

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1104 Session of 2015

INTRODUCED BY GREENLEAF, RAFFERTY AND COSTA, JANUARY 13, 2016

AS AMENDED ON THIRD CONSIDERATION, MARCH 22, 2016

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, in orphans' court  
3 divisions, further providing for nonmandatory exercise of  
4 jurisdiction through orphans' court division; in wills,  
5 further providing for rules of interpretation; in  
6 dispositions independent of letters, family exemption,  
7 probate of wills and grant of letters, providing for  
8 submission to jurisdiction; in administration and personal  
9 representatives, further providing for continuation of  
10 business and for incorporation of estate's business; in  
11 accounts and distribution, further providing for  
12 determination of title to decedent's interest in real estate;  
13 in health care, further providing for definitions, FOR WHEN <--  
14 HEALTH CARE POWER OF ATTORNEY IS OPERATIVE, for authority of  
15 health care agent and for relation of health care agent to  
16 court-appointed guardian and other agents; in powers of  
17 attorney, further providing for general provisions, FOR <--  
18 AUTHORITY THAT REQUIRES SPECIFIC AND GENERAL GRANT OF  
19 AUTHORITY, for form of power of attorney, for implementation  
20 of power of attorney, for durable powers of attorney and for  
21 account; providing for meaning and effect of power of  
22 attorney and for jurisdiction and venue; in estates, further  
23 providing for release or disclaimer of powers or interests;  
24 in estates, providing for release of powers and interests and  
25 disclaimer of powers; providing for powers of appointment; in  
26 trusts, further providing for nonjudicial settlement  
27 agreements - UTC 111, for representation of parties in  
28 interest in general, for division of trusts, for resignation  
29 of trustee and filing resignation, for duty to inform and  
30 report, for limitation of action against trustee and for  
31 powers, duties and liabilities identical with personal  
32 representatives; codifying provisions of the Charitable  
33 Instruments Act of 1971; in principal and income, further  
34 providing for charitable trusts; and making a related repeal.

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

3 Section 1. Sections 712(1) and 2514(13) of Title 20 of the  
4 Pennsylvania Consolidated Statutes are amended to read:

5 § 712. Nonmandatory exercise of jurisdiction through orphans'  
6 court division.

7 The jurisdiction of the court of common pleas over the  
8 following may be exercised through either its orphans' court  
9 division or other appropriate division:

10 (1) Title to real estate.--The determination of the  
11 persons to whom the title to real estate of a decedent or of  
12 the creator of an estate or trust has passed by devise or  
13 descent or by the terms of the trust instrument where  
14 jurisdiction of such estate or trust is exercised through the  
15 orphans' court division: Provided, That nothing herein shall  
16 be construed to restrict the provisions of section 711  
17 (relating to mandatory exercise of jurisdiction through  
18 orphans' court division in general) relating to distribution  
19 of real estate in an estate or trust. If section 3546  
20 (relating to determination of title to decedent's interest in  
21 real estate) applies, the procedures under that section shall  
22 govern. For other actions to quiet title to real estate, this  
23 section shall govern.

24 \* \* \*

25 § 2514. Rules of interpretation.

26 In the absence of a contrary intent appearing therein, wills  
27 shall be construed as to real and personal estate in accordance  
28 with the following rules:

29 \* \* \*

30 [(13) Power of appointment.--A general devise of the

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

22 \* \* \*

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

24 § 3163. Submission to jurisdiction.

25 (a) General rule.--By accepting appointment by the register  
26 of wills, the personal representative submits personally to the  
27 jurisdiction of the orphans' court division of the county where  
28 letters testamentary or letters of administration are granted in  
29 all matters involving the performance of the personal  
30 representative's duties as personal representative, and an

1 action by any interested party seeking an accounting by, or  
2 removal of, the personal representative, or alleging breach of  
3 duty by the personal representative, shall be commenced by  
4 notice to the personal representative.

5 (b) Criminal contempt.--Notwithstanding subsection (a), no  
6 personal representative shall be held in criminal contempt of an  
7 order of the orphans' court division without the prior issuance  
8 of a citation and service of process.

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

11 § 3314. Continuation of business.

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

25 (1) for the conduct of business, by the personal  
26 representative alone or jointly with others, or, unless  
27 restricted by the terms of the governing instrument, as a  
28 corporation, partnership, limited liability company or other  
29 entity to be formed;

30 (2) the extent of the liability of the estate or any

1 part thereof, or of the personal representative, for  
2 obligations incurred in the continuation of the business;

3 (3) whether liabilities incurred in the conduct of the  
4 business are to be chargeable solely to the part of the  
5 estate set aside for use in the business or to the estate as  
6 a whole;

7 (4) the period of time the business may be conducted;  
8 [and]

9 (4.1) for the compensation of a personal representative  
10 actively managing, supervising or engaging in the operation  
11 of an entity or business, from the estate's assets or from  
12 the entity or business, as appropriate, provided that the  
13 compensation is reasonably based upon the actual  
14 responsibilities assumed and performed; and

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

17 § 3315. Incorporation of or formation of entity to operate  
18 estate's business.

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

1 business.

2 § 3546. Determination of title to decedent's interest in real  
3 estate.

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

1 deeds of each county where real estate included in the decree  
2 shall lie, shall be indexed by the recorder in the grantor's  
3 index under the name of the decedent and in the grantee's index  
4 under the name of each distributee, and shall be registered in  
5 the survey bureau or with the proper authorities empowered to  
6 keep a register of real estate in the county.]

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

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

10 (2) Either of the following occurs:

11 (i) No letters testamentary or letters of  
12 administration have been granted on the estate of the  
13 decedent in this Commonwealth and one year has expired  
14 since the decedent's death.

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

18 (3) There is a conflict between this section and either  
19 section 2103(6) (relating to shares of others than surviving  
20 spouse) or Article XIII.1 of the act of April 9, 1929  
21 (P.L.343, No.176), known as The Fiscal Code, with respect to  
22 a petition by an entity under subsection (c)(2). The rights  
23 granted under this section shall supersede any right of the  
24 Commonwealth created under section 2103(6) or Article XIII.1  
25 of The Fiscal Code.

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

28 (1) terminate an interest in the real estate of other  
29 heirs or devisees of the decedent who, after being given  
30 proper notice under subsection (f); or

1           (2) have declared as void, unenforceable and canceled of  
2 record a fraudulent conveyance of the decedent's interest in  
3 the real estate and to the extent otherwise authorized by law  
4 any lien, title, claim or interest arising in the property  
5 by, from or under the fraudulent conveyance, including any  
6 subsequent transfers of property following the fraudulent  
7 conveyance and any liens to the extent that they have  
8 attached to the property as a result of the fraudulent  
9 conveyance, after all interested parties have been given  
10 proper notice under subsection (f).

