
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 621 Session of
2013

INTRODUCED BY GREENLEAF, ALLOWAY, ERICKSON AND FERLO,
MARCH 6, 2013

REFERRED TO JUDICIARY, MARCH 6, 2013

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in wills, further
3 providing for rules of interpretation; in dispositions
4 independent of letters, family exemption, probate of wills
5 and grant of letters, providing for submission to
6 jurisdiction; in administration and personal representatives,
7 further providing for continuation of business and for
8 incorporation of estate's business; in accounts and
9 distribution, further providing for determination of title to
10 decedent's interest in real estate; in estates, further
11 providing for release or disclaimer of powers or interests;
12 in estates, providing for release of powers and interests and
13 disclaimer of powers; providing for powers of appointment; in
14 trusts, further providing for nonjudicial settlement
15 agreements - UTC 111, for representation of parties in
16 interest in general, for division of trusts, for resignation
17 of trustee and filing resignation, for duty to inform and
18 report and for powers, duties and liabilities identical with
19 personal representatives; codifying provisions of the
20 Charitable Instruments Act of 1971; in principal and income,
21 further providing for charitable trusts; and making a related
22 repeal.

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

25 Section 1. Section 2514(13) of Title 20 of the Pennsylvania
26 Consolidated Statutes is amended to read:

27 § 2514. Rules of interpretation.

28 In the absence of a contrary intent appearing therein, wills

1 shall be construed as to real and personal estate in accordance
2 with the following rules:

3 * * *

4 [(13) Power of appointment.--A general devise of the
5 real estate of the testator, or of the real estate of the
6 testator in any place, or in the occupation of any person
7 mentioned in his will, or otherwise described in a general
8 manner, shall be construed to include any real estate, or any
9 real estate to which such description shall extend, as the
10 case may be, which he shall have power to appoint in any
11 manner he shall think proper, and shall operate as an
12 execution of such power. In like manner, a bequest of the
13 personal estate of the testator, or any bequest of personal
14 property described in a general manner, shall be construed to
15 include any personal estate, or any personal estate to which
16 such description shall extend, as the case may be, which he
17 shall have power to appoint in any manner he shall think
18 proper, and shall operate as an execution of such power. In
19 like manner, a general pecuniary legacy, when the assets of
20 the individual estate of the testator are not sufficient for
21 its payment, shall, to the extent necessary to make possible
22 the payment of the legacy, be construed to include any estate
23 which the testator shall have power to appoint in any manner
24 he shall think proper, and shall to such extent operate as an
25 execution of such power.]

26 * * *

27 Section 2. Title 20 is amended by adding a section to read:

28 § 3163. Submission to jurisdiction.

29 A person granted letters testamentary or letters of
30 administration shall be deemed to submit to the jurisdiction of

1 the orphans' court division of the county in which the register
2 granted the letters.

3 Section 3. Sections 3314, 3315 and 3546 of Title 20 are
4 amended to read:

5 § 3314. Continuation of business.

6 [The court,] Giving due regard to the provisions of the
7 governing instrument and any other factor that the court deems
8 relevant, and aided by the report of a master if necessary, the
9 court may authorize the personal representative to continue any
10 business of the estate for the benefit of the estate [and in
11 doing so the court, for cause shown, may disregard the
12 provisions of the governing instrument, if any]. The order may
13 be with or without notice. If prior notice is not given to all
14 parties in interest, it shall be given within five days after
15 the order or within such extended time as the court, for cause
16 shown, shall allow. Any party in interest may, at any time,
17 petition the court to revoke or modify the order. The order may
18 provide:

19 (1) for the conduct of business, by the personal
20 representative alone or jointly with others, or, unless
21 restricted by the terms of the governing instrument, as a
22 corporation, partnership, limited liability company or other
23 entity to be formed;

24 (2) the extent of the liability of the estate or any
25 part thereof, or of the personal representative, for
26 obligations incurred in the continuation of the business;

27 (3) whether liabilities incurred in the conduct of the
28 business are to be chargeable solely to the part of the
29 estate set aside for use in the business or to the estate as
30 a whole;

1 (4) the period of time the business may be conducted;
2 [and]

3 (4.1) for the compensation of a personal representative
4 actively managing, supervising or engaging in the operation
5 of an entity or business, from the estate's assets or from
6 the entity or business, as appropriate, provided that the
7 compensation is reasonably based upon the actual
8 responsibilities assumed and performed; and

9 (5) such other regulations, including accountings, as
10 the court shall deem advisable.

11 § 3315. Incorporation of or formation of entity to operate
12 estate's business.

13 After notice to all parties in interest, aided by the report
14 of a master if necessary, and giving due regard to the
15 provisions of the governing instrument and any other factor that
16 the court deems relevant, the court[, unless restricted by the
17 terms of the governing instrument,] may authorize the personal
18 representative alone or jointly with others, to organize a
19 corporation, or form a partnership, limited liability company or
20 other entity, to carry on the business of the estate, whether
21 the business was owned solely or with others, and may contribute
22 for stock of the corporation, as capital, or for an interest in
23 a partnership, limited liability company or other entity, all or
24 part of the property of the estate which was invested in the
25 business.

