

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

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 28, 2010

AN ACT

1 Amending Titles 15 (Corporations and Unincorporated
2 Associations) and 20 (Decedents, Estates and Fiduciaries) of
3 the Pennsylvania Consolidated Statutes, in intestate
4 succession, further providing for forfeiture; in wills,
5 further providing for modification of wills; providing for
6 formula clauses for Federal tax purposes; ~~in dispositions~~
7 ~~independent of letters, family exemption, probate of wills~~
8 ~~and grant of letters, further providing for payments to~~
9 ~~family and funeral directors;~~ in grant of letters, further
10 providing for advertisement of grant of letters; in
11 administration and personal representatives, further
12 providing for duty of personal representative; in
13 apportionment of death taxes, further providing for
14 enforcement of contribution or exoneration of Federal estate
15 tax; in powers of attorney, further providing for
16 implementation of power of attorney; in estates, further
17 providing for applicability of rule against perpetuities and
18 for modification of conveyance by divorce and for effect of
19 divorce on designation of beneficiaries; in trusts, further
20 providing for notice of representation, for creditor's claim
21 against settlor, for actions contesting validity of revocable
22 trusts, for claims and distribution after settlor's death,
23 for removal of trustee, for trustee's duty to inform and
24 report, for illustrative powers of trustee and for limitation
25 of action against trustee; in principal and income, further
26 providing for power to convert to unitrust and for retirement
27 benefits, individual retirement accounts, deferred
28 compensation, annuities and similar payments; and making
29 conforming amendments.

30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Sections 5547(b) and 5548(b) of Title 15 of the
3 Pennsylvania Consolidated Statutes are amended to read:

4 § 5547. Authority to take and hold trust property.

5 * * *

6 (b) Nondiversion of certain property.--Property committed to
7 charitable purposes shall not, by any proceeding under Chapter
8 59 (relating to fundamental changes) or otherwise, be diverted
9 from the objects to which it was donated, granted or devised,
10 unless and until the board of directors or other body obtains
11 from the court an order under 20 Pa.C.S. [Ch. 61 (relating to
12 estates)] Ch. 77 Subch. D (relating to creation, validity,
13 modification and termination of trust) specifying the
14 disposition of the property.

15 § 5548. Investment of trust funds.

16 * * *

17 (b) Use and management.--Except as otherwise permitted under
18 20 Pa.C.S. [Ch. 61 (relating to estates)] Ch. 77 Subch. D
19 (relating to creation, validity, modification and termination of
20 trust), the board of directors or other body shall apply all
21 assets thus received to the purposes specified in the trust
22 instrument. The directors or other body shall keep accurate
23 accounts of all trust funds, separate and apart from the
24 accounts of other assets of the corporation.

25 * * *

26 Section 2. Sections 2106(a) and 2507(2) of Title 20 are
27 amended to read:

28 § 2106. Forfeiture.

29 (a) Spouse's share.--

30 (1) A spouse who, for one year or upwards previous to

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

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

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

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

14 (iii) grounds have been established as provided in
15 23 Pa.C.S. § 3323(g).

16 * * *

17 § 2507. Modification by circumstances.

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

20 * * *

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

28 (i) is divorced from such spouse after making the
29 will; or

30 (ii) dies domiciled in this Commonwealth during the

1 course of divorce proceedings, no decree of divorce has
2 been entered pursuant to 23 Pa.C.S. § 3323 (relating to
3 decree of court) and grounds have been established as
4 provided in 23 Pa.C.S. § 3323(g).

5 * * *

6 Section 3. Title 20 is amended by adding a chapter to read:

7 CHAPTER 28

8 FORMULA CLAUSES FOR FEDERAL TAX PURPOSES

9 Sec.

10 2801. Definitions.

11 2802. Interpretation of formula clauses.

12 2803. Judicial proceeding.

13 § 2801. Definitions.

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

17 "Formula clause." A clause that has any of the following
18 characteristics:

19 (1) Refers to the unified credit, estate tax exemption,
20 applicable exemption amount, applicable credit amount,
21 applicable exclusion amount, generation-skipping transfer tax
22 exemption, GST exemption, marital deduction, maximum marital
23 deduction, unlimited marital deduction or charitable
24 deduction, or other words relating to Federal tax exemptions,
25 exclusions, deductions or credits where the meaning of the
26 words is dependent on the current state of the Federal tax
27 laws.

28 (2) Measures a share of an estate or trust based on the
29 amount that can pass free of Federal estate taxes or affects
30 the inclusion ratio for generation-skipping transfer tax

1 purposes.