11       (c) Who may petition.--The following persons and entities  
12 may petition to establish title to the decedent's real estate:

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

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

15               (ii) through the decedent; or

16               (iii) through an heir or devisee of the decedent,  
17 when the heir or devisee is deceased or has conveyed all  
18 or part of the heir or devisee's interest in the property  
19 to the person.

20           (2) A nonprofit corporation organized for community  
21 development purposes under section 501(c)(3) of the Internal  
22 Revenue Code (Public Law 99-514, 26 U.S.C. § 1 et seq.), a  
23 municipality in which the real estate is located or a  
24 redevelopment authority created and organized under the act  
25 of May 24, 1945 (P.L.991, No.385), known as the Urban  
26 Redevelopment Law, having jurisdiction in the municipality in  
27 which the real estate is located upon a showing by clear and  
28 convincing evidence to the court that:

29               (i) No heirs or devisees exist or have taken action  
30 with respect to the real estate for at least five years

1 since the decedent's death.

2 (ii) The real estate is not occupied by a person  
3 claiming rights by adverse possession.

4 (d) Priority of petitions.--Where there are two or more  
5 petitions for the same real estate under subsection (c)(2), the  
6 court shall give priority in entering its order to one of the  
7 petitioners in the following order:

8 (1) The municipality.

9 (2) The redevelopment authority.

10 (3) The nonprofit corporation.

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

13 (1) the letters testamentary or letters of  
14 administration have been granted;

15 (2) the principal residence of the decedent was located,  
16 if no letters testamentary or letters of administration have  
17 been granted; or

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

20 (f) Notice of petition.--

21 (1) Notice shall be given to all persons reasonably  
22 identifiable as eligible to file a petition under subsection  
23 (c), creditors that do not have liens of record, to the  
24 extent known, and all other persons and parties in interest  
25 reasonably known to hold or claim a lien, title, claim or  
26 other interest in the property in accordance with the  
27 Pennsylvania Orphans' Court Rules. Notice shall also be given  
28 by:

29 (i) publication once a week during three successive  
30 calendar weeks in the legal periodical, if any, and in a

1 newspaper of general circulation published at or near the  
2 location of the real estate;

3 (ii) posting a copy of the petition on the most  
4 public part of the property; and

5 (iii) such other methods, if any, as the court deems  
6 appropriate to give notice.

7 (2) If letters testamentary or letters of administration  
8 have been granted on the estate of the decedent, notice of  
9 the petition under this section shall be given to the  
10 personal representative of the decedent.

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

15 (g) Order.--

16 (1) Aided if necessary by the report of a master, the  
17 court may enter an order adjudging that the title to the  
18 decedent's interest in the real estate is in the petitioner,  
19 free of all decedent's debts not then liens of record, and  
20 regardless of the provisions of any testamentary writing of  
21 the decedent thereafter probated, or an order directing other  
22 appropriate relief as the court determines.

23 (2) A certified copy of the order shall be:

24 (i) Recorded in the office of the recorder of deeds  
25 of each county where real estate included in the decree  
26 or order shall lie.

27 (ii) Indexed by the recorder in the grantor's index  
28 under the name of the decedent and in the grantee's index  
29 under the name of each distributee.

30 (iii) Registered in the survey bureau or with the

1 proper authorities empowered to keep a register of real  
2 estate in the county.

3 (iv) Served by the petitioner upon each party who  
4 has entered an appearance in the proceeding.

5 (h) Parcel number or identifier.--

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

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

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

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

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

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

29 Section 4. The definition of "health care decision" in  
30 section 5422 of Title 20 is amended by adding paragraphs to

1 read:

2 § 5422. Definitions.

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

6 \* \* \*

7 "Health care decision." A decision regarding an individual's  
8 health care, including, but not limited to, the following:

9 \* \* \*

10 (4) Admission to a medical, nursing, residential or  
11 similar facility, or entering into agreements for the  
12 individual's care.

13 (5) Making anatomical gifts, or after the death of the  
14 individual, disposing of the remains or consenting to  
15 autopsies.

16 \* \* \*

17 Section 5. Sections 5454(D), 5456(a) and 5460(a) of Title 20 <--  
18 are amended to read:

19 § 5454. WHEN HEALTH CARE POWER OF ATTORNEY OPERATIVE. <--

20 \* \* \*

21 (D) DURATION.--UNLESS THE HEALTH CARE POWER OF ATTORNEY  
22 STATES A TIME OF TERMINATION, [IT IS VALID UNTIL REVOKED BY THE  
23 PRINCIPAL OR THE PRINCIPAL'S GUARDIAN OF THE PERSON,  
24 NOTWITHSTANDING THE LAPSE OF TIME SINCE ITS EXECUTION.]  
25 NOTWITHSTANDING THE LAPSE OF TIME SINCE THE HEALTH CARE POWER OF  
26 ATTORNEY WAS EXECUTED, THE HEALTH CARE POWER OF ATTORNEY IS  
27 VALID UNTIL REVOKED BY ANY OF THE FOLLOWING:

28 (1) THE PRINCIPAL.

29 (2) THE COURT.

30 (3) IF AUTHORIZED BY THE COURT, THE PRINCIPAL'S GUARDIAN

1       OF THE PERSON.

2       \* \* \*

3   § 5456. Authority of health care agent.

4       (a) Extent of authority.--Except as expressly provided  
5 otherwise in a health care power of attorney and subject to  
6 subsection (b) and section 5460 (relating to relation of health  
7 care agent to court-appointed guardian and other agents), a  
8 health care agent shall have the authority to make any health  
9 care decision and to exercise any right and power regarding the  
10 principal's care, custody and health care treatment that the  
11 principal could have made and exercised. The foregoing power  
12 shall include the power to authorize admission to a medical,  
13 nursing, residential or similar facility, or to enter into  
14 agreements for the principal's care. The health care agent's  
15 authority may extend beyond the principal's death to make  
16 anatomical gifts, dispose of the remains and consent to  
17 autopsies.

18       \* \* \*

19   § 5460. Relation of health care agent to court-appointed  
20               guardian and other agents.

21       (a) Accountability of health care agent.--If a principal who  
22 has executed a health care power of attorney is later  
23 adjudicated an incapacitated person and a guardian of the person  
24 to make health care decisions is appointed by a court, the  
25 health care agent is accountable to the guardian as well as to  
26 the principal. [The guardian shall have the same power to revoke  
27 or amend the appointment of a health care agent that the  
28 principal would have if the principal were not incapacitated but  
29 may not revoke or amend other instructions in an advance health  
30 directive absent judicial authorization.] In its guardianship

1 order and determination of a person's incapacity, the court  
2 shall determine the extent to which the health care agent's  
3 authority to act remains in effect.