26 § 3546. Determination of title to decedent's interest in real
27 estate.

28 [When a person shall die leaving an interest in real estate
29 within the Commonwealth and no letters testamentary or of
30 administration have been granted on the estate of the decedent

1 in the Commonwealth, and one year has expired since the
2 decedent's death, or if a personal representative has been
3 appointed and has not filed his account within six years of the
4 death of the decedent, any person claiming an interest in the
5 real estate as or through an heir or devisee of the decedent may
6 present a petition to establish title thereto in the orphans'
7 court division of the county where the letters testamentary or
8 of administration have been granted, or should no letters have
9 been granted, then in the orphans' court division of the county
10 within which was the family or principal residence of the
11 decedent. If the decedent was a nonresident of the Commonwealth,
12 the petition may be presented in the orphans' court division of
13 any county wherein any of the real estate shall lie. The court,
14 aided if necessary by the report of a master, may enter its
15 decree nisi adjudging that the title to the decedent's interest
16 in the real estate is in such person or persons as the court
17 shall determine. Notice of the decree nisi shall be given to
18 creditors and other parties in interest, by advertisement and
19 otherwise, as the court shall direct. If no exception to the
20 decree is filed within three months, it shall be confirmed
21 absolutely, free of all decedent's debts not then liens of
22 record, and regardless of the provisions of any testamentary
23 writing of the decedent thereafter probated. A certified copy of
24 the decree shall be recorded in the office of the recorder of
25 deeds of each county where real estate included in the decree
26 shall lie, shall be indexed by the recorder in the grantor's
27 index under the name of the decedent and in the grantee's index
28 under the name of each distributee, and shall be registered in
29 the survey bureau or with the proper authorities empowered to
30 keep a register of real estate in the county.]

1 (a) Applicability.--This section shall apply if:

2 (1) A person dies leaving an interest in real estate
3 within this Commonwealth.

4 (2) Either of the following occurs:

5 (i) No letters testamentary or letters of
6 administration have been granted on the estate of the
7 decedent in this Commonwealth and one year has expired
8 since the decedent's death.

9 (ii) A personal representative has been appointed
10 but has not filed an account within six years of the
11 decedent's death.

12 (b) Subject of petition.--A person or entity authorized by
13 subsection (c) may present a petition under this section to:

14 (1) terminate an interest in the real estate of other
15 heirs or devisees of the decedent who, after being given
16 proper notice as directed by the court under subsection
17 (f) (2), fail to file timely an exception to the court's
18 decree; or

19 (2) have declared as void, unenforceable and canceled of
20 record a fraudulent conveyance of the decedent's interest in
21 the real estate and to the extent otherwise authorized by law
22 any lien, title, claim or interest arising in the property
23 by, from or under the fraudulent conveyance, including any
24 subsequent transfers of property following the fraudulent
25 conveyance and any liens to the extent that they have
26 attached to the property as a result of the fraudulent
27 conveyance, after all interested parties have been given
28 proper notice as directed by the court under subsection
29 (f) (2).

30 (c) Who may petition.--The following persons and entities

1 may petition to establish title to the decedent's real estate:

2 (1) A person claiming an interest in the real estate:

3 (i) as an heir or devisee of the decedent;

4 (ii) through the decedent; or

5 (iii) through an heir or devisee of the decedent,

6 when the heir or devisee is deceased or has conveyed all

7 or part of the heir or devisee's interest in the property

8 to the person.

9 (2) A nonprofit corporation organized for community

10 development purposes under section 501(c)(3) of the Internal

11 Revenue Code (Public Law 99-514, 26 U.S.C. § 1 et seq.), a

12 municipality in which the real estate is located or a

13 redevelopment authority created and organized under the act

14 of May 24, 1945 (P.L.991, No.385), known as the Urban

15 Redevelopment Law, having jurisdiction in the municipality in

16 which the real estate is located:

17 (i) In a manner that the court prescribes.

18 (ii) Upon a showing by clear and convincing evidence

19 to the court that:

20 (A) No heirs or devisees exist or have taken

21 action with respect to the real estate for at least

22 five years since the decedent's death.

23 (B) The real estate is not occupied by a person

24 claiming rights by adverse possession.

25 (d) Priority of petitions.--Where there are two or more

26 petitions for the same real estate under subsection (c)(2), the

27 court shall give priority in entering a decree nisi or order to

28 one of the petitioners in the following order:

29 (1) The municipality.

30 (2) The redevelopment authority.

1 (3) The nonprofit corporation.

