

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 96 Session of 2011

INTRODUCED BY GREENLEAF, TARTAGLIONE, COSTA, M. WHITE AND STACK,  
JANUARY 12, 2011

REFERRED TO JUDICIARY, JANUARY 12, 2011

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, in will, further  
3 providing for rules of interpretation; in dispositions  
4 independent of letters, family exemption, probate of wills  
5 and grant of letters, providing for submission to  
6 jurisdiction; in administration and personal representatives,  
7 further providing for continuation of business and for  
8 incorporation of estate's business; in accounts and  
9 distribution, further providing for determination of title to  
10 decedent's interest in real estate; in health care, further  
11 providing for definitions, for authority of health care agent  
12 and for relation of health care agent to court-appointed  
13 guardian and other agents; in powers of attorney, further  
14 providing for general provisions, for special rules for  
15 gifts, for form of power of attorney, for implementation of  
16 power of attorney, for durable powers of attorney and for  
17 account; providing for investigation of financial abuse and  
18 mismanagement, for jurisdiction and venue and for principles  
19 of law and equity; in estates, further providing for release  
20 or disclaimer of powers or interests; in estates, providing  
21 for release of powers and interests and disclaimer of powers;  
22 providing for powers of appointment; in trusts, further  
23 providing for nonjudicial settlement agreements - UTC 111,  
24 for representation of parties in interest in general, for  
25 division of trusts, for claims and distribution after  
26 settlor's death, for resignation of trustee and filing  
27 resignation, for duty to inform and report and for powers,  
28 duties and liabilities identical with personal  
29 representatives; codifying provisions of the Charitable  
30 Instruments Act of 1971; in principal and income, further  
31 providing for charitable trusts; and making a related repeal.  
32 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

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

4 § 2514. Rules of interpretation.

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

8 \* \* \*

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

1           \* \* \*

2           Section 2. Title 20 is amended by adding a section to read:  
3   § 3163. Submission to jurisdiction.

4           A person granted letters testamentary or letters of  
5 administration shall be deemed to submit to the jurisdiction of  
6 the orphans' court division of the county in which the register  
7 granted the letters.

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

10   § 3314. Continuation of business.

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

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

29           (2) the extent of the liability of the estate or any  
30 part thereof, or of the personal representative, for

obligations incurred in the continuation of the business;

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

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

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

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

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

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

1 § 3546. Determination of title to decedent's interest in real  
2 estate.

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

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

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

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

9 (2) Either of the following:

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

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

17 (b) Who may petition.--The following may petition to  
18 establish title to the decedent's real estate:

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

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

21 (ii) through the decedent or an heir or devisee of  
22 the decedent.

23 (2) A nonprofit corporation organized for community  
24 development purposes or a municipality in which the real  
25 estate is located:

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

27 (ii) Upon a showing by clear and convincing evidence  
28 to the court that no heirs or devisees exist or have  
29 taken action with respect to the real estate for at least  
30 five years since the decedent's death.

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

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

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

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

10    (d) Notice of petition.--If letters testamentary or letters  
11 of administration have been granted on the estate of the  
12 decedent, notice of the petition under this section shall be  
13 given to the personal representative of the decedent.

14    (e) Decree.--

15         (1) Aided if necessary by the report of a master, the  
16 court may enter a decree nisi adjudging that the title to the  
17 decedent's interest in the real estate is in the petitioner  
18 as the court determines.

19         (2) Notice of the decree nisi shall be given to  
20 creditors and other parties in interest, by advertisement and  
21 otherwise, as the court shall direct.

22         (3) If no exception to the decree is filed within three  
23 months, it shall be confirmed absolutely, free of all  
24 decedent's debts not then liens of record, and regardless of  
25 the provisions of any testamentary writing of the decedent  
26 thereafter probated.

27         (4) A certified copy of the decree shall be:

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

1           (ii) Indexed by the recorder in the grantor's index  
2           under the name of the decedent and in the grantee's index  
3           under the name of each distributee.

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

7       Section 4. The definition of "health care decision" in  
8 section 5422 of Title 20 is amended to read:

9       § 5422. Definitions.