4 \* \* \*

5 Section 6. ~~Sections~~ SECTION 5601(b) (3) ~~and 5602(a)~~ of Title <--  
6 20 ~~are~~ IS amended to read: <--

7 § 5601. General provisions.

8 \* \* \*

9 (b) Execution.--

10 \* \* \*

11 (3) For a power of attorney executed on or after the  
12 effective date of this paragraph, the signature or mark of  
13 the principal, or the signature [or mark] of another  
14 individual signing a power of attorney on behalf of and at  
15 the direction of the principal, shall be:

16 (i) Acknowledged before a notary public or other  
17 individual authorized by law to take acknowledgments. The  
18 notary public or other individual authorized by law to  
19 take acknowledgments shall not be the agent designated in  
20 the power of attorney.

21 (ii) Witnessed by two individuals, each of whom is  
22 18 years of age or older. A witness shall not be the  
23 individual who signed the power of attorney on behalf of  
24 and at the direction of the principal, the agent  
25 designated in the power of attorney or the notary public  
26 or other person authorized by law to take acknowledgments  
27 before whom the power of attorney is acknowledged. ~~For~~ <--  
28 ~~acknowledgments by an attorney subject to this~~  
29 ~~subparagraph, the provisions of 57 Pa.C.S. § 316(2.1)~~  
30 ~~(relating to short form certificates) insofar as they~~

1 ~~relate to an attorney as subscribing witness do not~~  
2 ~~apply.~~

3 \* \* \*

4 SECTION 6.1. SECTION 5601.4(C), (D) AND (E) OF TITLE 20 ARE <--  
5 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO  
6 READ:

7 § 5601.4. AUTHORITY THAT REQUIRES SPECIFIC AND GENERAL GRANT OF  
8 AUTHORITY.

9 \* \* \*

10 (C) SCOPE OF AUTHORITY.--SUBJECT TO SUBSECTIONS (A), (B),  
11 (D), (D.1) AND (E), IF A POWER OF ATTORNEY GRANTS TO AN AGENT  
12 AUTHORITY TO DO ALL ACTS THAT A PRINCIPAL IS AUTHORIZED TO  
13 PERFORM, THE AGENT HAS ALL OF THE POWERS WHICH MAY BE  
14 INCORPORATED BY REFERENCE PURSUANT TO SECTION 5602(A).

15 (D) GIFTS.--

16 (1) UNLESS THE POWER OF ATTORNEY OTHERWISE PROVIDES, [A  
17 GRANT OF AUTHORITY TO MAKE A GIFT IS SUBJECT TO SECTION  
18 5603(A.1) (RELATING TO IMPLEMENTATION OF POWER OF ATTORNEY).]  
19 THE POWER TO MAKE LIMITED GIFTS OR OTHER LANGUAGE IN A POWER  
20 OF ATTORNEY GRANTING GENERAL AUTHORITY WITH RESPECT TO GIFTS  
21 AUTHORIZES THE AGENT ONLY TO:

22 (I) MAKE OUTRIGHT TO OR FOR THE BENEFIT OF A PERSON,  
23 A GIFT OF ANY OF THE PRINCIPAL'S PROPERTY, INCLUDING BY  
24 THE EXERCISE OF A PRESENTLY EXERCISABLE GENERAL POWER OF  
25 APPOINTMENT HELD BY THE PRINCIPAL:

26 (A) IN AN AMOUNT PER DONEE NOT TO EXCEED THE  
27 ANNUAL DOLLAR LIMITS OF THE FEDERAL GIFT TAX  
28 EXCLUSION UNDER SECTION 2503(B) OF THE INTERNAL  
29 REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §  
30 2503(B)), WITHOUT REGARD TO WHETHER THE FEDERAL GIFT

1 TAX EXCLUSION APPLIES TO THE GIFT; OR

2 (B) IF THE PRINCIPAL'S SPOUSE AGREES TO CONSENT  
3 TO A SPLIT GIFT PURSUANT TO SECTION 2513 OF THE  
4 INTERNAL REVENUE CODE OF 1986 (26 U.S.C. § 2513), IN  
5 AN AMOUNT PER DONEE NOT TO EXCEED TWICE THE ANNUAL  
6 FEDERAL GIFT TAX EXCLUSION LIMIT.

7 (II) CONSENT, PURSUANT TO SECTION 2513 OF THE  
8 INTERNAL REVENUE CODE OF 1986, TO THE SPLITTING OF A GIFT  
9 MADE BY THE PRINCIPAL'S SPOUSE IN AN AMOUNT PER DONEE NOT  
10 TO EXCEED THE AGGREGATE ANNUAL GIFT TAX EXCLUSIONS FOR  
11 BOTH SPOUSES.

12 (2) AN AGENT MAY MAKE A GIFT OF THE PRINCIPAL'S PROPERTY  
13 ONLY AS THE AGENT DETERMINES IS CONSISTENT WITH THE  
14 PRINCIPAL'S OBJECTIVES IF ACTUALLY KNOWN BY THE AGENT AND, IF  
15 UNKNOWN, AS THE AGENT DETERMINES IS CONSISTENT WITH THE  
16 PRINCIPAL'S BEST INTEREST BASED ON ALL RELEVANT FACTORS,  
17 INCLUDING:

18 (I) THE VALUE AND NATURE OF THE PRINCIPAL'S  
19 PROPERTY.

20 (II) THE PRINCIPAL'S FORESEEABLE OBLIGATIONS AND  
21 NEED FOR MAINTENANCE.

22 (III) MINIMIZATION OF TAXES, INCLUDING INCOME,  
23 ESTATE, INHERITANCE, GENERATION-SKIPPING TRANSFER AND  
24 GIFT TAXES.

25 (IV) ELIGIBILITY FOR A BENEFIT, PROGRAM OR  
26 ASSISTANCE UNDER A STATUTE OR REGULATION.

27 (V) THE PRINCIPAL'S PERSONAL HISTORY OF MAKING OR  
28 JOINING IN MAKING GIFTS.

29 (3) AS USED IN THIS SUBSECTION, THE PHRASE "A GIFT FOR  
30 THE BENEFIT OF A PERSON" INCLUDES A GIFT TO A TRUST, AN

1 ACCOUNT UNDER CHAPTER 53 (RELATING TO PENNSYLVANIA UNIFORM  
2 TRANSFERS TO MINORS ACT) AND A TUITION SAVINGS ACCOUNT OR  
3 PREPAID TUITION PLAN AS DEFINED UNDER SECTION 529 OF THE  
4 INTERNAL REVENUE CODE OF 1986 (26 U.S.C. § 529).