2 (e) Where to petition.--A petition under this section shall
3 be filed in the orphans' court division of the county where:

4 (1) the letters testamentary or letters of
5 administration have been granted;

6 (2) the principal residence of the decedent was located,
7 if no letters testamentary or letters of administration have
8 been granted; or

9 (3) any of the real estate is located, if the decedent
10 was a nonresident of this Commonwealth.

11 (f) Notice of petition.--

12 (1) Notice shall be given to all persons reasonably
13 identifiable as eligible to file a petition under subsection
14 (c), creditors that do not have liens of record, to the
15 extent known, and all other persons and parties in interest
16 reasonably known to hold or claim a lien, title, claim or
17 other interest in the property in accordance with
18 Pennsylvania Orphans' Court Rule 5.1 or, if the notice cannot
19 be given in accordance with Pennsylvania Orphans' Court Rule
20 5.1 (a) or (b), the petition shall be accompanied by a motion
21 for service pursuant to Pennsylvania Rule of Civil Procedure
22 430, including an affidavit, attested by the petitioner or
23 petitioner's counsel of record, stating the reasons why
24 notice cannot be given under Rule 5.1 (a) or (b) and the
25 nature and extent of the investigation that has been made to
26 determine the whereabouts of creditors that do not have liens
27 of record and other parties in interest.

28 (2) If letters testamentary or letters of administration
29 have been granted on the estate of the decedent, notice of
30 the petition under this section shall be given to the

1 personal representative of the decedent.

2 (3) A lis pendens notice shall be given in each county
3 where the real estate is located in the same manner and place
4 as provided in section 3390 (relating to specific performance
5 of contracts) for an action of specific performance.

6 (g) Decree or order.--

7 (1) Aided if necessary by the report of a master, the
8 court may enter a decree nisi adjudging that the title to the
9 decedent's interest in the real estate is in the petitioner
10 or an order directing other appropriate relief as the court
11 determines.

12 (2) Notice of the decree nisi or order shall be given
13 to:

14 (i) creditors that do not have liens of record, to
15 the extent known;

16 (ii) creditors that have liens of record, if relief
17 is being sought under subsection (b)(2); and

18 (iii) other parties in interest, by advertisement or
19 as otherwise directed by the court.

20 (3) If no exception to the decree or order is filed
21 within three months after notice is given in accordance with
22 paragraph (2), it shall be confirmed absolutely, free of all
23 decedent's debts not then liens of record, and regardless of
24 the provisions of any testamentary writing of the decedent
25 thereafter probated.

26 (4) A certified copy of the decree or order shall be:

27 (i) Recorded in the office of the recorder of deeds
28 of each county where real estate included in the decree
29 or order shall lie.

30 (ii) Indexed by the recorder in the grantor's index

1 under the name of the decedent and in the grantee's index
2 under the name of each distributee.

3 (iii) Registered in the survey bureau or with the
4 proper authorities empowered to keep a register of real
5 estate in the county.

6 (h) Parcel number or identifier.--

7 (1) A petition filed under subsection (b) and notice of
8 petition given under subsection (f) shall include the county
9 tax parcel number or Uniform Parcel Identifier for each
10 parcel included. A party alleging any failure to comply with
11 the requirements of this paragraph must do so in the manner
12 provided for raising an affirmative defense.

13 (2) A decree presented for recording under subsection
14 (g) shall comply with section 3 of the act of April 24, 1931
15 (P.L.48, No.40), entitled "An act requiring the recording of
16 certain written agreements pertaining to real property, and
17 prescribing the effect thereof as to subsequent purchasers,
18 mortgages, and judgment creditors of the parties thereto."

19 (i) Definition.--For the purposes of this section,
20 "fraudulent conveyance" shall mean a transfer of an interest,
21 lien, title or claim in real estate that occurs as a result of:

22 (1) a forgery of the grantor's signature on a document
23 purporting to make such transfer;

24 (2) the grantor being induced by fraud,
25 misrepresentation, duress or coercion to sign a document
26 purporting to make such transfer; or

27 (3) some other inappropriate means used to obtain the
28 grantor's signature on the document purporting to make such
29 transfer, as determined by a court.

30 Section 4. Section 6103 of Title 20 is repealed:

1 [§ 6103. Release or disclaimer of powers or interests.

2 (a) Powers and interests releasable.--Any power of
3 appointment, or power of consumption, whether general or
4 special, other than a power in trust which is imperative, and
5 any interest in, to, or over real or personal property held or
6 owned outright, or in trust, or in any other manner which is
7 reserved or given to any person by deed, will or otherwise, and
8 irrespective of any limitation of such power or interest by
9 virtue of any restriction in the nature of a so-called
10 spendthrift trust provision, or similar provision, may be
11 released or disclaimed, either with or without consideration by
12 written instrument signed by the person possessing the power or
13 the interest and delivered as hereinafter provided, but nothing
14 in this section shall authorize an income beneficiary of a
15 spendthrift trust to release or disclaim his right to such
16 income, unless as a result of the release or disclaimer the
17 released or disclaimed income will pass to one or more of the
18 beneficiary's descendants. This section shall not apply to an
19 interest that may be disclaimed under Chapter 62 (relating to
20 disclaimers).

