

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 120 Session of
2009INTRODUCED BY MARSICO, DALLY, GODSHALL, HARHART, REICHLEY AND
CALTAGIRONE, JANUARY 30, 2009AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 25, 2009

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 forfeiture, for modification of wills, for advertisement of
4 grant of letters, for duty of personal representative, for
5 enforcement of contribution or exoneration of Federal estate
6 tax, for implementation of power of attorney, for
7 applicability of rule against perpetuities, for modification
8 of conveyance by divorce, for effect of divorce on
9 designation of beneficiaries, for notice of representation,
10 for creditor's claim against settlor, for actions contesting
11 validity of revocable trusts, for claims and distribution
12 after settlor's death, FOR REMOVAL OF TRUSTEE, for trustee's
13 duty to inform and report, for illustrative powers of
14 trustee, for limitation of action against trustee, for power
15 to convert to unitrust and for retirement benefits,
16 individual retirement accounts, deferred compensation,
17 annuities and similar payments; and making conforming
18 amendments to Title 15.



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

21 Section 1. Sections 2106(a), 2507(2), 3162, 3301(c), 3706,
22 5603(p) and (q), 6107.1, 6111.1, 6111.2, 7725 and 7745 of Title
23 20 of the Pennsylvania Consolidated Statutes are amended to
24 read:
25 § 2106. Forfeiture.

(a) Spouse's share.--

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

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

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

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

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

* * *

§ 2507. Modification by circumstances.

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

* * *

(2) Divorce or pending divorce.--[If the testator is divorced from the bonds of matrimony after making a will, any] Any provision in [the] a testator's will in favor of or relating to [his] the testator's spouse [so divorced] shall [thereby] become ineffective for all purposes unless it appears from the will that the provision was intended to survive [the divorce.] a divorce, if the testator:

(i) is divorced from such spouse after making the

1 will; or

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

7 * * *

8 § 3162. Advertisement of grant of letters.

9 (a) Notice generally.--The personal representative,
10 immediately after the grant of letters, shall cause notice
11 thereof to be given in one newspaper of general circulation
12 published at or near the place where the decedent resided or, in
13 the case of a nonresident decedent, at or near the place where
14 the letters were granted, and in the legal periodical, if any,
15 designated by rule of court for the publication of legal
16 notices, once a week for three successive weeks, together with
17 his name and address; and in every such notice, he shall request
18 all persons having claims against the estate of the decedent to
19 make known the same to him or his attorney, and all persons
20 indebted to the decedent to make payment to him without delay.

21 (b) Proofs of advertisement to trustee.--A personal
22 representative who has advertised the grant of letters and
23 received the notice required by section 7780.3(c) (relating to
24 duty to inform and report) shall promptly send copies of the
25 proofs of that advertisement to the trustee.

26 § 3301. Duty of personal representative.

27 * * *

28 (c) Time for filing.--The personal representative shall file
29 his inventory no later than the date he files his account or the
30 due date, including any extension, for the filing of the

1 inheritance tax return for the estate, whichever is earlier. Any
2 party in interest in the estate may request the filing of an
3 inventory at an earlier date by writing delivered to the
4 personal representative or his attorney in which event an
5 inventory shall be filed within three months after the
6 appointment of the personal representative or within 30 days
7 after the request, whichever is later. The court[, upon cause
8 shown,] may direct the [filing of] personal representative to
9 file an inventory of estate assets at any time.

10 § 3706. Enforcement of contribution or exoneration of Federal
11 estate tax.

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

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

25 (c) Suspending distribution.--Distribution or delivery of
26 property to any party, other than a fiduciary charged with a
27 duty to pay the Federal estate tax, shall not be required of any
28 fiduciary until [the Federal estate tax apportionable with
29 respect thereto is paid or, if the Federal estate tax has not
30 been determined and apportionment made, until adequate security

1 for payment is furnished to the fiduciary making the
2 distribution or delivery.] that party pays the Federal estate
3 tax apportioned to that party.

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

1 § 5603. Implementation of power of attorney.

2 * * *

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

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

11 (2) Exercise nonforfeiture provisions under insurance
12 policies.