5 (D.1) DISCLAIMERS.--

6 (1) UNLESS THE POWER OF ATTORNEY OTHERWISE PROVIDES, THE  
7 GRANT OF THE POWER TO DISCLAIM ANY INTEREST IN PROPERTY OR A  
8 GRANT OF GENERAL AUTHORITY WITH DISCLAIMERS AUTHORIZES THE  
9 AGENT TO RELEASE OR DISCLAIM ANY INTEREST IN PROPERTY ON  
10 BEHALF OF THE PRINCIPAL IN ACCORDANCE WITH CHAPTER 62  
11 (RELATING TO DISCLAIMERS) OR SECTION 6103.1 (RELATING TO  
12 RELEASE OF POWERS AND INTERESTS AND DISCLAIMER OF POWERS),  
13 PROVIDED THAT ANY DISCLAIMER UNDER CHAPTER 62 SHALL BE IN  
14 ACCORDANCE WITH THE PROVISIONS OF SECTION 6202 (RELATING TO  
15 DISCLAIMERS BY FIDUCIARIES OR AGENTS) IN THE CASE OF A  
16 PRINCIPAL WHO IS AN INCAPACITATED PERSON AT THE TIME OF THE  
17 EXECUTION OF THE DISCLAIMER.

18 (2) AN AGENT MAY MAKE A DISCLAIMER AS THE AGENT  
19 DETERMINES IS CONSISTENT WITH THE PRINCIPAL'S OBJECTIVES IF  
20 ACTUALLY KNOWN BY THE AGENT AND, IF UNKNOWN, AS THE AGENT  
21 DETERMINES IS CONSISTENT WITH THE PRINCIPAL'S BEST INTEREST  
22 BASED ON ALL RELEVANT FACTORS, INCLUDING:

23 (I) THE VALUE AND NATURE OF THE PRINCIPAL'S  
24 PROPERTY.

25 (II) THE PRINCIPAL'S FORESEEABLE OBLIGATIONS AND  
26 NEED FOR MAINTENANCE.

27 (III) MINIMIZATION OF TAXES, INCLUDING INCOME,  
28 ESTATE, INHERITANCE, GENERATION-SKIPPING TRANSFER AND  
29 GIFT TAXES.

30 (IV) ELIGIBILITY FOR A BENEFIT, PROGRAM OR

1           ASSISTANCE UNDER A STATUTE OR REGULATION.

2           (V) THE PRINCIPAL'S PERSONAL HISTORY OF MAKING OR  
3           JOINING IN MAKING GIFTS.

4           (E) SIMILAR OR OVERLAPPING SUBJECTS.--SUBJECT TO SUBSECTIONS  
5 (A), (B) [AND], (D) AND (D.1), IF THE SUBJECTS OVER WHICH  
6 AUTHORITY IS GRANTED IN A POWER OF ATTORNEY ARE SIMILAR OR  
7 OVERLAP, THE BROADEST AUTHORITY CONTROLS.

8           \* \* \*

9           SECTION 6.2. SECTION 5602(A) OF TITLE 20 IS AMENDED TO READ:  
10 § 5602. Form of power of attorney.

11          (a) Specification of powers.--A principal may, by inclusion  
12 of the language quoted in any of the following paragraphs or by  
13 inclusion of other language showing a similar intent on the part  
14 of the principal, empower an agent to do any or all of the  
15 following, each of which is defined in section 5603 (relating to  
16 implementation of power of attorney):

17           [(1) "To make limited gifts."]

18           (2) "To create a trust for my benefit."

19           (3) "To make additions to an existing trust for my  
20 benefit."

21           (4) "To claim an elective share of the estate of my  
22 deceased spouse."

23           (6) "To renounce fiduciary positions."

24           (7) "To withdraw and receive the income or corpus of a  
25 trust."

26           [(8) "To authorize my admission to a medical, nursing,  
27 residential or similar facility and to enter into agreements  
28 for my care."]

29           (9) "To authorize medical and surgical procedures."]

30           (10) "To engage in real property transactions."

- 1 (11) "To engage in tangible personal property  
2 transactions."  
3 (12) "To engage in stock, bond and other securities  
4 transactions."  
5 (13) "To engage in commodity and option transactions."  
6 (14) "To engage in banking and financial transactions."  
7 (15) "To borrow money."  
8 (16) "To enter safe deposit boxes."  
9 (17) "To engage in insurance and annuity transactions."  
10 (18) "To engage in retirement plan transactions."  
11 (19) "To handle interests in estates and trusts."  
12 (20) "To pursue claims and litigation."  
13 (21) "To receive government benefits."  
14 (22) "To pursue tax matters."  
15 [(23) "To make an anatomical gift of all or part of my  
16 body."]  
17 (24) "To operate a business or entity."  
18 (25) "To provide for personal and family maintenance."

19 \* \* \*

20 Section 7. Section ~~5603(d)~~ 5603(A.1), (D), (h), (r) and <--  
21 (u.1) of Title 20 are amended and the section is amended by  
22 adding subsections to read:

23 § 5603. Implementation of power of attorney.

24 [(A.1) POWER TO MAKE LIMITED GIFTS.-- <--

25 (1) UNLESS THE POWER OF ATTORNEY OTHERWISE PROVIDES, THE  
26 POWER TO MAKE LIMITED GIFTS OR OTHER LANGUAGE IN A POWER OF  
27 ATTORNEY GRANTING GENERAL AUTHORITY WITH RESPECT TO GIFTS  
28 AUTHORIZES THE AGENT ONLY TO:

29 (I) MAKE OUTRIGHT TO OR FOR THE BENEFIT OF A PERSON,  
30 A GIFT OF ANY OF THE PRINCIPAL'S PROPERTY, INCLUDING BY

1 THE EXERCISE OF A PRESENTLY EXERCISABLE GENERAL POWER OF  
2 APPOINTMENT HELD BY THE PRINCIPAL:

3 (A) IN AN AMOUNT PER DONEE NOT TO EXCEED THE  
4 ANNUAL DOLLAR LIMITS OF THE FEDERAL GIFT TAX  
5 EXCLUSION UNDER SECTION 2503(B) OF THE INTERNAL  
6 REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §  
7 2503(B)), WITHOUT REGARD TO WHETHER THE FEDERAL GIFT  
8 TAX EXCLUSION APPLIES TO THE GIFT; OR

9 (B) IF THE PRINCIPAL'S SPOUSE AGREES TO CONSENT  
10 TO A SPLIT GIFT PURSUANT TO SECTION 2513 OF THE  
11 INTERNAL REVENUE CODE OF 1986 (26 U.S.C. § 2513), IN  
12 AN AMOUNT PER DONEE NOT TO EXCEED TWICE THE ANNUAL  
13 FEDERAL GIFT TAX EXCLUSION LIMIT.