21 (b) Form of release or disclaimer.--A power or interest
22 which is releasable or disclaimable may be released or
23 disclaimed either absolutely or conditionally, and may also be
24 released or disclaimed with respect to the whole or any part of
25 the property subject to such power or interest, and may also be
26 released or disclaimed in such manner as to reduce or limit the
27 persons or objects or classes of persons or objects in whose
28 favor such power or interest would otherwise be exercisable. No
29 release or disclaimer of a power or of an interest shall be
30 deemed to make imperative a power or interest which was not

1 imperative prior to such release or disclaimer unless the
2 instrument of release or disclaimer expressly so provides.

3 (c) Delivery of release or disclaimer.--Such release or
4 disclaimer may be delivered to any one of the following:

5 (1) Any person specified for such purpose in the
6 instrument creating the power or interest.

7 (2) Any trustee of the property to which the power or
8 interest relates.

9 (3) The clerk of the court having jurisdiction of the
10 trust for filing in said court.

11 (4) The recorder of deeds for recording in the county in
12 which the person possessing the power or interest resides, or
13 in which the deed, will, or other instrument creating the
14 power or interest is recorded or filed.

15 (d) Grantee or lienholder.--A release or disclaimer shall be
16 void as against a bona fide grantee of or holder of a lien on
17 real estate in any county unless the release or disclaimer or a
18 duplicate original or certified copy thereof is recorded in the
19 county where the real estate lies before the recording or
20 entering of the instrument or lien under which such grantee or
21 lienholder claims.]

22 Section 5. Title 20 is amended by adding a section to read:

23 § 6103.1. Release of powers and interests and disclaimer of
24 powers.

25 (a) Interests releasable.--

26 (1) Subject to paragraph (2), an interest in property
27 that has been accepted may be released.

28 (2) An income interest in a spendthrift trust may be
29 released only if the released income passes to one or more of
30 the releasor's descendants.

1 (b) Effect of release of interest.--A releasor of an
2 interest in property shall be treated as having died at the time
3 of the release for purposes of determining and accelerating the
4 interests of other parties in the property.

5 (c) Nonfiduciary powers disclaimable or releasable.--A power
6 of appointment, power of withdrawal or other power held in a
7 nonfiduciary capacity may be disclaimed prior to its acceptance
8 or released after its acceptance.

9 (d) Fiduciary powers disclaimable or releasable.--

10 (1) Except as otherwise provided in the instrument
11 creating the power, a power held in a fiduciary capacity that
12 is not imperative may be disclaimed prior to its acceptance
13 or released after its acceptance.

14 (2) A disclaimer or release under this subsection is
15 effective as to a successor fiduciary if the disclaimer or
16 release so provides.

17 (e) Terms of disclaimer or release.--

18 (1) A release of a power or interest or a disclaimer of
19 a power under this section may:

20 (i) Be absolute or conditional.

21 (ii) Be made with respect to the whole or any part
22 of the property subject to the power or interest.

23 (iii) Reduce or limit the persons or objects or
24 classes of persons or objects in whose favor the power or
25 interest would otherwise be exercisable.

26 (2) Unless the disclaimer or release so provides, a
27 disclaimer or release under this section shall not make
28 imperative a power or interest that was not imperative prior
29 to the disclaimer or release.

30 (f) Date of effect.--

1 (3) The donee's estate.

2 (4) Every person other than the donee, the donee's
3 creditors, the donee's estate or the creditors of the donee's
4 estate.

5 "Limited power of appointment." A power of appointment that
6 is not a broad power of appointment. The term includes a power
7 to appoint to the donee's creditors or the creditors of the
8 donee's estate.

9 § 7602. Exercise of powers of appointment.

10 (a) Broad power of appointment.--Subject to subsection (c),
11 in the absence of a contrary intent appearing in the instrument
12 creating a broad power of appointment or in the donee's
13 instrument exercising the power, a broad power of appointment
14 may be exercised only by the donee's instrument making:

15 (1) specific reference to the power;

16 (2) general reference to any or all powers of
17 appointment held by the donee;

18 (3) a testamentary or inter vivos gift specifically
19 describing the appointive property;

20 (4) an insufficiently funded testamentary pecuniary
21 legacy, to the extent to satisfy the legacy;

22 (5) a general testamentary gift; or

23 (6) a testamentary residuary gift.