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

13       \* \* \*

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

16           (1) Selection and discharge of a health care provider.

17           (2) Approval or disapproval of a diagnostic test,  
18 surgical procedure or program of medication.

19           (3) Directions to initiate, continue, withhold or  
20 withdraw all forms of life-sustaining treatment, including  
21 instructions not to resuscitate.

22           (4) Admission to a medical, nursing, residential or  
23           similar facility or entering into agreements for the  
24           individual's care.

25           (5) After the death of the individual, making anatomical  
26           gifts, disposing of the remains or consenting to autopsies.

27       \* \* \*

28       Section 5. Sections 5456(a) and 5460(a) of Title 20 are  
29 amended to read:

30       § 5456. Authority of health care agent.



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

15 \* \* \*

16 § 5460. Relation of health care agent to court-appointed  
17 guardian and other agents.

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



1 assets.

2 I shall exercise reasonable caution and prudence.

3 I shall keep a full and accurate record of all actions,  
4 receipts and disbursements on behalf of the principal.

5 I shall preserve the estate plan of the principal, including  
6 the effect of intestacy if the principal does not have a will.

7 (Agent) (Date)

8 (e) Fiduciary relationship.--An agent acting under a power  
9 of attorney has a fiduciary relationship with the principal. In  
10 the absence of a specific provision to the contrary in the power  
11 of attorney, the fiduciary relationship includes the duty to:

12 (1) Exercise the powers for the benefit of the  
13 principal.

14 (2) Keep separate the assets of the principal from those  
15 of an agent.

16 (3) Exercise reasonable caution and prudence.

17 (4) Keep a full and accurate record of all actions,  
18 receipts and disbursements on behalf of the principal.

19 (5) Preserve the estate plan of the principal, including  
20 the effect of intestacy if the principal does not have a  
21 will.

22 \* \* \*

23 (e.3) Equity and justice.--

24 (1) An agent and a recipient of a gift or other  
25 financial benefit, during the principal's life or at the  
26 principal's death, arising from the action of the agent is  
27 liable as equity and justice may require to the extent that  
28 the court determines that the action of the agent was  
29 inconsistent with:

30 (i) prudent estate planning or financial management

1           for the principal; or

2           (ii) the known or probable intent of the principal  
3           with respect to the disposition of the principal's  
4           property.

5           (2) An agent who in good faith exercises reasonable  
6           caution and prudence shall not be personally liable.

7           \* \* \*

8   § 5601.2. Special rules for gifts and changes to principal's  
9           estate plan.

10       (a) General rule.--A principal may empower an agent to make  
11 a gift or make changes to the principal's estate plan in a power  
12 of attorney only as provided in this section. A power to make a  
13 gift or make changes to the principal's estate plan may not be  
14 inferred from a grant of another power or from a general grant  
15 of authority to do anything that the principal could do, except  
16 to the extent that a principal expressly grants the agent the  
17 power under section 5603(u.3) (relating to implementation of  
18 power of attorney) authorizing personal and family maintenance.

19       (b) Limited gifts not requiring court approval.--Limited  
20 gifts that are authorized in compliance with this subsection do  
21 not require court approval. A principal may authorize an agent  
22 to make [a] limited [gift] gifts as defined under section  
23 5603(a)(2) [(relating to implementation of power of attorney)]  
24 only by the inclusion of:

25           (1) the language quoted in section 5602(a)(1) (relating  
26 to form of power of attorney); or

27           (2) other language showing a similar intent on the part  
28 of the principal to empower the agent to make a limited gift.

29       (c) [Unlimited] Other gifts specifically authorized and not  
30 requiring court approval.--Other gifts that are specifically

1 authorized in compliance with this subsection do not require  
2 court approval. A principal may authorize an agent to make any  
3 other gift only by specifically [providing for and defining the  
4 agent's authority in the power of attorney.] identifying:

5 (1) The donee, such as an individual, charity or other  
6 entity, whether by name, relationship, class or other  
7 description, except that the phrase "any donee" or other  
8 language showing a similar intent is not a specific  
9 identification.