14 (II) CONSENT, PURSUANT TO SECTION 2513 OF THE  
15 INTERNAL REVENUE CODE OF 1986, TO THE SPLITTING OF A GIFT  
16 MADE BY THE PRINCIPAL'S SPOUSE IN AN AMOUNT PER DONEE NOT  
17 TO EXCEED THE AGGREGATE ANNUAL GIFT TAX EXCLUSIONS FOR  
18 BOTH SPOUSES.

19 (2) AN AGENT MAY MAKE A GIFT OF THE PRINCIPAL'S PROPERTY  
20 ONLY AS THE AGENT DETERMINES IS CONSISTENT WITH THE  
21 PRINCIPAL'S OBJECTIVES IF ACTUALLY KNOWN BY THE AGENT AND, IF  
22 UNKNOWN, AS THE AGENT DETERMINES IS CONSISTENT WITH THE  
23 PRINCIPAL'S BEST INTEREST BASED ON ALL RELEVANT FACTORS,  
24 INCLUDING:

25 (I) THE VALUE AND NATURE OF THE PRINCIPAL'S  
26 PROPERTY.

27 (II) THE PRINCIPAL'S FORESEEABLE OBLIGATIONS AND  
28 NEED FOR MAINTENANCE.

29 (III) MINIMIZATION OF TAXES, INCLUDING INCOME,  
30 ESTATE, INHERITANCE, GENERATION-SKIPPING TRANSFER AND

1 GIFT TAXES.

2 (IV) ELIGIBILITY FOR A BENEFIT, PROGRAM OR  
3 ASSISTANCE UNDER A STATUTE OR REGULATION.

4 (V) THE PRINCIPAL'S PERSONAL HISTORY OF MAKING OR  
5 JOINING IN MAKING GIFTS.

6 (3) AS USED IN THIS SUBSECTION, THE PHRASE "A GIFT FOR  
7 THE BENEFIT OF A PERSON" INCLUDES A GIFT TO A TRUST, AN  
8 ACCOUNT UNDER CHAPTER 53 (RELATING TO PENNSYLVANIA UNIFORM  
9 TRANSFERS TO MINORS ACT) AND A TUITION SAVINGS ACCOUNT OR  
10 PREPAID TUITION PLAN AS DEFINED UNDER SECTION 529 OF THE  
11 INTERNAL REVENUE CODE OF 1986 (26 U.S.C. § 529).]

12 \* \* \*

13 (d) Power to claim an elective share.--A power "to claim an  
14 elective share of the estate of my deceased spouse" shall mean  
15 that the agent may elect to take against the will and  
16 conveyances of the principal's deceased spouse, disclaim any  
17 interest in property which the principal is required to disclaim  
18 as a result of such election, retain any property which the  
19 principal has the right to elect to retain, file petitions  
20 pertaining to the election, including petitions to extend the  
21 time for electing and petitions for orders, decrees and  
22 judgments in accordance with section 2211(c) and (d) (relating  
23 to determination of effect of election; enforcement), and take  
24 all other actions which the agent deems appropriate in order to  
25 effectuate the election: Provided, however, That the election  
26 shall be made only upon the approval of the court having  
27 jurisdiction of the principal's estate in accordance with  
28 section 2206 (relating to right of election personal to  
29 surviving spouse) in the case of a principal who [has been  
30 adjudicated] is an incapacitated person, or upon the approval of

1 the court having jurisdiction of the deceased spouse's estate in  
2 the case of a principal who [has not been adjudicated] is not  
3 an incapacitated person.

4 \* \* \*

5 [(h) Power to authorize admission to medical facility and  
6 power to authorize medical procedures.--

7 (1) A power "to authorize my admission to a medical,  
8 nursing, residential or similar facility, and to enter into  
9 agreements for my care" shall mean that the agent may apply  
10 for the admission of the principal to a medical, nursing,  
11 residential or other similar facility, execute any consent or  
12 admission forms required by such facility which are  
13 consistent with this paragraph, and enter into agreements for  
14 the care of the principal by such facility or elsewhere  
15 during his lifetime or for such lesser period of time as the  
16 agent may designate, including the retention of nurses for  
17 the principal.

18 (2) A power "to authorize medical and surgical  
19 procedures" shall mean that the agent may arrange for and  
20 consent to medical, therapeutical and surgical procedures for  
21 the principal, including the administration of drugs.]

22 \* \* \*

23 (r) Power to handle interests in estates and trusts.--A  
24 power to "handle interests in estates and trusts" shall mean  
25 that the agent may receive a bequest, devise, gift or other  
26 transfer of real or personal property to the principal in the  
27 principal's own right or as a fiduciary for another and give  
28 full receipt and acquittance therefor or a refunding bond  
29 therefor; approve accounts of any estate, trust, partnership or  
30 other transaction in which the principal may have an interest;

1 [and] enter into any compromise and release in regard  
2 thereto[.]; and receive on behalf of the principal all notices  
3 and reports required by section 7780.3 (relating to duty to  
4 inform and report) or permitted by section 7785(a) (relating to  
5 limitation of action against trustee).

6 \* \* \*

7 [(u.1) Power to make anatomical gift.--A power "to make an  
8 anatomical gift of all or part of my body" shall mean that the  
9 agent may arrange and consent, either before or after the death  
10 of the principal, to procedures to make an anatomical gift in  
11 accordance with Chapter 86 (relating to anatomical gifts).]

12 (u.2) Power to operate a business or entity.--A power "to  
13 operate a business or entity" shall mean that the agent may:

14 (1) Continue or participate in the operation of any  
15 business or other entity in which the principal holds an  
16 interest, whether alone or with others, by making and  
17 implementing decisions regarding its financing, operations,  
18 employees and all other matters pertinent to the business or  
19 entity.

20 (2) Change the form of ownership of the business or  
21 entity to a corporation, partnership, limited liability  
22 company or other entity, and initiate or take part in a  
23 corporate reorganization, including a merger, consolidation,  
24 dissolution or other change in organizational form.

25 (3) Compensate an agent actively managing, supervising  
26 or engaging in the operation of a business or entity, as  
27 appropriate, from the principal's assets or from the business  
28 or entity, provided that the compensation is reasonably based  
29 upon the actual responsibilities assumed and performed.

30 (4) In general, exercise all powers with respect to

1 operating a business or entity that the principal could if  
2 present.

3 (u.3) Power to provide for personal and family  
4 maintenance.--

5 (1) A power "to provide for personal and family  
6 maintenance" shall mean that the agent may provide for the  
7 health, education, maintenance and support, in order to  
8 maintain the customary standard of living of the principal's  
9 spouse and the following individuals, whether living when the  
10 power of attorney is executed or later born:

11 (i) The principal's minor children.