2 (3) Is based on a similar provision of Federal estate
3 tax or generation-skipping transfer tax law.

4 "Other dispositive instrument." Includes the following:

5 (1) A beneficiary designation pertaining to insurance or
6 retirement assets.

7 (2) An instrument that exercises a power of appointment
8 held by the decedent at death.

9 (3) A similar instrument that:

10 (i) expresses a decedent's intent regarding assets
11 over which the decedent had dispositive authority at
12 death; or

13 (ii) otherwise disposes of assets as a result of the
14 decedent's death.

15 § 2802. Interpretation of formula clauses.

16 (a) General rule.--Except as provided in subsection (b), and
17 subject to section 2803 (relating to judicial proceeding), a
18 will, trust or other dispositive instrument of a decedent who
19 dies after December 31, 2009, and before January 1, 2011, that
20 contains a formula clause shall be rebuttably presumed to be
21 interpreted pursuant to the Federal estate tax and generation-
22 skipping transfer tax laws applicable to estates of decedents
23 dying on December 31, 2009.

24 (b) Exception.--

25 (1) Subsection (a) shall not apply with respect to a
26 will, trust or other dispositive instrument that:

27 (i) is executed or amended after December 31, 2009;

28 or

29 (ii) manifests an intent that a contrary rule shall
30 apply if the decedent dies on a date on which there is no

1 applicable Federal estate tax or generation-skipping
2 transfer tax in effect.

3 (2) If the Federal estate tax or generation-skipping
4 transfer tax applies to an estate of a decedent dying or
5 generation-skipping transfer occurring before January 1,
6 2011, then with respect to each such Federal tax, the initial
7 reference to January 1, 2011, in this section shall refer
8 instead to the first date after December 31, 2009, on which
9 such tax applies to decedents' estates or generation-skipping
10 transfers.

11 § 2803. Judicial proceeding.

12 (a) Standing.--The decedent's personal representative,
13 trustee or any affected beneficiary under the will, trust or
14 other dispositive instrument may bring a proceeding to interpret
15 a formula clause.

16 (b) Commencement.--A proceeding under this section must be
17 commenced within 12 months following the death of the decedent.

18 (c) Considerations.--In a proceeding under this section, the
19 court shall consider all of the following:

20 (1) The provisions and purposes of the will, trust or
21 other dispositive instrument.

22 (2) The facts surrounding the creation of the will,
23 trust or other dispositive instrument.

24 (3) The decedent's known or probable intent, based on
25 all the facts and circumstances surrounding the creation of
26 the will, trust or other dispositive instrument. In
27 determining this intent, the court may consider evidence that
28 contradicts the plain meaning of the will, trust or other
29 dispositive instrument.

30 (4) The identity and interests of beneficiaries of

different shares resulting from the application of the
formula clause.

(d) Modifications.--The court shall have the power to modify
a provision of a will, trust or other dispositive instrument in
a manner that is not contrary to the decedent's probable
intention in order to achieve the decedent's tax and other
objectives.

(e) Effective date of interpretation or modification.--The
court may provide that an interpretation or modification
pursuant to this chapter shall be effective as of the decedent's
date of death.

Section 4. Sections ~~3101(b)~~, 3162, 3301(c), 3706, 5603(p)
and (q), 6107.1, 6111.1, 6111.2, 7725 and 7745 of Title 20 are
amended to read:

~~§ 3101. Payments to family and funeral directors.~~

~~* * *~~

~~(b) Deposit account. Any bank, savings association, savings
and loan association, building and loan association, credit
union or other savings organization, at any time after the death
of a depositor, member or certificate holder, may pay the amount
on deposit or represented by the certificate, when the total
standing to the credit of the decedent in that institution does
not exceed [\$3,500] \$7,500, to the spouse, any child, the father
or mother or any sister or brother (preference being given in
the order named) of the deceased depositor, member or
certificate holder, provided that a receipted funeral bill or an
affidavit, executed by a licensed funeral director which sets
forth that satisfactory arrangements for payment of funeral
services have been made, is presented. Any bank, association,
union or other savings organization making such a payment shall~~

~~be released to the same extent as if payment had been made to a
duly appointed personal representative of the decedent and it
shall not be required to see to the application thereof. Any
person to whom payment is made shall be answerable therefor to
anyone prejudiced by an improper distribution.~~

~~* * *~~

§ 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

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

9 § 3706. Enforcement of contribution or exoneration of Federal
10 estate tax.