10 (2) The property to be gifted or the amounts of cash  
11 gifts.

12 (c.1) Other actions not requiring court approval.--

13 (1) An agent may act without court approval if the  
14 action:

15 (i) Is otherwise authorized by the power of  
16 attorney.

17 (ii) Maintains and is consistent with the  
18 preservation of the principal's estate plan, including  
19 the effect of intestacy if the principal does not have a  
20 will.

21 (2) An action under this subsection may include:

22 (i) Placing property into joint names with rights of  
23 survivorship.

24 (ii) The use of a designation such as "in trust  
25 for," "payable on death" or "transfer on death."

26 (iii) The execution of a beneficiary designation.

27 (3) An action under this subsection may not be taken if  
28 the interest of any beneficiary under the principal's  
29 existing estate plan, including an intestacy if the principal  
30 has no will, is prejudiced thereby. Either of the following

1 shall be considered a change in the principal's estate plan  
2 and governed by subsection (c.2), which requires court  
3 approval:

4 (i) An action that results in a beneficiary  
5 receiving at the death of the principal an interest  
6 outright and free of trust that would have passed in  
7 trust at death under the principal's present estate plan.

8 (ii) An action that converts an outright gift at  
9 death into one received in trust.

10 (c.2) Court-approved gifts and changes to estate plan.--

11 (1) Subject to paragraph (2), a principal may authorize  
12 an agent to do the following on behalf of the principal or  
13 with the principal's property:

14 (i) Make a gift other than a gift authorized under  
15 subsection (b) or (c).

16 (ii) Create or change rights of survivorship.

17 (iii) Create or change a beneficiary designation.

18 (iv) Create an inter vivos trust, other than a trust  
19 described in section 5603(b) or (c), or amend, revoke or  
20 terminate an existing trust, but only to the extent that  
21 the principal had previously retained or been granted  
22 such powers.

23 (v) Waive the principal's right to be a beneficiary  
24 of a joint and survivor annuity, including a survivor  
25 benefit under a retirement plan.

26 (2) An agent may exercise a power under paragraph (1)  
27 only if:

28 (i) The power of attorney expressly grants the agent  
29 the specific authority to exercise the power.

30 (ii) The court having jurisdiction over the agent,

1       upon petition by the agent, approves the agent's proposed  
2       action after finding that it is consistent with both:

3               (A) Prudent estate planning or financial  
4               management for the principal.

5               (B) The known or probable intent of the  
6               principal with respect to the disposition of the  
7               principal's property.

8       (d) Nature of gifts.--In the absence of a specific provision  
9 to the contrary in the power of attorney:

10           (1) A power to make a [limited] gift under subsection  
11           (b) or (c) shall be construed to empower the agent to make a  
12           gift to each donee either outright [or], in trust or to a  
13           tuition savings account or prepaid tuition plan as defined in  
14           section 529 of the Internal Revenue Code of 1986 (Public Law  
15           99-514, 26 U.S.C. § 529).

16           (2) In the case of any gift to a minor, that gift may be  
17           made in trust or in accordance with Chapter 53 (relating to  
18           Pennsylvania Uniform Transfers to Minors Act) or section 5155  
19           (relating to order of court).

20           (3) In the case of any gift made in trust, the agent may  
21           execute a deed of trust for such purpose, designating one or  
22           more persons, including the agent, as original or successor  
23           trustees, or may make an addition to an existing trust.

24           (4) In making any gift, the agent need not treat the  
25           donees equally or proportionately and may entirely exclude  
26           one or more permissible donees.

27           (5) The pattern followed on the occasion of any gift  
28           need not be followed on the occasion of any other gift.

29       [(e) Equity.--An agent and the donee of a gift shall be  
30 liable as equity and justice may require to the extent that, as

determined by the court, a gift made by the agent is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of the estate.]

\* \* \*

(g) Court proceeding.--When court approval is required under subsection (c.2):

(1) The burden of proof, by clear and convincing evidence, shall be on the agent.

(2) Notice of the petition and hearing shall be given in the manner as the court shall direct to:

(i) All persons who are sui juris and would be entitled to share in the principal's estate if the principal died intestate at that time.