24 (b) Limited power of appointment.--

25 (1) Subject to paragraph (2) and subsection (c), in the
26 absence of a contrary intent appearing in the instrument
27 creating a limited power of appointment or in the donee's
28 instrument exercising the power, a limited power of
29 appointment may be exercised only by the donee's instrument
30 making:

- 1 (i) specific reference to the power;
2 (ii) a testamentary or inter vivos gift specifically
3 describing the appointive property;
4 (iii) a general testamentary gift to all, and only
5 to all, the objects of the power; or
6 (iv) a testamentary residuary gift to all, and only
7 to all, the objects of the power.

8 (2) The objects of the power described in paragraph (1)
9 (iii) and (iv) who have a common ancestor shall be only those
10 descendants of the common ancestor determined on a per
11 stirpes basis.

12 (c) Necessity of donee's specific reference to power.--A
13 power of appointment may be exercised only by specific reference
14 to the power if the instrument creating the power so requires.

15 (d) Exercise before testamentary power granted.--In the
16 absence of a contrary intent appearing in the instrument
17 creating a power of appointment exercisable at the donee's death
18 or in the donee's instrument exercising the power, the donee's
19 instrument may exercise a power of appointment existing at the
20 donee's death even though the power was granted after the date
21 of the donee's instrument.

22 (e) Testamentary powers.--

23 (1) Notwithstanding any contrary provision in an
24 instrument creating a power of appointment, a testamentary
25 power of appointment shall not be exercisable in favor of the
26 donee or the donee's creditors.

27 (2) A grant of a testamentary power to appoint to the
28 donee's creditors shall be construed as a power to appoint to
29 the creditors of the donee's estate.

30 (3) An attempted exercise of a testamentary power of

1 appointment in favor of the donee's creditors shall be
2 construed as an exercise in favor of those creditors of the
3 donee's estate who were also creditors of the donee at the
4 time of the donee's death.

5 (4) If the donee is an issue of the donor, a
6 testamentary power of appointment to appoint to the donor's
7 issue shall not be exercisable in favor of the donee or the
8 donee's estate.

9 § 7603. Contract to exercise power.

10 (a) Contract prohibited.--Unless the donor and donee are the
11 same person, the donee of a power of appointment that is not
12 presently exercisable may not contract to exercise the power.

13 (b) Actions for recovery.--A prohibited contract under
14 subsection (a), if made, may not be the basis of an action for
15 specific performance or damages, but the promisee can obtain
16 restitution from the donee of the value given for the promise,
17 unless the donee has exercised the power pursuant to the
18 contract.

19 (c) No limitation on disclaimer or release.--This section
20 does not limit the power of a donee to disclaim or release a
21 power of appointment in whole or in part.

22 § 7604. Manner of appointment.

23 (a) Outright or in trust.--Subject to section 7602(e)
24 (relating to exercise of powers of appointment), unless
25 expressly prohibited by the instrument creating a power of
26 appointment, a donee may exercise a power by appointing in any
27 manner, including, but not limited to:

28 (1) Appointing outright to one or more objects of the
29 power.

30 (2) Appointing to one or more trustees to hold the

1 appointive property in trust for the benefit of one or more
2 objects of the power and specifying the terms and
3 administrative provisions of the trust and the powers and
4 duties of the trustees, even if the trustees themselves are
5 not objects of the power.

6 (3) Creating a broad or limited power of appointment
7 exercisable by any one or more objects of the original power
8 to whom the donee could have appointed outright, even if some
9 of the objects of the new power are not among the objects of
10 the original power, provided that if the original power is a
11 limited power, other than a power to appoint to the donee's
12 creditors or the creditors of the donee's estate:

13 (i) All the objects of the original power are among
14 the objects of the new power.

15 (ii) All the takers in default of exercise of the
16 new power are among the objects of the original power.

17 (b) Exclusive and nonexclusive powers.--Unless the
18 instrument creating a power of appointment expressly specifies a
19 minimum share of, a minimum pecuniary amount of or a particular
20 item of appointive property to be appointed to an object of the
21 power, the donee may exclude any object of the power as the
22 donee deems appropriate.

23 § 7605. Antilapse provision.

24 (a) General rule.--

25 (1) Subject to paragraphs (2) and (3), in the absence of
26 a contrary intent appearing in the instrument creating a
27 power of appointment or, in the donee's instrument,
28 exercising the power, an exercise of the power of appointment
29 in favor of any of the following, whether designated by name
30 or as one of a class, shall not fail if the appointee is not

1 living at the time the appointment becomes effective:

2 (i) A child or other issue of the donee.

3 (ii) A brother or sister of the donee.

4 (iii) A child of a brother or sister of the donee.

5 (2) Paragraph (1) applies if:

6 (i) One or more issues of the appointee are living
7 at the time the appointment becomes effective.

8 (ii) The issue under subparagraph (i), per stirpes,
9 are objects of the power.

10 (3) The property appointed to the deceased appointee
11 shall pass per stirpes to the appointee's issue living at the
12 time the appointment becomes effective, but the appointment
13 to a brother or sister or child of a brother or sister of the
14 donee shall fail to the extent the property would pass to the
15 spouse or issue of the donee if the appointment were to
16 lapse.