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

23 (q) Power to engage in retirement plan transactions.--A
24 power to "engage in retirement plan transactions" shall mean
25 that the agent may contribute to, withdraw from and deposit
26 funds in any type of retirement plan (including, but not limited
27 to, any tax qualified or nonqualified pension, profit sharing,
28 stock bonus, employee savings and retirement plan, deferred
29 compensation plan or individual retirement account), select and
30 change payment options for the principal, make roll-over

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

11 * * *

12 § 6107.1. Applicability of rule against perpetuities.

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

19 (1) shall apply to every interest created before January
20 1, 2007; but

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

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

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

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

29 (3) If a power of appointment is exercised to create a
30 new power of appointment, any interest created by the

1 exercise of the new power of appointment is invalid if it
2 does not vest within 360 years of the creation of the
3 original power of appointment, unless the exercise of the new
4 power of appointment expressly states that this provision
5 shall not apply to the interests created by the exercise.

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

8 § 6111.1. Modification by divorce or pending divorce.

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

18 (1) is divorced from such spouse after making the
19 conveyance; or

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

25 § 6111.2. Effect of divorce or pending divorce on designation
26 of beneficiaries.

27 [If a person domiciled in this Commonwealth at the time of
28 his death is divorced from the bonds of matrimony after
29 designating his spouse as beneficiary of a life insurance
30 policy, annuity contract, pension or profit-sharing plan or

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

9 (a) Applicability.--This section is applicable if an
10 individual:

11 (1) is domiciled in this Commonwealth;

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

16 (3) either:

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

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

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

1 (1) the wording of the designation;

2 (2) a court order; ~~or~~ ←

3 (3) a written contract between the individual and the
4 spouse or former spouse; OR ←

5 (4) A DESIGNATION OF THE FORMER SPOUSE AS BENEFICIARY
6 AFTER THE DECREE OF DIVORCE HAS BEEN ENTERED.

7 (c) Liability.--

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

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

15 § 7725. Notice of representation.

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

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

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

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

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

creditors.

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

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

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

§ 7754. Actions contesting validity of revocable trust.

* * *

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

Section 3. Sections 7755(c), 7766(B), 7780.3(a), (f), (g),
(i), (k) and (l), 7780.6(a), 7785(a), 8105(d) and (e) and
8149(c) of Title 20 are amended to read:

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

* * *

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

Trustee's duty to advertise.--

(1) A trustee of a revocable trust:

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

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

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

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

(ii) The trustee's name and address.

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

* * *

§ 7766. REMOVAL OF TRUSTEE - UTC 706.

* * *

(B) WHEN COURT MAY REMOVE TRUSTEE.--THE COURT MAY REMOVE A

1 TRUSTEE IF IT FINDS THAT REMOVAL OF THE TRUSTEE BEST SERVES THE
2 INTERESTS OF THE BENEFICIARIES OF THE TRUST AND IS NOT
3 INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST, A SUITABLE
4 COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE AND:

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

6 (2) LACK OF COOPERATION AMONG COTRUSTEES SUBSTANTIALLY
7 IMPAIRS THE ADMINISTRATION OF THE TRUST;

8 (3) THE TRUSTEE HAS NOT EFFECTIVELY ADMINISTERED THE
9 TRUST BECAUSE OF THE TRUSTEE'S UNFITNESS, UNWILLINGNESS OR
10 PERSISTENT FAILURES; OR

11 (4) THERE HAS BEEN A SUBSTANTIAL CHANGE OF
12 CIRCUMSTANCES. HOWEVER, A CORPORATE REORGANIZATION OF AN
13 INSTITUTIONAL TRUSTEE, INCLUDING A PLAN OF MERGER OR
14 CONSOLIDATION, IS NOT ITSELF A SUBSTANTIAL CHANGE OF
15 CIRCUMSTANCES.

16 * * *

17 § 7780.3. Duty to inform and report.