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

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

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

1 * * *

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

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

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

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

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

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

10 * * *

11 § 6107.1. Applicability of rule against perpetuities.

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

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

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

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

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

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

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

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

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

7 § 6111.1. Modification by divorce or pending divorce.

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

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

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

24 § 6111.2. Effect of divorce or pending divorce on designation
25 of beneficiaries.

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

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

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

10 (1) is domiciled in this Commonwealth;

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

15 (3) either:

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

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

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

30 (1) the wording of the designation;

1 (2) a court order;

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

4 (4) a designation of a former spouse as a beneficiary
5 after the divorce decree has been issued.

6 (c) Liability.--

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

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

14 § 7725. Notice of representation.

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

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

24 § 7745. Creditor's claim against settlor - UTC 505(a).

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

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

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

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

22 Section 5. Section 7754 of Title 20 is amended by adding a
23 subsection to read:

24 § 7754. Actions contesting validity of revocable trust.

25 * * *

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

30 Section 6. Section 7755(c) of Title 20 is amended to read:

1 § 7755. Claims and distribution after settlor's death.

2 * * *

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

8 Trustee's duty to advertise.--

9 (1) A trustee of a revocable trust:

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

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

16 (2) Advertisements by the trustee under this subsection
17 shall be in the manner set forth in section 3162 (relating to
18 advertisement of grant of letters), shall be done in the
19 jurisdiction of the deceased settlor's domicile and shall
20 include:

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

22 (ii) The trustee's name and address.

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

26 * * *

27 Section 7. Section 7766(b) of Title 20 is amended and the
28 section is amended by adding a subsection to read:

29 § 7766. Removal of trustee - UTC 706.

30 * * *

1 (b) When court may remove trustee.--The court may remove a
2 trustee if it finds that removal of the trustee best serves the
3 interests of the beneficiaries of the trust and is not
4 inconsistent with a material purpose of the trust, a suitable
5 cotrustee or successor trustee is available and:

6 (1) the trustee has committed a serious breach of trust;

7 (2) lack of cooperation among cotrustees substantially
8 impairs the administration of the trust;

9 (3) the trustee has not effectively administered the
10 trust because of the trustee's unfitness, unwillingness or
11 persistent failures; or

12 (4) there has been a substantial change of
13 circumstances. A corporate reorganization of an institutional
14 trustee, including a plan of merger or consolidation, is not
15 itself a substantial change of circumstances.

16 * * *

17 (e) Cross reference.--See section 1608 of the act of
18 November 30, 1965 (P.L.847, No.356), known as the Banking Code
19 of 1965.

20 Section 8. Sections 7780.3(a), (f), (g), (i), (k) and (l),
21 7780.6(a), 7785, 8105(d) and (e) and 8149(c) of Title 20 are
22 amended to read:

23 § 7780.3. Duty to inform and report.

24 (a) Duty to respond to requests.--A trustee shall promptly
25 respond to a [beneficiary's] reasonable request by the settlor
26 of a trust or by a beneficiary of an irrevocable trust for
27 information related to the trust's administration. A trustee
28 shall promptly respond to the Department of Public Welfare's
29 reasonable request for information related to the trust's
30 administration when a settlor or beneficiary is a resident in a

1 State-owned facility or an applicant for or recipient of cash or
2 medical assistance from the Commonwealth and the department
3 certifies in writing that it has obtained a currently valid
4 consent for the disclosure of such information from the settlor
5 or beneficiary of the trust. A trustee may rely upon the
6 department's certification without investigating its accuracy.

7 * * *

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

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

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

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

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

3 * * *

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

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

8 (2) The identity of the settlor.

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

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

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

19 * * *

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

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

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

5 (1) Applicability.--

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

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

14 (3) The notice under subsection (f) shall not be
15 required to be completed until two years after November 6,
16 2006.

17 § 7780.6. Illustrative powers of trustee.

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

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

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

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

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

4 (5) To abandon or decline to administer any property
5 which is of little or no value, transfer title to abandoned
6 property and decline to accept title to and administer
7 property which has or may have environmental or other
8 liability attached to it.

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

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

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

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

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

30 (i) the court has made an order excusing the trustee

1 from entering additional security; or

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

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

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

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

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

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

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

25 (17) To partition, subdivide, repair, improve or develop
26 real estate; enter into agreements concerning the partition,
27 subdivision, repair, improvement, development, zoning or
28 management of real estate; impose or extinguish restrictions
29 on real estate; dedicate land and easements to public use;
30 adjust boundaries; and do anything else regarding real estate

1 which is commercially reasonable or customary under the
2 circumstances.