12 (ii) Other individuals legally entitled to be  
13 supported by the principal.

14 (iii) The individuals whom the principal has  
15 customarily supported and intends to support.

16 (2) In acting under this subsection, the agent shall:

17 (i) Take into account the long-term needs of the  
18 principal.

19 (ii) Consider any independent means available to  
20 those individuals apart from the support provided by the  
21 principal.

22 (3) Authority with respect to personal and family  
23 maintenance is in addition to and not limited by authority  
24 that an agent may or may not have with respect to gifts under  
25 this chapter.

26 ~~(u.4) Implied powers. Except as provided by a power of~~ <--  
27 ~~attorney, each of the specific powers listed in this section~~  
28 ~~included in a power of attorney include the other powers listed~~  
29 ~~in this section to the extent necessary to exercise the~~  
30 ~~specifically designated power.~~

1 Section 8. Section 5604(c)(1) of Title 20 is amended and  
2 subsection (c) is amended by adding a paragraph to read:

3 § 5604. Durable powers of attorney.

4 \* \* \*

5 (c) Relation of agent to court-appointed guardian.--

6 (1) If, following execution of a durable power of  
7 attorney, the principal [is adjudicated] becomes an  
8 incapacitated person and a guardian is appointed for his  
9 estate, the agent is accountable to the guardian as well as  
10 to the principal. [The guardian shall have the same power to  
11 revoke or amend the power of attorney that the principal  
12 would have had if he were not an incapacitated person.]

13 \* \* \*

14 (3) In its guardianship order and determination of a  
15 person's incapacity, the court shall determine whether and  
16 the extent to which the incapacitated person's durable power  
17 of attorney remains in effect.

18 \* \* \*

19 Section 9. Section 5610 of Title 20 is amended to read:

20 § 5610. Account.

21 An agent shall file an account of his administration whenever  
22 directed to do so by the court and may file an account at any  
23 other time. All accounts shall be filed in the office of the  
24 clerk in the county where the principal resides. The court may  
25 assess the costs of the accounting proceeding as it deems  
26 appropriate, including the costs of preparing and filing the  
27 account.

28 Section 10. Title 20 is amended by adding sections to read:

29 § 5613. Meaning and effect of power of attorney.

30 The meaning and effect of a power of attorney is determined

1 by the law of the jurisdiction indicated in the power of  
2 attorney and, in the absence of an indication of jurisdiction,  
3 by the law of the jurisdiction in which the power of attorney is  
4 executed.

5 § 5614. Jurisdiction and venue.

6 (a) County having venue.--Venue of any matter pertaining to  
7 the exercise of a power by an agent acting under a power of  
8 attorney as provided in this chapter shall be in the county in  
9 which the principal is domiciled, a resident or residing in a  
10 long-term care facility.

11 (b) Declining jurisdiction.--

12 (1) A court having jurisdiction may decline to exercise  
13 jurisdiction if at any time it determines that a court of  
14 another county or state is a more appropriate forum.

15 (2) If a court of this Commonwealth declines to exercise  
16 jurisdiction, it shall either dismiss the proceeding or stay  
17 the proceeding upon condition that a proceeding be promptly  
18 commenced in another county or state. A court may impose any  
19 other condition that it deems appropriate.

20 Section 11. Section 6103 of Title 20 is repealed:

21 [§ 6103. Release or disclaimer of powers or interests.

22 (a) Powers and interests releasable.--Any power of  
23 appointment, or power of consumption, whether general or  
24 special, other than a power in trust which is imperative, and  
25 any interest in, to, or over real or personal property held or  
26 owned outright, or in trust, or in any other manner which is  
27 reserved or given to any person by deed, will or otherwise, and  
28 irrespective of any limitation of such power or interest by  
29 virtue of any restriction in the nature of a so-called  
30 spendthrift trust provision, or similar provision, may be

1 released or disclaimed, either with or without consideration by  
2 written instrument signed by the person possessing the power or  
3 the interest and delivered as hereinafter provided, but nothing  
4 in this section shall authorize an income beneficiary of a  
5 spendthrift trust to release or disclaim his right to such  
6 income, unless as a result of the release or disclaimer the  
7 released or disclaimed income will pass to one or more of the  
8 beneficiary's descendants. This section shall not apply to an  
9 interest that may be disclaimed under Chapter 62 (relating to  
10 disclaimers).

11 (b) Form of release or disclaimer.--A power or interest  
12 which is releasable or disclaimable may be released or  
13 disclaimed either absolutely or conditionally, and may also be  
14 released or disclaimed with respect to the whole or any part of  
15 the property subject to such power or interest, and may also be  
16 released or disclaimed in such manner as to reduce or limit the  
17 persons or objects or classes of persons or objects in whose  
18 favor such power or interest would otherwise be exercisable. No  
19 release or disclaimer of a power or of an interest shall be  
20 deemed to make imperative a power or interest which was not  
21 imperative prior to such release or disclaimer unless the  
22 instrument of release or disclaimer expressly so provides.

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

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

27 (2) Any trustee of the property to which the power or  
28 interest relates.

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

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

5 (d) Grantee or lienholder.--A release or disclaimer shall be  
6 void as against a bona fide grantee of or holder of a lien on  
7 real estate in any county unless the release or disclaimer or a  
8 duplicate original or certified copy thereof is recorded in the  
9 county where the real estate lies before the recording or  
10 entering of the instrument or lien under which such grantee or  
11 lienholder claims.]

12 Section 12. Title 20 is amended by adding a section to read:  
13 § 6103.1. Release of powers and interests and disclaimer of  
14 powers.

15 (a) Interests releasable.--

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

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

21 (b) Effect of release of interest.--A releasor of an  
22 interest in property shall be treated as having died at the time  
23 of the release for purposes of determining and accelerating the  
24 interests of other parties in the property.

25 (c) Nonfiduciary powers disclaimable or releasable.--A power  
26 of appointment, power of withdrawal or other power held in a  
27 nonfiduciary capacity may be disclaimed prior to its acceptance  
28 or released after its acceptance.

29 (d) Terms of disclaimer or release.--A release of a power or  
30 interest or a disclaimer of a power under this section may:



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

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

8           § 7602. Exercise of powers of appointment.

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

14                   (1) specific reference to the power;

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

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

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

21                   (5) a general testamentary gift; or

22                   (6) a testamentary residuary gift.

23           (b) Limited power of appointment.--

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

30                   (i) specific reference to the power;

1           (ii) a testamentary or inter vivos gift specifically  
2 describing the appointive property;

3           (iii) a general testamentary gift to all, and only  
4 to all, the objects of the power; or

5           (iv) a testamentary residuary gift to all, and only  
6 to all, the objects of the power.