(ii) Any person known to the agent who would be prejudiced by the proposed action.

(iii) Such other parties as the court may direct.

(3) The hearing may be closed to the public unless the principal or the principal's counsel objects.

(4) The court sua sponte or upon request of the agent or others may direct that some or all of the pleadings or documents related to the petition and hearing be sealed or redacted in the manner and to the extent that the court deems appropriate.

§ 5602. Form of power of attorney.

(a) Specification of powers.--A principal may, by inclusion of the language quoted in any of the following paragraphs or by inclusion of other language showing a similar intent on the part of the principal, empower an agent to do any or all of the



1 following, each of which is defined in section 5603 (relating to  
2 implementation of power of attorney):

3 (1) "To make limited gifts."

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

5 (3) "To make additions to an existing trust for my  
6 benefit."

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

9 (5) "To disclaim any interest in property."

10 (6) "To renounce fiduciary positions."

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

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

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

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

18 (11) "To engage in tangible personal property  
19 transactions."

20 (12) "To engage in stock, bond and other securities  
21 transactions."

22 (13) "To engage in commodity and option transactions."

23 (14) "To engage in banking and financial transactions."

24 (15) "To borrow money."

25 (16) "To enter safe deposit boxes."

26 (17) "To engage in insurance and annuity transactions."

27 (18) "To engage in retirement plan transactions."

28 (19) "To handle interests in estates and trusts."

29 (20) "To pursue claims and litigation."

30 (21) "To receive government benefits."

1           (22) "To pursue tax matters."  
2           [(23) "To make an anatomical gift of all or part of my  
3       body."]  
4           (24) "To operate a business or entity."  
5           (25) "To provide for personal and family maintenance."

6       \* \* \*

7       (c) Filing of power of attorney.--An originally executed  
8 [copy of the] power of attorney may be filed with the clerk of  
9 the orphans' court division of the court of common pleas in the  
10 county in which the principal resides, and if it is  
11 acknowledged, it may be recorded in the office for the recording  
12 of deeds of the county of the principal's residence and of each  
13 county in which real property to be affected by an exercise of  
14 the power is located. The clerk of the orphans' court division  
15 or any office for the recording of deeds with whom the power has  
16 been filed, may, upon request, issue certified copies of the  
17 power of attorney. Each such certified copy shall have the same  
18 validity and the same force and effect as if it were the  
19 original, and it may be filed of record in any other office of  
20 this Commonwealth (including, without limitation, the clerk of  
21 the orphans' court division or the office for the recording of  
22 deeds) as if it were the original.

23       (d) Copy of power of attorney.--Except for the purpose of  
24 filing under subsection (c), a photocopy or electronically  
25 transmitted copy of an originally executed power of attorney has  
26 the same effect as the original.

27       Section 7. Section 5603(a), (d), (e), (h), (k)(4), (p), (q)  
28 and (u.1) of Title 20, amended October 27, 2010 (P.L. , No.85),  
29 are amended and the section is amended by adding subsections to  
30 read:

1 § 5603. Implementation of power of attorney.

2 (a) Power to make limited gifts.--

3 (2) A power "to make limited gifts" shall mean that the  
4 agent may make only gifts for or on behalf of the principal  
5 which are limited as follows:

6 (i) The class of permissible donees under this  
7 paragraph shall consist solely of the principal's spouse,  
8 issue and a spouse of the principal's issue (including  
9 the agent if a member of any such class), or any of them.

10 (ii) During each calendar year, the gifts made to  
11 any permissible donee, pursuant to such power, shall have  
12 an aggregate value not in excess of, and shall be made in  
13 such manner as to qualify in their entirety for, the  
14 annual exclusion from the Federal gift tax permitted  
15 under section 2503(b) of the Internal Revenue Code of  
16 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) for the  
17 principal [and, if applicable, the principal's spouse]  
18 or, if the principal's spouse agrees to consent to  
19 splitting gifts under section 2513(a) of the Internal  
20 Revenue Code of 1986, in an amount per donee (other than  
21 the spouse) not to exceed twice the annual exclusion  
22 limit. The limits under this subparagraph may be exceeded  
23 if and to the extent the agent elects to equalize gifts  
24 among family units with each child of the principal and  
25 the child's descendants treated as a family unit.

