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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 53 Session of 2009

INTRODUCED BY GREENLEAF, TARTAGLIONE, RAFFERTY, FERLO, BROWNE, COSTA, O'PAKE AND KITCHEN, JANUARY 20, 2009

REFERRED TO JUDICIARY, JANUARY 20, 2009

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in intestate succession, further providing for forfeiture; in wills, further providing for modification of wills; in grant of letters, further providing for advertisement of grant of letters; in administration and personal representatives, further providing for duty of personal representative; in apportionment of death taxes, further providing for enforcement of contribution or exoneration of Federal estate tax; in powers of attorney, further providing for implementation of power of attorney; in estates, further providing for applicability of rule against perpetuities and for modification of conveyance by divorce and for effect of divorce on designation of beneficiaries; in trusts, further providing for notice of representation, for creditor's claim against settlor, for actions contesting validity of revocable trusts, for claims and distribution after settlor's death, for trustee's duty to inform and report, for illustrative powers of trustee and for limitation of action against trustee; in principal and income, further providing for power to convert to unitrust and for retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments; and making conforming amendments to Title 15.

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

Section 1. Sections 2106(a), 2507(2), 3162, 3301(c), 3706, 5603(p) and (q), 6107.1, 6111.1, 6111.2, 7725 and 7745 of Title 20 of the Pennsylvania Consolidated Statutes are amended to

read:

§ 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 will; or

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

* * *

§ 3162. Advertisement of grant of letters.

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

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

§ 3301. Duty of personal representative.

* * *

(c) Time for filing.--The personal representative shall file

his inventory no later than the date he files his account or the due date, including any extension, for the filing of the inheritance tax return for the estate, whichever is earlier. Any party in interest in the estate may request the filing of an inventory at an earlier date by writing delivered to the personal representative or his attorney in which event an inventory shall be filed within three months after the appointment of the personal representative or within 30 days after the request, whichever is later. The court[, upon cause shown,] may direct the [filing of] personal representative to file an inventory of estate assets at any time.

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

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

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

(c) Suspending distribution.--Distribution or delivery of property to any party, other than a fiduciary charged with a duty to pay the Federal estate tax, shall not be required of any fiduciary until [the Federal estate tax apportionable with

respect thereto is paid or, if the Federal estate tax has not been determined and apportionment made, until adequate security for payment is furnished to the fiduciary making the distribution or delivery.] that party pays the Federal estate tax apportioned to that party.

(d) Court decrees.--[The] Notwithstanding subsections (a) and (b), the court, upon petition or at an accounting or in any appropriate action or proceeding, shall make such decrees or orders as it shall deem advisable apportioning the Federal estate tax. The court may direct a fiduciary to collect the apportioned amounts from the property or interests in his possession of any parties against whom apportionment has been made and may direct all other parties against whom the Federal estate tax has been or may be apportioned or from whom any part of the Federal estate tax may be recovered to make payment of the apportioned amounts to the fiduciary. When a fiduciary holds property of a party liable to apportionment insufficient to satisfy the apportioned Federal estate tax, the court may direct that the balance of the apportioned amount of Federal estate tax shall be paid to the fiduciary by the party liable. Should an overpayment of the Federal estate tax be made by any party or on his behalf, the court may direct an appropriate reimbursement for the overpayment. If the court apportions any part of the Federal estate tax against any party interested in nontestamentary property or among the respective interests created by any nontestamentary instrument, the court, in its discretion, may assess against those properties or interests an equitable share of the expenses incurred in connection with the determination and apportionment of the Federal estate tax. If the fiduciary cannot recover the Federal estate tax apportioned

against a party benefited, the unrecovered amount shall be charged in such manner as the court may determine.

§ 5603. Implementation of power of attorney.

* * *

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

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

(2) Exercise nonforfeiture provisions under insurance policies.

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

(q) Power to engage in retirement plan transactions.--A power to "engage in retirement plan transactions" shall mean that the agent may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred

compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, exercise all powers with respect to retirement plans that the principal could if present. However, the agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal. An agent and a beneficiary of a retirement plan shall be liable as equity and justice may require to the extent that, as determined by the court, a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

* * *

§ 6107.1. Applicability of rule against perpetuities.

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

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

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

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

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

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

(3) If a power of appointment is exercised to create a new power of appointment, any interest created by the exercise of the new power of appointment is invalid if it does not vest within 360 years of the creation of the original power of appointment, unless the exercise of the new power of appointment expressly states that this provision shall not apply to the interests created by the exercise.

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

§ 6111.1. Modification by divorce or pending divorce.