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

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

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

21          (e) Testamentary powers.--

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

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

29           (3) An attempted exercise of a testamentary power of  
30 appointment in favor of the donee's creditors shall be

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

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

8 § 7603. Contract to exercise power.

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

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

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

21 § 7604. Manner of appointment.

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

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

29 (2) Appointing to one or more trustees to hold the  
30 appointive property in trust for the benefit of one or more

1 objects of the power and specifying the terms and  
2 administrative provisions of the trust and the powers and  
3 duties of the trustees, even if the trustees themselves are  
4 not objects of the power.

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

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

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

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

22 § 7605. Antilapse provision.

23 (a) General rule.--

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

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

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

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

4 (2) Paragraph (1) applies if:

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

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

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

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

24 § 7606. Partially effective exercise.

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

1 plan that the parts cannot be separated without defeating the  
2 plan.

3 Section 14. Sections 7710.1(c), 7722 and 7740.7(b) of Title  
4 20 are amended to read:

5 § 7710.1. Nonjudicial settlement agreements - UTC 111.

6 \* \* \*

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

12 \* \* \*

13 § 7722. Representation of parties in interest in general.

14 (a) Judicial proceeding.--In a judicial proceeding involving  
15 a trust matter, an order or decree of the court that binds the  
16 representative [or representatives] is binding upon a person,  
17 class of persons or both represented in accordance with section  
18 7723 (relating to representatives and persons represented) if:

19 (1) the trustee notifies the [representatives]  
20 representative in writing whom [they represent, they do] he  
21 represents and the representative does not decline the  
22 representation as provided in section 7725 (relating to  
23 notice of representation) [and they act in good faith.];

24 (2) a petitioner, whether or not a trustee, avers the  
25 representation in a petition before the court, the  
26 representative is the petitioner or a respondent over whom  
27 the court has jurisdiction and, if a respondent, the  
28 representative does not decline the representation in a  
29 responsive pleading filed and served as required by law; or

30 (3) the representative has signed a certification of

1 representation described in subsection (d) and has not  
2 rescinded the certification on the court's records by the  
3 time the court acts upon the petition.

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

9 (1) the trustee notifies the [representatives]  
10 representative in writing whom [they represent, they do] he  
11 represents and the representative does not decline the  
12 representation as provided in section 7725 [and they act in  
13 good faith.]; or

14 (2) the representative has signed a certification of  
15 representation described in subsection (d) and has not  
16 rescinded the certification in a writing received by the  
17 trustee by the time of the nonjudicial settlement.

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

21 (d) Certification of representation.--

22 (1) A certification signed by the representative  
23 describing his representation of another person, class of  
24 persons or both in accordance with section 7723 may be filed  
25 with:

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

27 or

28 (ii) the trustee, in the case of a nonjudicial  
29 resolution of a trust matter.

30 (2) Subject to paragraph (3), a certification of

1 representation may be rescinded in a writing signed by the  
2 representative and filed with:

3 (i) the court at any time before the court acts in  
4 reliance upon the certification, in the case of a  
5 judicial proceeding; or

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

8 (3) A representative's rescission of a certification of  
9 representation shall have no effect upon actions taken by a  
10 trustee in good faith reliance upon the certification.

11 § 7740.7. Division of trusts.

12 \* \* \*

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

17 \* \* \*

18 Section 15. Section 7765(a), (b) and (c) of Title 20 are  
19 amended and the section is amended by adding a subsection to  
20 read:

21 § 7765. Resignation of trustee; filing resignation.

22 [(a) Court approval.--A trustee may resign with court  
23 approval.

24 (b) Without court approval if authorized by trust  
25 instrument.--A trustee may resign without court approval if  
26 authorized to resign by the trust instrument.

27 (c) Without court approval and without authorization in  
28 trust instrument.--

29 (1) Unless expressly provided to the contrary in the  
30 trust instrument, an individual trustee may resign without

1 court approval and without authorization in the trust  
2 instrument if:

- 3 (i) there is at least one cotrustee and all  
4 cotrustees consent in writing to the resignation; and  
5 (ii) all the qualified beneficiaries consent in  
6 writing to the resignation.

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

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

- 14 (1) with court approval;  
15 (2) without court approval if authorized to resign by  
16 the trust instrument; or  
17 (3) pursuant to a nonjudicial settlement agreement  
18 described in section 7710.1 (relating to nonjudicial  
19 settlement agreements - UTC 111).

20 \* \* \*

21 Section 16. Section 7780.3 of Title 20 is amended by adding  
22 subsections to read:

23 § 7780.3. Duty to inform and report.

24 \* \* \*

25 (k.1) Nomination by current beneficiary.--In a writing given  
26 to the trustee, a current beneficiary of a trust may nominate  
27 another person to receive, on behalf of the current beneficiary,  
28 the notices required by this section. By giving the notices  
29 required by this section to the nominee of the current  
30 beneficiary, the trustee satisfies the trustee's duty to give to

1 the current beneficiary the notices required by this section if:

2 (1) the trustee notifies the nominee that the notice is  
3 being given to the nominee as representative of the current  
4 beneficiary and that future notices required by this section  
5 will be given to the nominee in the same capacity; and

6 (2) the nominee does not decline to receive the notices  
7 on behalf of the current beneficiary in a writing given to  
8 the trustee no later than 60 days after receipt of the notice  
9 described in paragraph (1).

10 (k.2) Reliance on nomination.--The trustee may rely upon the  
11 current beneficiary's nomination of another person to receive  
12 the notices required by this section on behalf of the current  
13 beneficiary and the nominee's presumed acceptance of that  
14 representation under subsection (k.1)(2) until the trustee  
15 receives a written rescission of the nomination from the current  
16 beneficiary or a written declination to receive further notices  
17 from the nominee. No such rescission or declination shall render  
18 ineffective any notice given by the trustee to the nominee  
19 before the trustee received the rescission or declination.

20 \* \* \*

21 Section 17. Section 7785(a) of Title 20 is amended by adding  
22 paragraphs to read:

23 § 7785. Limitation of action against trustee.

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

25 \* \* \*

26 (3) In a writing given to the trustee, a beneficiary of  
27 a trust may nominate another person to receive, on behalf of  
28 the beneficiary, the reports required by this section. By  
29 giving the reports required by this section to the nominee of  
30 the beneficiary, the trustee satisfies the trustee's duty to

1 give the beneficiary the reports required by this section if:

2 (i) the trustee notifies the nominee that the report  
3 and future reports required by this section are being  
4 given to the nominee as representative of the  
5 beneficiary; and

6 (ii) the nominee does not decline to receive reports  
7 on behalf of the beneficiary in a writing given to the  
8 trustee no later than 60 days after receipt of the notice  
9 described in this subsection.