26 (iv) In addition to the gifts authorized by  
27 subparagraphs (i) and (ii), a gift made pursuant to such  
28 power may be for the tuition or medical care of any  
29 permissible donee to the extent that the gift is excluded  
30 from the Federal gift tax under section 2503(e) of the

Internal Revenue Code of 1986 as a qualified transfer.

(v) The agent may consent, pursuant to section 2513(a) of the Internal Revenue Code of 1986, to the splitting of gifts made by the principal's spouse to the principal's issue or a spouse of the principal's issue in any amount and to the splitting of gifts made by the principal's spouse to any other person in amounts not exceeding the aggregate annual gift tax exclusions for both spouses under section 2503(b) of the Internal Revenue Code of 1986.

\* \* \*

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

1 the case of a principal who [has not been adjudicated] is not an  
2 incapacitated person.

3 (e) Power to disclaim any interest in property.--A power "to  
4 disclaim any interest in property" shall mean that the agent may  
5 release or disclaim any interest in property on behalf of the  
6 principal in accordance with Chapter 62 (relating to  
7 disclaimers) or section [6103 (relating to release or disclaimer  
8 of powers or interests)] 6103.1 (relating to release of powers  
9 and interests and disclaimer of powers), provided that any  
10 disclaimer under Chapter 62 shall be in accordance with the  
11 provisions of section 6202 (relating to disclaimers by  
12 fiduciaries or agents) in the case of a principal who [shall  
13 have been adjudicated] is an incapacitated person at the time of  
14 the execution of the disclaimer.

15 \* \* \*

16 [(h) Power to authorize admission to medical facility and  
17 power to authorize medical procedures.--

18 (1) A power "to authorize my admission to a medical,  
19 nursing, residential or similar facility, and to enter into  
20 agreements for my care" shall mean that the agent may apply  
21 for the admission of the principal to a medical, nursing,  
22 residential or other similar facility, execute any consent or  
23 admission forms required by such facility which are  
24 consistent with this paragraph, and enter into agreements for  
25 the care of the principal by such facility or elsewhere  
26 during his lifetime or for such lesser period of time as the  
27 agent may designate, including the retention of nurses for  
28 the principal.

29 (2) A power "to authorize medical and surgical  
30 procedures" shall mean that the agent may arrange for and

consent to medical, therapeutical and surgical procedures for the principal, including the administration of drugs.]

\* \* \*

(k) Power to engage in stock, bond and other securities transactions.--A power to "engage in stock, bond and other securities transactions" shall mean that the agent may:

\* \* \*

(4) Join in any merger, reorganization, consolidation, dissolution, liquidation, voting-trust plan or other concerted action of security holders and make payments in connection therewith.

\* \* \*

(p) Power to engage in insurance and annuity transactions.--A power to "engage in insurance and annuity 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) or annuity and pay premiums and collect benefits and proceeds under [insurance] these policies.

(2) Exercise nonforfeiture provisions under insurance policies and annuity contracts.

(3) In general, exercise all powers with respect to insurance and annuities 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

1 the agent is inconsistent with the known or probable intent  
2 of the principal], including the designation of a  
3 beneficiary, but only as permitted under section 5601.2(c.1)  
4 and (c.2) (relating to special rules for gifts and changes to  
5 principal's estate plan).