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

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

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

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

[If a person domiciled in this Commonwealth at the time of his death is divorced from the bonds of matrimony after

designating his spouse as beneficiary of a life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to his spouse, any designation in favor of his former spouse which was revocable by him after the divorce shall become ineffective for all purposes and shall be construed as if such former spouse had predeceased him unless it appears from the wording of the designation, a court order or a written contract between the person and such former spouse that the designation was intended to survive the divorce.]

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

(1) is domiciled in this Commonwealth;

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

(3) either:

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

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

(b) General rule.--Any designation described in subsection (a)(2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual,

unless it appears the designation was intended to survive the divorce based on:

(1) the wording of the designation;

(2) a court order; or

(3) a written contract between the individual and the spouse or former spouse.

(c) Liability.--

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

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

§ 7725. Notice of representation.

A person representing another must be given written notice by the trustee that the person is representing the other person. [The person to whom the notice is given may decline the representation by a writing that is given to the trustee no later than 60 days after receipt of the trustee's notice.] A person to whom the notice is given is presumed to accept the representation unless the person declines the representation in a writing delivered to the trustee no later than 30 days after receipt of the notice.

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

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

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

creditors.

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

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

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

§ 7754. Actions contesting validity of revocable trust.

* * *

(d) Competency of witnesses.--The competency of a witness in 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), 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.

* * *

§ 7780.3. Duty to inform and report.

(a) Duty to respond to requests.--A trustee shall promptly respond to a [beneficiary's] reasonable request by the settlor

of a trust or by a beneficiary of an irrevocable trust for information related to the trust's administration.

* * *

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

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

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

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

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

* * *

(i) Contents of notice.--[Any] Except as provided in

subsection (g), any notice under this section shall be written and convey the following information:

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

(2) The identity of the settlor.

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

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

(5) [The recipient's] Each current beneficiary's right to receive, at least annually, [a written report of the trust's assets and their market values if feasible, the trust's liabilities and the trust's receipts and disbursements since the date of the last such report] upon request, periodic written financial reports concerning the trust.

* * *

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

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

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

(l) Applicability.--

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

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

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

§ 7780.6. Illustrative powers of trustee.

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

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

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

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

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

(5) To abandon or decline to administer any property

which is of little or no value, transfer title to abandoned property and decline to accept title to and administer property which has or may have environmental or other liability attached to it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

buildings.

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

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

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

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

(i) the beneficiary;

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

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

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

(25) To pay funds distributable to a minor beneficiary to the minor or to a guardian of the minor's estate or to

apply the funds directly for the minor's benefit.

(26) To do any of the following:

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

(A) the beneficiary;

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

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

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

(ii) Apply the funds for the beneficiary.

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

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

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

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

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

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

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

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

* * *

§ 7785. Limitation of action against trustee.

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

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

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

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

existence;

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

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

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

* * *

§ 8105. Power to convert to unitrust.

* * *

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

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

(i) from appreciation of capital;

(ii) from earnings and distributions from capital; or

(iii) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in

accordance with the provisions of this section.

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

(i) the [three] preceding years <u>in the smoothing period selected by the trustee</u>; or

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

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

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

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

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

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

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

<u>(5.1) Whether to average the net assets of the trust over a smoothing period of three, four or five years.</u>

(6) What valuation dates to use.

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

(8) Whether to omit from the calculations trust property

occupied or possessed by a beneficiary.

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

* * *

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

* * *

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

(1) If no portion of a payment from a separate fund held exclusively for the benefit of the trust is allocable to income under subsections (a) and (b) but the internal net income of the fund determined as if the fund were a separate trust subject to Subchapters [B (relating to decedent's estate or terminating income interest) through] A (relating to preliminary provisions; power to adjust; power to convert to unitrust), B (relating to decedent's estate or terminating income interest), C (relating to apportionment at beginning and end of income interest), D (relating to allocation of receipts during administration of trust) and E (relating to allocation of disbursements during administration of trust) is readily ascertainable by the trustee, the internal net income of the fund shall be considered to be the income earned by the fund, and the portion of the payment equal to the then undistributed net income of the fund realized since the trust acquired its interest in the fund shall be deemed to be a distribution of such income and shall be allocated to the trust income account.

(2) The balance of any such payment shall be allocated

to principal.

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

* * *

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

§ 5547. Authority to take and hold trust property.

* * *

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

§ 5548. Investment of trust funds.

* * *

(b) Use and management.--Except as otherwise permitted under 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D (relating to creation, validity, modification and termination of

trust), the board of directors or other body shall apply all assets thus received to the purposes specified in the trust instrument. The directors or other body shall keep accurate accounts of all trust funds, separate and apart from the accounts of other assets of the corporation.

* * *

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

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

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

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

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

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

Section 7. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) This section.

(ii) Sections 5 and 6 of this act.

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

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