

CORPORATIONS AND UNINCORPORATED ASSOCIATIONS (15 PA.C.S.) AND
DECEDENTS, ESTATES AND FIDUCIARIES (20 PA.C.S.) - INVESTMENT
OF TRUST FUNDS, NONJUDICIAL SETTLEMENT AGREEMENT AND CHARITABLE
TRUSTS

Act of Jul. 23, 2020, P.L. 681, No. 71

Cl. 15

Session of 2020
No. 2020-71

HB 2484

AN ACT

Amending Titles 15 (Corporations and Unincorporated Associations) and 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, establishing financial restrictions related to the COVID-19 emergency; in financial matters of domestic nonprofit corporations, further providing for investment of trust funds and providing for nonjudicial settlement agreement; and, in principal and income, further providing for charitable trusts.

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

Section 1. Section 5548(c) of Title 15 of the Pennsylvania Consolidated Statutes is amended to read:
§ 5548. Investment of trust funds.

* * *

(c) Determination of income.--

(1) Unless otherwise specifically directed in the trust instrument, the board of directors or other body may elect to be governed by this subsection with respect to assets thus received, including any participation in any common trust fund.

(2) To make an election under this subsection, the board of directors or other body shall adopt and follow an investment policy seeking a total return for the assets held by the corporation or in the name of a nominee of the corporation or by an institutional trustee pursuant to section 5549 (relating to transfer of trust or other assets to institutional trustee), whether the return is to be derived from capital appreciation, earnings or distributions with respect to the capital or both. The policy constituting the election shall be in writing, shall be maintained as part of the permanent records of the corporation and shall recite that it constitutes an election to be governed by this subsection.

(3) (i) If an election is made to be governed by this subsection, the term "income" shall mean a percentage of the value of the assets so held by or for the corporation. [The]

(ii) Except as otherwise provided in subparagraph (iii), the board of directors or other body shall in a writing maintained as part of the permanent records of the corporation annually select a percentage and determine that it is consistent with the long-term preservation of the real value of the assets, but in no event shall the percentage be less than 2% nor more than 7% per year.

(iii) The board of directors or other governing body shall, in selecting a percentage, consider both the

long-term preservation of the real value of the assets and the corporation's need for capital to fulfill its mission and may select a percentage of not more than 10% per year. This subparagraph shall only apply during calendar years 2020, 2021 and 2022, or for the corporation's fiscal years that end during those calendar years.

(4) The board of directors or other body may revoke an election to be governed by this subsection if the revocation is made as part of an alternative investment policy seeking the long-term preservation of the real value of the assets thus received. The revocation and alternative investment policy shall be in writing and maintained as part of the permanent records of the corporation.

(5) For purposes of applying this subsection, the value of the assets of the corporation shall be the fair market value of the assets so held by or for the corporation, determined at least annually and averaged over a period of three or more preceding years. However, if the assets have been held for less than three years, the average shall be determined over the period during which the assets have been held.

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Section 2. Title 15 is amended by adding a section to read:
§ 5548.1. Nonjudicial settlement agreement.

Notwithstanding section 5547(b) (relating to authority to take and hold trust property):

(1) Except as expressly provided in the gift instrument and as otherwise provided in paragraph (2), if the donor placed restrictions on the use or management of property transferred to a nonprofit corporation, the donor, together with the nonprofit corporation holding the property, may enter into a binding nonjudicial settlement agreement with respect to any matter involving the property, including a restriction.

(2) A nonjudicial settlement agreement is valid only to the extent it includes terms and conditions that the court could approve under this chapter or other applicable law and that the property remains committed to a charitable purpose or purposes.

(3) A nonprofit corporation may request the court to review a nonjudicial settlement agreement in order to determine whether the agreement contains terms and conditions the court could have approved.

(4) A proceeding commenced to enforce a gift instrument related to assets held by a nonprofit corporation for a charitable purpose, whether or not subject to a nonjudicial settlement agreement, may be brought by the donor during the donor's lifetime or at any time by the Office of Attorney General, by a charitable organization expressly named in the gift instrument and nonjudicial settlement agreement, if applicable, to receive any portion of the assets governed by the gift instrument and nonjudicial settlement agreement, if applicable, or by any other person having standing to do so, which may include anyone appointed in the gift instrument.

Section 3. Section 8113(c) of Title 20 is amended to read:
§ 8113. Charitable trusts.

* * *

(c) Effect of election.--

(1) If an election is made to be governed by this section, the term "income" shall mean a percentage of the value of the trust. [The]

(2) **Except as otherwise provided in paragraph (3), the trustee shall, in a writing maintained as part of the permanent records of the trust, select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust[,]** but in no event shall the percentage be less than 2% nor more than 7% per year.

(3) **The trustee shall consider the long-term preservation of the real value of the trust assets in selecting a percentage and, as to each charitable organization to which the trustee is required to or may distribute funds, shall consider the organization's need for capital to fulfill its mission and communicate with the organization to make that determination, in selecting a percentage, and may select a percentage as great as 10% per year. This paragraph shall only apply during calendar years 2020, 2021 and 2022, or for the trust's fiscal years that end during those calendar years.**

(4) The term "principal" shall mean all other assets held by the trustee with respect to the trust. The selection may be made either annually or subject to change only when the trustee deems such change necessary and prudent.

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Section 4. This act shall take effect immediately.

APPROVED--The 23rd day of July, A.D. 2020.

TOM WOLF