6 (q) Power to engage in retirement plan transactions.--A  
7 power to "engage in retirement plan transactions" shall mean  
8 that the agent may contribute to, withdraw from and deposit  
9 funds in any type of retirement plan (including, but not limited  
10 to, any tax qualified or nonqualified pension, profit sharing,  
11 stock bonus, employee savings and retirement plan, deferred  
12 compensation plan or individual retirement account), select and  
13 change payment options for the principal, make roll-over  
14 contributions from any retirement plan to other retirement plans  
15 and, in general, exercise all powers with respect to retirement  
16 plans that the principal could if present, including the  
17 designation of a beneficiary, but only as permitted under  
18 section 5601.2(c.1) and (c.2). [However, the agent cannot  
19 designate himself beneficiary of a retirement plan unless the  
20 agent is the spouse, child, grandchild, parent, brother or  
21 sister of the principal. An agent and a beneficiary of a  
22 retirement plan shall be liable as equity and justice may  
23 require to the extent that, as determined by the court, a  
24 beneficiary designation made by the agent is inconsistent with  
25 the known or probable intent of the principal.]

26 \* \* \*

27 [(u.1) Power to make anatomical gift.--A power "to make an  
28 anatomical gift of all or part of my body" shall mean that the  
29 agent may arrange and consent, either before or after the death  
30 of the principal, to procedures to make an anatomical gift in

1 accordance with Chapter 86 (relating to anatomical gifts).]

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

4 (1) Continue or participate in the operation of any  
5 business or other entity in which the principal holds an  
6 interest, whether alone or with others, by making and  
7 implementing decisions regarding its financing, operations,  
8 employees and all other matters pertinent to the business or  
9 entity.

10 (2) Change the form of ownership of the business or  
11 entity to a corporation, partnership, limited liability  
12 company or other entity, and initiate or take part in a  
13 corporate reorganization, including a merger, consolidation,  
14 dissolution or other change in organizational form.

15 (3) Compensate an agent actively managing, supervising  
16 or engaging in the operation of a business or entity, as  
17 appropriate, from the principal's assets or from the business  
18 or entity, provided that the compensation is reasonably based  
19 upon the actual responsibilities assumed and performed.

20 (4) In general, exercise all powers with respect to  
21 operating a business or entity that the principal could if  
22 present.

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

25 (1) A power "to provide for personal and family  
26 maintenance" shall mean that the agent may provide for the  
27 health, education, maintenance and support, in order to  
28 maintain the customary standard of living of the principal's  
29 spouse and the following individuals, whether living when the  
30 power of attorney is executed or later born:



1           (i) The principal's minor children.

2           (ii) Other individuals legally entitled to be  
3           supported by the principal.

4           (iii) The individuals whom the principal has  
5           customarily supported.

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

7           (i) Take into account the long-term needs of the  
8           principal.

9           (ii) Consider any independent means available to  
10           those individuals apart from the support provided by the  
11           principal.

12           (3) Authority with respect to personal and family  
13           maintenance is in addition to and not limited by authority  
14           that an agent may or may not have or court approval that may  
15           be necessary with respect to gifts under this chapter.

16           \* \* \*

17           Section 8. Section 5604(c)(1) of Title 20 is amended,  
18           subsection (c) is amended by adding a paragraph and the section  
19           is amended by adding a subsection to read:

20           § 5604. Durable powers of attorney.

21           \* \* \*

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

23           (1) If, following execution of a durable power of  
24           attorney, the principal [is adjudicated] becomes an  
25           incapacitated person and a guardian is appointed for his  
26           estate, the agent is accountable to the guardian as well as  
27           to the principal. [The guardian shall have the same power to  
28           revoke or amend the power of attorney that the principal  
29           would have had if he were not an incapacitated person.]

30           \* \* \*

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

5       \* \* \*

6       (d.1) Disclosure.--Except as otherwise provided in the power  
7       of attorney, an agent is not required to disclose receipts,  
8       disbursements or transactions conducted on behalf of the  
9       principal unless:

10       (1) ordered by a court; or

11       (2) requested by:

12               (i) the principal;

13               (ii) the principal's guardian;

14               (iii) another fiduciary acting for the principal;

15               (iv) a governmental agency having authority to  
16       protect the welfare of the principal as set forth in  
17       subsection (d); or

18               (v) the personal representative or successor in  
19       interest of the principal's estate, upon the death of the  
20       principal.

21       \* \* \*

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

23       § 5610. Account.

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

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

2 § 5612. Investigation of financial abuse and mismanagement.