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

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

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

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

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

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

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

1 equipment and pay them reasonable compensation.

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

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

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

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

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

26 (i) the beneficiary;

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

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

30 (iv) if there is no agent or guardian, a relative or

1 other person having legal or physical custody or care of
2 the beneficiary.

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

6 (26) To do any of the following:

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

9 (A) the beneficiary;

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

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

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

20 (ii) Apply the funds for the beneficiary.

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

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

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

29 (30) To select a mode of payment under a qualified
30 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

1 the five reports] in a report to which subparagraph (i)
2 refers or such report provided sufficient information so
3 that the beneficiary knew or should have known of the
4 potential claim or should have inquired into its
5 existence;

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

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

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

21 (b) Five-year absolute bar.--If not previously barred by
22 subsection (a) or section 7798 (relating to failure to present
23 claim at audit):

24 (1) Except as provided in paragraph (1.1), (2) or (3), a
25 claim by a beneficiary against a trustee, including a claim
26 preserved by the beneficiary notifying the trustee in the
27 manner described in subsection (a), shall be barred five
28 years after the first to occur of the following events:

29 (i) the date after the removal, resignation or death
30 of the trustee on which the beneficiary was given the

notice required by section 7780.3(g) (relating to duty to inform and report);

(ii) the termination of the beneficiary's interest in the trust; or

(iii) the termination of the trust.

(1.1) A beneficiary who has challenged a transaction or asserted a claim as provided in subsection (a)(1)(iii) may not challenge the transaction or assert the claim against the trustee in a court or an arbitration proceeding commenced more than five years after the date the trustee sent the beneficiary the report described in subsection (a)(1)(i) and (ii).

(2) Except as set forth in paragraph (3), if the first to occur of the events set forth in paragraph (1) occurred before November 6, 2006, a claim described in paragraph (1) shall be barred five years after November 6, 2006.

(3) A claim described in paragraph (1) or (1.1) is not barred if, prior to the respective date set forth in either paragraph (1) or (2), the trustee has filed an account with the court or the beneficiary has petitioned the court to compel the trustee to file an account.

§ 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;

1 or

2 (iii) from both.

3 (2) The trustee shall make regular distributions in
4 accordance with the governing instrument construed in
5 accordance with the provisions of this section.

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

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

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

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

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

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

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

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

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

29 (5.1) Whether to average the net assets of the trust
30 over a smoothing period of three, four or five years.

1 (6) What valuation dates to use.

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

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

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

8 * * *

9 § 8149. Retirement benefits, individual retirement accounts,
10 deferred compensation, annuities and similar
11 payments.

12 * * *

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

15 (1) If no portion of a payment from a separate fund held
16 exclusively for the benefit of the trust is allocable to
17 income under subsections (a) and (b) but the internal net
18 income of the fund determined as if the fund were a separate
19 trust subject to Subchapters [B (relating to decedent's
20 estate or terminating income interest) through] A (relating
21 to preliminary provisions; power to adjust; power to convert
22 to unitrust), B (relating to decedent's estate or terminating
23 income interest), C (relating to apportionment at beginning
24 and end of income interest), D (relating to allocation of
25 receipts during administration of trust) and E (relating to
26 allocation of disbursements during administration of trust)
27 is readily ascertainable by the trustee, the internal net
28 income of the fund shall be considered to be the income
29 earned by the fund, and the portion of the payment equal to
30 the then undistributed net income of the fund realized since

1 the trust acquired its interest in the fund shall be deemed
2 to be a distribution of such income and shall be allocated to
3 the trust income account.

4 (2) The balance of any such payment shall be allocated
5 to principal.

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

16 * * *

17 Section 9. This act shall apply as follows:

18 (1) The addition of 20 Pa.C.S. Ch. 28 shall apply to any
19 decedent dying after December 31, 2009.

20 (2) The amendment of 20 Pa.C.S. § 6107.1 shall apply to any
21 interest created after December 31, 2006.

22 Section 10. (a) The following provisions shall be
23 retroactive to November 6, 2006:

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

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

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

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

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

30 (1) The following provisions shall take effect

1 immediately:

2 (i) This section.

3 (ii) Sections 9 and 10 of this act.

4 (iii) The addition of 20 Pa.C.S. Ch. 28.

5 (iv) The amendment of 20 Pa.C.S. §§ 6107.1, 7745,

6 7780.3(1)(2) and 7780.6(a).

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

8 days.