18 (a) Duty to respond to requests.--A trustee shall promptly
19 respond to a [beneficiary's] reasonable request by the settlor
20 of a trust or by a beneficiary of an irrevocable trust for
21 information related to the trust's administration. A trustee
22 shall promptly respond to the Department of Public Welfare's
23 reasonable request for information related to the trust's
24 administration when a settlor, trustee or beneficiary is a
25 resident in a State-owned facility or an applicant for or
26 recipient of cash or medical assistance from the Commonwealth.

27 * * *

28 (f) Notice to current beneficiaries.--No later than 30 days
29 after the date on which the trustee of an irrevocable trust
30 learns that a person who did not previously receive the notice

1 described in subsection (i) is a current beneficiary of the
2 trust, the trustee shall send the notice described in subsection
3 (i) to the current beneficiary if, at that time, the trustee
4 knows that the settlor is then deceased or has been adjudicated
5 incapacitated. With respect to a testamentary trust, the time
6 specified in this subsection commences to run when the trust is
7 first funded, whether or not the trust is completely funded on
8 that date.

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

13 (1) Each time there is a change in trusteeship of any
14 trust, the trustee shall notify the settlor in writing of the
15 change.

16 (2) Each time there is a change in trusteeship of any
17 trust whose settlor is deceased or of an irrevocable trust
18 whose settlor has been adjudicated incapacitated, the trustee
19 shall notify the current beneficiaries in writing of the
20 change.

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

23 * * *

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

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

28 (2) The identity of the settlor.

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

30 (4) The recipient's right to receive upon request a copy

1 of the trust instrument.

2 (5) [The recipient's] Each current beneficiary's right
3 to receive, ~~at least annually, [a] upon request, an annual~~ ←
4 written report of the trust's assets and their market values
5 if feasible, the trust's liabilities and the trust's receipts
6 and disbursements since the date of the last such report] ←
7 UPON REQUEST, PERIODIC WRITTEN FINANCIAL REPORTS CONCERNING
8 THE TRUST.

9 * * *

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

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

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

25 (1) Applicability.--

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

30 (2) If the death or adjudication of incapacity described

1 in subsection (b), [(c),] (d) or (e) has occurred before
2 November 6, 2006, the time limit for notice set forth in that
3 subsection shall be November 6, 2008.

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

7 § 7780.6. Illustrative powers of trustee.

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

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

13 (2) To pay or contest a claim; settle a claim by or
14 against the trust by compromise, arbitration or otherwise;
15 and release, in whole or in part, any claim belonging to the
16 trust.

17 (3) To resolve a dispute regarding the interpretation of
18 the trust or the administration of the trust by mediation,
19 arbitration or other alternative dispute resolution
20 procedures.

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

24 (5) To abandon or decline to administer any property
25 which is of little or no value, transfer title to abandoned
26 property and decline to accept title to and administer
27 property which has or may have environmental or other
28 liability attached to it.

29 (6) To insure the assets of the trust against damage or
30 loss and, at the expense of the trust, protect the trustee,

1 the trustee's agents and the beneficiaries from liability to
2 third persons arising from the administration of the trust.

3 (7) To advance money for the protection of the trust and
4 for all expenses, losses and liability sustained in the
5 administration of the trust or because of the holding or
6 ownership of any trust assets. The trustee has a lien on the
7 trust assets as against the beneficiary for an advance under
8 this paragraph, including interest on the advance.

9 (8) To pay taxes, assessments, compensation of the
10 trustee and employees and agents of the trustee and other
11 expenses incurred in the administration of the trust.

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

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

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

22 (ii) the court has made an order requiring
23 additional security and the trustee has entered the
24 additional security.

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

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

1 (13) To join in any reorganization, consolidation,
2 merger, dissolution, liquidation, voting trust plan or other
3 concerted action of securityholders and to delegate
4 discretionary duties with respect thereto.

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

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

10 (16) To make loans to and buy property from the personal
11 representatives of the settlor and the settlor's spouse.
12 Loans under this paragraph shall be adequately secured, and
13 the purchases under this paragraph shall be for fair market
14 value.