3 The court may order an investigation, appoint a guardian ad  
4 litem, make a referral to an appropriate agency or take any  
5 other appropriate action regarding allegations that a principal  
6 is suffering from financial abuse or mismanagement by the  
7 principal's agent under a power of attorney:

8 (1) upon petition by an appropriate party and a  
9 reasonable showing of the financial abuse or mismanagement;  
10 or

11 (2) after the court is otherwise informed of the  
12 financial abuse or mismanagement.

13 § 5613. Jurisdiction and venue.

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

19 (b) Declining jurisdiction.--

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

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

28 § 5614. Principles of law and equity.

29 Except as otherwise provided by this chapter or another  
30 statute of this Commonwealth, common law and the principles of

1 equity supplement this chapter.

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

3 [§ 6103. Release or disclaimer of powers or interests.

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

23 (b) Form of release or disclaimer.--A power or interest  
24 which is releasable or disclaimable may be released or  
25 disclaimed either absolutely or conditionally, and may also be  
26 released or disclaimed with respect to the whole or any part of  
27 the property subject to such power or interest, and may also be  
28 released or disclaimed in such manner as to reduce or limit the  
29 persons or objects or classes of persons or objects in whose  
30 favor such power or interest would otherwise be exercisable. No

1 release or disclaimer of a power or of an interest shall be  
2 deemed to make imperative a power or interest which was not  
3 imperative prior to such release or disclaimer unless the  
4 instrument of release or disclaimer expressly so provides.

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

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

9 (2) Any trustee of the property to which the power or  
10 interest relates.

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

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

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

24 Section 12. Title 20 is amended by adding a section to read:

25 § 6103.1. Release of powers and interests and disclaimer of  
26 powers.

27 (a) Interests releasable.--

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

30 (2) An income interest in a spendthrift trust may be

1 released only if the released income passes to one or more of  
2 the releasor's descendants.

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

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

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

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

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

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

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

22 (i) Be absolute or conditional.

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

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

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

1 to the disclaimer or release.

2 (f) Date of effect.--

3 (1) A disclaimer of a power held in a fiduciary capacity  
4 that is not imperative takes effect as of the time the  
5 instrument creating the power becomes irrevocable.

6 (2) A release of a power held in a fiduciary capacity  
7 that is not imperative takes effect immediately after the  
8 last exercise of the power.

9 (g) Procedural requirements.--A release and a disclaimer  
10 under this section shall be in writing and filed, delivered and  
11 recorded in a similar manner as a disclaimer under section 6204  
12 (relating to filing, delivery and recording).

13 Section 13. Title 20 is amended by adding a chapter to read:

14 CHAPTER 76

15 POWERS OF APPOINTMENT

16 Sec.

17 7601. Definitions.

18 7602. Exercise of powers of appointment.

19 7603. Contract to exercise power.

20 7604. Manner of appointment.

21 7605. Anti-lapse provision.

22 7606. Partially effective exercise.

23 7607. Creditors' rights.

24 § 7601. Definitions.

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

28 "Broad power of appointment." A power of appointment that  
29 the donee may exercise in favor of any one or more of the  
30 following:

1       (1) One or more persons selected by the donee.

2       (2) The donee.

3       (3) The donee's estate.

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

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

11       § 7602. Exercise of powers of appointment.

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

17               (1) specific reference to the power;

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

20               (3) a testamentary or inter vivos gift specifically  
21       describing the appointive property;

22               (4) an insufficiently funded testamentary pecuniary  
23       legacy, to the extent to satisfy the legacy;

24               (5) a general testamentary gift; or

25               (6) a testamentary residuary gift.

26       (b) Limited power of appointment.--

27               (1) Subject to paragraph (2) and subsection (c), in the  
28       absence of a contrary intent appearing in the instrument  
29       creating a limited power of appointment or in the donee's  
30       instrument exercising the power, a limited power of



1 appointment may be exercised only by the donee's instrument  
2 making:

3 (i) specific reference to the power;

4 (ii) a testamentary or inter vivos gift specifically  
5 describing the appointive property;

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

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

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

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

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

24 (e) Testamentary powers.--

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

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

1 the creditors of the donee's estate.