17 (b) Lapsed share of residue.--In the absence of a contrary
18 intent appearing in the donee's instrument exercising a power of
19 appointment, if an appointment of an amount or share of the
20 residue of the property subject to the power fails, the amount
21 or share shall pass to the other appointees of the residue of
22 the property subject to the power, if any, in proportion to
23 their shares in the residue of the property subject to the
24 power.

25 § 7606. Partially effective exercise.

26 In the absence of a contrary intent appearing in the
27 instrument creating a power of appointment or in the donee's
28 instrument exercising the power, a partially ineffective
29 exercise of a power of appointment shall not make ineffective
30 any otherwise effective portion of the exercise, unless the

1 appointment regarded as a whole constitutes such an integrated
2 plan that the parts cannot be separated without defeating the
3 plan.

4 § 7607. Creditors' rights.

5 Property subject to a presently exercisable inter vivos broad
6 power of appointment that does not exceed the greater of \$5,000
7 or 5% of the assets subject to the power is not, by virtue of
8 the power, available to the creditors of the donee of the power.

9 Section 7. Sections 7710.1(c), 7722 and 7740.7(b) of Title
10 20 are amended to read:

11 § 7710.1. Nonjudicial settlement agreements - UTC 111.

12 * * *

13 (c) Exception.--A nonjudicial settlement agreement is valid
14 only to the extent it [does not violate] is not inconsistent
15 with a material purpose of the trust and includes terms and
16 conditions that could be properly approved by the court under
17 this chapter or other applicable law.

18 * * *

19 § 7722. Representation of parties in interest in general.

20 (a) Judicial proceeding.--In a judicial proceeding involving
21 a trust matter, an order or decree of the court that binds the
22 representative [or representatives] is binding upon a person,
23 class of persons or both represented in accordance with section
24 7723 (relating to representatives and persons represented) if:

25 (1) the trustee notifies the [representatives]
26 representative in writing whom [they represent, they do] he
27 represents, the representative does not decline the
28 representation as provided in section 7725 (relating to
29 notice of representation) and [they act] the representative
30 acts in good faith[.];

1 (2) the petitioner avers the representation in the
2 petition, the representative is the petitioner or a
3 respondent over whom the court has jurisdiction and, if a
4 respondent, the representative does not decline the
5 representation in a responsive pleading filed and served as
6 required by law; or

7 (3) the representative has signed a certification of
8 representation described in subsection (d) and has not
9 rescinded the certification on the court's records by the
10 time the court acts upon the petition.

11 (b) Nonjudicial resolution.--In a nonjudicial resolution of
12 a trust matter, notice to, the consent or approval of or the
13 waiver or release by the representative [or representatives] is
14 binding upon a person, class of persons or both represented in
15 accordance with section 7723 if:

16 (1) the trustee notifies the [representatives]
17 representative in writing whom [they represent, they do] he
18 represents, the representative does not decline the
19 representation as provided in section 7725 and [they act] the
20 representative acts in good faith[.]; or

21 (2) the representative has signed a certification of
22 representation described in subsection (d) and has not
23 rescinded the certification in a writing received by the
24 trustee by the time of the nonjudicial settlement.

25 (c) Permissible consideration.--In making decisions, a
26 representative may consider the general benefit accruing to the
27 living members of the family of the person represented.

28 (d) Certification of representation.--

29 (1) A certification signed by the representative
30 describing his representation of another person, class of

1 persons or both in accordance with section 7723 may be filed
2 with:

3 (i) the court, in the case of a judicial proceeding;

4 or

5 (ii) the trustee, in the case of a nonjudicial
6 resolution of a trust matter.

7 (2) A certification of representation may be rescinded
8 in a writing signed by the representative and filed with:

9 (i) the court at any time before the court acts in
10 reliance upon the certification, in the case of a
11 judicial proceeding; or

12 (ii) the trustee before a trust matter is resolved
13 without application to the court.

14 § 7740.7. Division of trusts.

15 * * *

16 (b) With court approval.--The court, for cause shown, may
17 authorize the division of a trust into [two] separate trusts
18 upon such terms and conditions and with notice as the court
19 shall direct.

20 * * *

21 Section 8. Section 7765(a), (b) and (c) of Title 20 are
22 amended and the section is amended by adding a subsection to
23 read:

24 § 7765. Resignation of trustee; filing resignation.

25 [(a) Court approval.--A trustee may resign with court
26 approval.

27 (b) Without court approval if authorized by trust
28 instrument.--A trustee may resign without court approval if
29 authorized to resign by the trust instrument.

30 (c) Without court approval and without authorization in

1 trust instrument.--

2 (1) Unless expressly provided to the contrary in the
3 trust instrument, an individual trustee may resign without
4 court approval and without authorization in the trust
5 instrument if:

6 (i) there is at least one cotrustee and all
7 cotrustees consent in writing to the resignation; and

8 (ii) all the qualified beneficiaries consent in
9 writing to the resignation.