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

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

25 (i) to inspect or investigate property the trustee
26 holds or has been asked to hold or property owned or
27 operated by an organization in which the trustee holds or
28 has been asked to hold an interest, for the purpose of
29 determining the application of environmental law with
30 respect to the property;

1 (ii) to take action to prevent, abate or otherwise
2 remedy any actual or potential violation of environmental
3 law affecting property held directly or indirectly by the
4 trustee, whether taken before or after the assertion of a
5 claim or the initiation of governmental enforcement;

6 (iii) to decline to accept property into trust or
7 disclaim a power with respect to property that is or may
8 be burdened with liability for violation of environmental
9 law;

10 (iv) to compromise claims against the trust which
11 may be asserted for an alleged violation of environmental
12 law; and

13 (v) to pay the expense of inspection, review,
14 abatement or remedial action to comply with environmental
15 law.

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

22 (20) To make ordinary or extraordinary repairs or
23 alterations in buildings or other structures; demolish
24 improvements; and raze existing or erect new party walls or
25 buildings.

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

29 (22) To exercise all rights and incidents of ownership
30 of life insurance policies held by the trust, including

1 borrowing on policies, entering into and terminating split-
2 dollar plans, exercising conversion privileges and rights to
3 acquire additional insurance and selecting settlement
4 options.

5 (23) To employ a custodian; hold property unregistered
6 or in the name of a nominee, including the nominee of any
7 institution employed as custodian, without disclosing the
8 fiduciary relationship and without retaining possession and
9 control of securities or other property so held or
10 registered; and pay reasonable compensation to the custodian.

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

16 (i) the beneficiary;

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

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

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

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

26 (26) To do any of the following:

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

29 (A) the beneficiary;

30 (B) an existing custodian for the beneficiary

1 under Chapter 53 (relating to Pennsylvania Uniform
2 Transfers to Minors Act) or under any other state's
3 version of the Uniform Transfers to Minors Act;

4 (C) an existing custodian for the beneficiary
5 under the former Pennsylvania Uniform Gifts to Minors
6 Act or under any other state's version of the Uniform
7 Gifts to Minors Act; or

8 (D) a custodian for the beneficiary appointed by
9 the trustee under Chapter 53.

10 (ii) Apply the funds for the beneficiary.

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

13 (28) To sell or exercise stock subscription or
14 conversion rights.

15 (29) To continue or participate in the operation of any
16 business or other enterprise and to effect incorporation,
17 merger, consolidation, dissolution or other change in the
18 form of the organization of the business or enterprise.

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

22 (31) To distribute in cash or in kind or partly in each
23 and allocate particular assets in proportionate or
24 disproportionate shares.

25 (32) To appoint a trustee to act in another jurisdiction
26 with respect to trust property located in the other
27 jurisdiction, confer upon the appointed trustee all the
28 powers and duties of the appointing trustee, require that the
29 appointed trustee furnish security and remove the appointed
30 trustee.

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

3 [(33)] (34) To execute and deliver instruments which
4 will accomplish or facilitate the exercise of the trustee's
5 powers.

6 * * *

7 § 7785. Limitation of action against trustee.

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

9 (1) A beneficiary [may not challenge a transaction or
10 assert] IS BARRED FROM CHALLENGING A TRANSACTION OR ASSERTING
11 a claim against a trustee for breach of trust [on the basis
12 of a transaction] if:

13 (i) the trustee provided the beneficiary [with a
14 ~~single~~ written report of the trust's assets and their
15 market values if feasible, the trust's liabilities and
16 the trust's receipts and disbursements for the ~~full~~
17 ~~calendar~~ year ~~or entire part of the calendar year during~~
18 ~~which the trust was in existence~~ in which the transaction
19 occurred and for each of the four subsequent calendar
20 years] AT LEAST ANNUALLY WITH PERIODIC WRITTEN FINANCIAL
21 REPORTS CONCERNING THE TRUST;

22 (ii) the transaction was disclosed in [the first of
23 the five reports] A REPORT to which subparagraph (i)
24 refers OR SUCH REPORT PROVIDED SUFFICIENT INFORMATION SO
25 THAT THE BENEFICIARY KNEW OR SHOULD HAVE KNOWN OF THE
26 POTENTIAL CLAIM OR SHOULD HAVE INQUIRED INTO ITS
27 EXISTENCE;