10 (4) The trustee may rely upon the beneficiary's  
11 nomination of another person to receive the reports required  
12 by this section on behalf of the beneficiary and the  
13 nominee's presumed acceptance of that representation under  
14 this subsection until the trustee receives a written  
15 rescission of the nomination from the beneficiary or a  
16 written declination to receive further reports from the  
17 nominee. No such rescission or declination shall render  
18 ineffective any report given by the trustee to the nominee  
19 before the trustee received the rescission or declination.

20 \* \* \*

21 Section 18. Section 7792 of Title 20 is amended to read:

22 § 7792. Powers, duties and liabilities identical with personal  
23 representatives.

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

28 Section 3184 (relating to discharge of personal  
29 representative and surety).

30 Section 3321(d) and (e) (relating to nominee registration;

1 corporate fiduciary as agent; deposit of securities in a  
2 clearing corporation; book-entry securities).

3 Section 3323 (relating to compromise of controversies).

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

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

6 Section 3353 (relating to order of court).

7 Section 3354 (relating to power given in governing  
8 instrument).

9 Section 3355 (relating to restraint of sale).

10 Section 3356 (relating to purchase by personal  
11 representative).

12 Section 3358 (relating to collateral attack).

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

15 Section 3532(c) (relating to at risk of personal  
16 representative).

17 Section 19. Title 20 is amended by adding a chapter to read:

18 CHAPTER 79

19 CHARITABLE INSTRUMENTS

20 Sec.

21 7901. Short title of chapter.

22 7902. Definitions.

23 7903. Deemed provisions of governing instrument.

24 7904. Power to amend governing instrument.

25 7905. Court authority.

26 7906. Applicability.

27 § 7901. Short title of chapter.

28 This chapter shall be known and may be cited as the  
29 Charitable Instruments Act.

30 § 7902. Definitions.

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

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

6 (1) A trust described in section 4947(a)(1) or (2) of  
7 the Internal Revenue Code of 1986 (Public Law 99-514, 26  
8 U.S.C. § 4947(a)(1) or (2)), which is or is treated as a  
9 private foundation under section 509 of the Internal Revenue  
10 Code of 1986 (26 U.S.C. § 509).

11 (2) A trust governed by Pennsylvania law that is or is  
12 treated as a pooled income fund under section 642(c)(5) of  
13 the Internal Revenue Code of 1986 (26 U.S.C. § 642(c)(5)).  
14 § 7903. Deemed provisions of governing instrument.

15 (a) Effect of deemed provisions.--The governing instrument  
16 of a charitable organization is deemed to include provisions,  
17 the effects of which are to:

18 (1) Require distributions for each taxable year in such  
19 amounts and at such times and in such manner as not to  
20 subject the organization to tax under section 4942 of the  
21 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
22 4942).

23 (2) Prohibit the organization from:

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

27 (ii) Retaining excess business holdings, as defined  
28 in section 4943(c) of the Internal Revenue Code of 1986  
29 (26 U.S.C. § 4943(c)).

30 (iii) Making an investment in such manner as to

1 subject the organization to tax under section 4944 of the  
2 Internal Revenue Code of 1986 (26 U.S.C. § 4944).

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

6 (b) Effect of contrary provision.--The deemed provisions  
7 under subsection (a) supersede any contrary provision of the  
8 governing instrument.

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

13 § 7904. Power to amend governing instrument.

14 The trustees or directors of every charitable organization  
15 have the power, acting alone, without the approval of a member,  
16 court, donor or beneficiary, to amend the instrument governing  
17 the charitable organization in any manner required for the sole  
18 purpose of ensuring that:

19 (1) Gifts and bequests to the charitable organization  
20 qualify for charitable deductions available for Federal  
21 income, gift and estate tax purposes.

22 (2) The charitable organization qualifies for tax  
23 exemptions available for Federal income tax purposes.

24 § 7905. Court authority.

25 Nothing in this chapter precludes a court of competent  
26 jurisdiction from authorizing a deviation from the express terms  
27 of an instrument governing a charitable organization.

28 § 7906. Applicability.

29 This chapter shall apply to:

30 (1) A charitable organization created after December 31,

1     1969.

2           (2) A charitable organization created before January 1,  
3     1970, unless a court of competent jurisdiction in a  
4     proceeding instituted before January 1, 1972, explicitly  
5     decided that the operation of this chapter would  
6     substantially impair the accomplishment of the purposes of  
7     the charitable organization involved in that proceeding.

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

9     § 8113. Charitable trusts.

10     \* \* \*

11     (f) Charitable organizations.--For a charitable organization  
12 defined under [the act of June 17, 1971 (P.L.181, No.23), known  
13 as the Charitable Instruments Act of 1971,] Chapter 79 (relating  
14 to charitable instruments) the provisions of [that act] Chapter  
15 79 shall supersede subsection (c) if necessary to comply with  
16 the minimum investment return requirements.

17     Section 21. This act shall apply as follows:

18           (1) Except as set forth in paragraphs (2) and (3), this  
19 act shall apply to all powers of attorney executed on or  
20 after the effective date of this paragraph.

21           (2) (i) Nothing in this act shall be construed to limit  
22 the effectiveness of powers of attorney in effect prior  
23 to the effective date of this paragraph.

24           (ii) The amendment or addition of 20 Pa.C.S. §§  
25 5603(r) and (u.4), 5610, 5613 and 5614 shall apply to all  
26 powers of attorney executed before, on or after the  
27 effective date of this paragraph.

28           (3) The addition of 20 Pa.C.S. Ch. 76 shall apply to all  
29 powers of appointment created before, on or after the  
30 effective date of that chapter.

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

4           (i) All activities initiated under the Charitable  
5 Instruments Act of 1971 shall continue and remain in full  
6 force and effect and may be completed under 20 Pa.C.S.  
7 Ch. 79. Resolutions, orders, regulations, rules and  
8 decisions which were made under the Charitable  
9 Instruments Act of 1971 and which are in effect on the  
10 effective date of this paragraph shall remain in full  
11 force and effect until revoked, vacated or modified under  
12 20 Pa.C.S. Ch. 79. Contracts, obligations and agreements  
13 entered into under the Charitable Instruments Act of 1971  
14 are not affected nor impaired by the repeal of the  
15 Charitable Instruments Act of 1971.

16           (ii) Any difference in language between 20 Pa.C.S.  
17 Ch. 79 and the Charitable Instruments Act of 1971 is  
18 intended only to conform to the style of the Pennsylvania  
19 Consolidated Statutes and is not intended to change or  
20 affect the legislative intent, judicial construction or  
21 administrative interpretation and implementation of the  
22 Charitable Instruments Act of 1971.

23 Section 22. Repeals are as follows:

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

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

29 Section 23. This act shall take effect immediately.