10 (2) This subsection shall not authorize the sole trustee
11 of a trust to resign unless the trust instrument names a
12 successor trustee or provides a method for appointing a
13 successor trustee, and in either case the resignation shall
14 not be effective until the successor trustee accepts the
15 appointment in writing.]

16 (a.1) General rule.--A trustee may resign:

17 (1) with court approval;

18 (2) without court approval if authorized to resign by
19 the trust instrument; or

20 (3) pursuant to a nonjudicial settlement agreement
21 described in section 7710.1 (relating to nonjudicial
22 settlement agreements - UTC 111).

23 * * *

24 Section 9. Section 7780.3 of Title 20 is amended by adding a
25 subsection to read:

26 § 7780.3. Duty to inform and report.

27 * * *

28 (k.1) Nomination by current beneficiary.--A current
29 beneficiary of a trust who has capacity may nominate another
30 person to receive, on behalf of the current beneficiary, the

1 notice required by this section. The current beneficiary shall
2 notify the trustee of the nomination. The trustee giving the
3 notice required by this section to that nominee satisfies the
4 trustee's duty to give to the named current beneficiary the
5 notice required by this section if:

6 (1) the trustee notifies the nominee that the notice is
7 being given to the nominee as representing the named current
8 beneficiary; and

9 (2) the nominee does not decline to receive the notice in
10 a writing that is given to the trustee no later than 60 days
11 after receipt of the trustee's notice.

12 * * *

13 Section 10. Section 7792 of Title 20 is amended to read:

14 § 7792. Powers, duties and liabilities identical with personal
15 representatives.

16 The provisions concerning the powers, duties and liabilities
17 of a trustee shall be the same as those set forth in the
18 following provisions of this title for the administration of a
19 decedent's or a minor's estate:

20 Section 3184 (relating to discharge of personal
21 representative and surety).

22 Section 3321(d) and (e) (relating to nominee registration;
23 corporate fiduciary as agent; deposit of securities in a
24 clearing corporation; book-entry securities).

25 Section 3323 (relating to compromise of controversies).

26 Section 3324 (relating to death or incapacity of fiduciary).

27 Section 3332 (relating to inherent powers and duties).

28 Section 3353 (relating to order of court).

29 Section 3354 (relating to power given in governing
30 instrument).

1 Section 3355 (relating to restraint of sale).

2 Section 3356 (relating to purchase by personal
3 representative).

4 Section 3358 (relating to collateral attack).

5 Section 3359 (relating to record of proceedings; county where
6 real estate lies).

7 Section 3532(c) (relating to at risk of personal
8 representative).

9 Section 11. Title 20 is amended by adding a chapter to read:

10 CHAPTER 79

11 CHARITABLE INSTRUMENTS

12 Sec.

13 7901. Short title of chapter.

14 7902. Definitions.

15 7903. Deemed provisions of governing instrument.

16 7904. Power to amend governing instrument.

17 7905. Court authority.

18 7906. Applicability.

19 § 7901. Short title of chapter.

20 This chapter shall be known and may be cited as the
21 Charitable Instruments Act.

22 § 7902. Definitions.

23 The following words and phrases when used in this chapter
24 shall have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Charitable organization." A corporation, trust or other
27 instrumentality governed by Pennsylvania law, including:

28 (1) A trust described in section 4947(a)(1) or (2) of
29 the Internal Revenue Code of 1986 (Public Law 99-514, 26
30 U.S.C. § 4947(a)(1) or (2)), which is or is treated as a

1 private foundation under section 509 of the Internal Revenue
2 Code of 1986 (26 U.S.C. § 509).

3 (2) A trust governed by Pennsylvania law that is or is
4 treated as a pooled income fund under section 642(c)(5) of
5 the Internal Revenue Code of 1986 (26 U.S.C. § 642(c)(5)).
6 § 7903. Deemed provisions of governing instrument.

7 (a) Effect of deemed provisions.--The governing instrument
8 of a charitable organization is deemed to include provisions,
9 the effects of which are to:

10 (1) Require distributions for each taxable year in such
11 amounts and at such times and in such manner as not to
12 subject the organization to tax under section 4942 of the
13 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
14 4942).

15 (2) Prohibit the organization from:

16 (i) Engaging in an act of self-dealing, as defined
17 in section 4941(d) of the Internal Revenue Code of 1986
18 (26 U.S.C. § 4941(d)).

19 (ii) Retaining excess business holdings, as defined
20 in section 4943(c) of the Internal Revenue Code of 1986
21 (26 U.S.C. § 4943(c)).

22 (iii) Making an investment in such manner as to
23 subject the organization to tax under section 4944 of the
24 Internal Revenue Code of 1986 (26 U.S.C. § 4944).