28 (iii) [the beneficiary did not notify the trustee in
29 writing within six months after receiving the fifth
30 ~~annual~~ report that the beneficiary objects to the

1 transaction and provide the basis in writing for that
2 objection] IN THE 30 MONTHS AFTER A REPORT TO WHICH
3 SUBPARAGRAPH (II) REFERS WAS SENT BY THE TRUSTEE TO THE
4 BENEFICIARY, THE BENEFICIARY DID NOT NOTIFY THE TRUSTEE
5 IN WRITING THAT THE BENEFICIARY CHALLENGES THE
6 TRANSACTION OR ASSERTS A CLAIM AND PROVIDES IN WRITING
7 THE BASIS FOR THE CHALLENGE OR ASSERTION; and

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

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

13 * * *

14 § 8105. Power to convert to unitrust.

15 * * *

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

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

21 (i) from appreciation of capital;

22 (ii) from earnings and distributions from capital;

23 or

24 (iii) from both.

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

28 (3) The term "income" in the governing instrument shall
29 mean an annual distribution (the unitrust distribution) equal
30 to 4% (the payout percentage) of the net fair market value of

1 the trust's assets, whether such assets would be considered
2 income or principal under other provisions of this chapter,
3 averaged over the lesser of:

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

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

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

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

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

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

17 (4) The effect of other payments from or contributions
18 to the trust on the trust's valuation.

19 (5) Whether to value the trust's assets annually or more
20 frequently.

21 (5.1) Whether to average the net assets of the trust
22 over a smoothing period of three, four or five years.

23 (6) What valuation dates to use.

24 (7) How frequently to value nonliquid assets and whether
25 to estimate their value.

26 (8) Whether to omit from the calculations trust property
27 occupied or possessed by a beneficiary.

28 (9) Any other matters necessary for the proper
29 functioning of the unitrust.

30 * * *

1 § 8149. Retirement benefits, individual retirement accounts,
2 deferred compensation, annuities and similar
3 payments.

4 * * *

5 (c) Allocation when internal net income of fund is readily
6 ascertained.--

7 (1) If no portion of a payment from a separate fund held
8 exclusively for the benefit of the trust is allocable to
9 income under subsections (a) and (b) but the internal net
10 income of the fund determined as if the fund were a separate
11 trust subject to Subchapters [B (relating to decedent's
12 estate or terminating income interest)] A (relating to
13 preliminary provisions; power to adjust; power to convert to
14 unitrust) through E (relating to allocation of disbursements
15 during administration of trust) is readily ascertainable by
16 the trustee, the internal net income of the fund shall be
17 considered to be the income earned by the fund, and the
18 portion of the payment equal to the then undistributed net
19 income of the fund realized since the trust acquired its
20 interest in the fund shall be deemed to be a distribution of
21 such income and shall be allocated to the trust income
22 account.

23 (2) The balance of any such payment shall be allocated
24 to principal.

25 (3) The power to adjust under section 8104 (relating to
26 trustee's power to adjust), the power to convert to a
27 unitrust under section 8105 (relating to power to convert to
28 unitrust) and the provisions governing express trusts under
29 section 8107 (relating to express trusts) shall apply to
30 retirement benefits covered by this subsection which are

1 payable to a trust. These powers may be exercised separately
2 and independently by the payee trustee or in the governing
3 instrument as between the retirement benefits and the trust
4 as if they were separate trusts subject to this chapter.

5 * * *

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

8 § 5547. Authority to take and hold trust property.

9 * * *

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

19 § 5548. Investment of trust funds.

20 * * *

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

29 * * *

30 Section 5. The amendment of 20 Pa.C.S. § 6107.1 shall apply

1 to any interest created after December 31, 2006.

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

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

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

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

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

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

10 (1) The following provisions shall take effect
11 immediately:

12 (i) This section.

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

14 (iii) The amendment of 20 Pa.C.S. §§ 6107.1, 7745,
15 7780.3(1)(2) and 7780.6(a).

16 (2) The remainder of this act shall take effect in 60
17 days.