governing  
29 instrument as between the retirement benefits and the trust  
30 as if they were separate trusts subject to this chapter.

1 \* \* \*

2 Section ~~4~~ 6. Sections 5547(b) and 5548(b) of Title 15 are  
3 amended to read:

4 § 5547. Authority to take and hold trust property.

5 \* \* \*

6 (b) Nondiversion of certain property.--Property committed to  
7 charitable purposes shall not, by any proceeding under Chapter  
8 59 (relating to fundamental changes) or otherwise, be diverted  
9 from the objects to which it was donated, granted or devised,  
10 unless and until the board of directors or other body obtains  
11 from the court an order under 20 Pa.C.S. [Ch. 61 (relating to  
12 estates)] Ch. 77 Subch. D (relating to creation, validity,  
13 modification and termination of trust) specifying the  
14 disposition of the property.

15 § 5548. Investment of trust funds.

16 \* \* \*

17 (b) Use and management.--Except as otherwise permitted under  
18 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D  
19 (relating to creation, validity, modification and termination of  
20 trust), the board of directors or other body shall apply all  
21 assets thus received to the purposes specified in the trust  
22 instrument. The directors or other body shall keep accurate  
23 accounts of all trust funds, separate and apart from the  
24 accounts of other assets of the corporation.

25 \* \* \*

26 Section ~~5~~ 7. The amendment of 20 Pa.C.S. § 6107.1 shall  
27 apply to any interest created after December 31, 2006.


28 Section ~~6~~ 8. (a) The following provisions shall be  
29 retroactive to November 6, 2006:

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

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


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

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

5       Section ~~7~~ 9. This act shall take effect as follows: 

6           (1)   The following provisions shall take effect  
7 immediately:

8               (i)   This section.

9               (ii)   Sections ~~5 and 6~~ 7 AND 8 of this act. 

10              (iii)   The amendment of 20 Pa.C.S. §§ 6107.1, 7745,  
11 7780.3(1)(2) and 7780.6(a).

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