25 (iv) Making a taxable expenditure, as defined in
26 section 4945(d) of the Internal Revenue Code of 1986 (26
27 U.S.C. § 4945(d)).

28 (b) Effect of contrary provision.--The deemed provisions
29 under subsection (a) supersede any contrary provision of the
30 governing instrument.

1 (c) Applicability.--This section applies only to the extent
2 that the charitable organization is subject to one or more of
3 the sections of the Internal Revenue Code of 1986 set forth in
4 subsection (a).

5 § 7904. Power to amend governing instrument.

6 The trustees or directors of every charitable organization
7 have the power, acting alone, without the approval of a member,
8 court, donor or beneficiary, to amend the instrument governing
9 the charitable organization in any manner required for the sole
10 purpose of ensuring that:

11 (1) Gifts and bequests to the charitable organization
12 qualify for charitable deductions available for Federal
13 income, gift and estate tax purposes.

14 (2) The charitable organization qualifies for tax
15 exemptions available for Federal income tax purposes.

16 § 7905. Court authority.

17 Nothing in this chapter precludes a court of competent
18 jurisdiction from authorizing a deviation from the express terms
19 of an instrument governing a charitable organization.

20 § 7906. Applicability.

21 This chapter shall apply to:

22 (1) A charitable organization created after December 31,
23 1969.

24 (2) A charitable organization created before January 1,
25 1970, unless a court of competent jurisdiction in a
26 proceeding instituted before January 1, 1972, explicitly
27 decided that the operation of this chapter would
28 substantially impair the accomplishment of the purposes of
29 the charitable organization involved in that proceeding.

30 Section 12. Section 8113(f) of Title 20 is amended to read:

1 § 8113. Charitable trusts.

2 * * *

3 (f) Charitable organizations.--For a charitable organization
4 defined under [the act of June 17, 1971 (P.L.181, No.23), known
5 as the Charitable Instruments Act of 1971,] Chapter 79 (relating
6 to charitable instruments) the provisions of [that act] Chapter
7 79 shall supersede subsection (c) if necessary to comply with
8 the minimum investment return requirements.

9 Section 13. This act shall apply as follows:

10 (1) The addition of 20 Pa.C.S. Ch. 76 shall apply to all
11 powers of appointment created before, on or after the
12 effective date of that chapter.

13 (2) The addition of 20 Pa.C.S. Ch. 79 is a continuation
14 of the act of June 17, 1971 (P.L.181, No.23), known as the
15 Charitable Instruments Act of 1971. The following apply:

16 (i) All activities initiated under the Charitable
17 Instruments Act of 1971 shall continue and remain in full
18 force and effect and may be completed under 20 Pa.C.S.
19 Ch. 79. Resolutions, orders, regulations, rules and
20 decisions which were made under the Charitable
21 Instruments Act of 1971 and which are in effect on the
22 effective date of this section shall remain in full force
23 and effect until revoked, vacated or modified under 20
24 Pa.C.S. Ch. 79. Contracts, obligations and agreements
25 entered into under the Charitable Instruments Act of 1971
26 are not affected nor impaired by the repeal of the
27 Charitable Instruments Act of 1971.

28 (ii) Any difference in language between 20 Pa.C.S.
29 Ch. 79 and the Charitable Instruments Act of 1971 is
30 intended only to conform to the style of the Pennsylvania

1 Consolidated Statutes and is not intended to change or
2 affect the legislative intent, judicial construction or
3 administrative interpretation and implementation of the
4 Charitable Instruments Act of 1971.

5 Section 14. Repeals are as follows:

6 (1) The General Assembly declares that the repeal under
7 paragraph (2) is necessary to effectuate the addition of 20
8 Pa.C.S. Ch. 79.

9 (2) The act of June 17, 1971 (P.L.181, No.23), known as
10 the Charitable Instruments Act of 1971, is repealed.

11 Section 15. This act shall take effect as follows:

12 (1) The following provisions shall take effect in 60
13 days:

14 (i) The amendment of 20 Pa.C.S. § 3314.

15 (ii) The amendment of 20 Pa.C.S. § 3315.

16 (iii) The amendment of 20 Pa.C.S. § 3546.

17 (iv) The repeal of 20 Pa.C.S. § 6103.

18 (v) The addition of 20 Pa.C.S. § 6103.1.

19 (vi) The amendment of 20 Pa.C.S. § 7710.1(c).

20 (vii) The amendment of 20 Pa.C.S. § 7722.

21 (viii) The amendment of 20 Pa.C.S. § 7740.7(b).

22 (ix) The amendment or addition of 20 Pa.C.S. §
23 7765(a), (a.1), (b) and (c).

24 (x) The addition of 20 Pa.C.S. § 7780.3(k.1).

25 (xi) The amendment of 20 Pa.C.S. § 7792.

26 (2) The remainder of this act shall take effect
27 immediately.