2 (3) An attempted exercise of a testamentary power of  
3 appointment in favor of the donee's creditors shall be  
4 construed as an exercise in favor of those creditors of the  
5 donee's estate who were also creditors of the donee at the  
6 time of the donee's death.

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

11 § 7603. Contract to exercise power.

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

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

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

24 § 7604. Manner of appointment.

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

30 (1) Appointing outright to one or more objects of the

1 power.

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

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

15 (i) All the objects of the original power are among  
16 the objects of the new power.

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

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

25 § 7605. Anti-lapse provision.

26 (a) General rule.--

27 (1) Subject to paragraphs (2) and (3), in the absence of  
28 a contrary intent appearing in the instrument creating a  
29 power of appointment or, in the donee's instrument,  
30 exercising the power, an exercise of the power of appointment

1 in favor of any of the following, whether designated by name  
2 or as one of a class, shall not fail if the appointee is not  
3 living at the time the appointment becomes effective:

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

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

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

7 (2) Paragraph (1) applies if:

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

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

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

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

27 § 7606. Partially effective exercise.

28 In the absence of a contrary intent appearing in the  
29 instrument creating a power of appointment or in the donee's  
30 instrument exercising the power, a partially ineffective

exercise of a power of appointment shall not make ineffective any otherwise effective portion of the exercise, unless the appointment regarded as a whole constitutes such an integrated plan that the parts cannot be separated without defeating the plan.

§ 7607. Creditors' rights.

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

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

§ 7710.1. Nonjudicial settlement agreements - UTC 111.

\* \* \*

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

\* \* \*

§ 7722. Representation of parties in interest in general.

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

(1) the trustee notifies the [representatives] representative in writing whom [they represent, they do] he represents, the representative does not decline the representation as provided in section 7725 (relating to

notice of representation) and [they act] the representative acts in good faith;

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

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

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

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

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

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

(d) Certification of representation.--

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

5               (i) the court, in the case of a judicial proceeding;  
6       or  
7               (ii) the trustee, in the case of a nonjudicial  
8       resolution of a trust matter.

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

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

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

16 § 7740.7. Division of trusts.

17 \* \* \*

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

22 \* \* \*

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

26 § 7765. Resignation of trustee; filing resignation.

27 [(a) Court approval.--A trustee may resign with court  
28 approval.

29 (b) Without court approval if authorized by trust  
30 instrument.--A trustee may resign without court approval if

1 authorized to resign by the trust instrument.

2 (c) Without court approval and without authorization in  
3 trust instrument.--

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

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

10 (ii) all the qualified beneficiaries consent in  
11 writing to the resignation.

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

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

19 (1) with court approval;

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

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

25 \* \* \*

26 Section 16. Section 7780.3 of Title 20 is amended by adding  
27 a subsection to read:

28 § 7780.3. Duty to inform and report.

29 \* \* \*

30 (k.1) Nomination by current beneficiary.--A current



beneficiary of a trust who has capacity may nominate another person to receive, on behalf of the current beneficiary, the notice required by this section. The current beneficiary shall notify the trustee of the nomination. The trustee giving the notice required by this section to that nominee satisfies the trustee's duty to give to the named current beneficiary the notice required by this section if:

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

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

\* \* \*

Section 17. Section 7792 of Title 20 is amended to read:

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

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

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

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

Section 3323 (relating to compromise of controversies).

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

Section 3332 (relating to inherent powers and duties).

Section 3353 (relating to order of court).

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

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

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

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

Section 18. Title 20 is amended by adding a chapter to read:

#### CHAPTER 79

#### CHARITABLE INSTRUMENTS

Sec.

7901. Short title of chapter.

7902. Definitions.

7903. Deemed provisions of governing instrument.

7904. Power to amend governing instrument.

7905. Court authority.

7906. Applicability.

§ 7901. Short title of chapter.

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

§ 7902. Definitions.

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

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

(1) A trust described in section 4947(a)(1) or (2) of

1 the Internal Revenue Code of 1986 (Public Law 99-514, 26  
2 U.S.C. § 4947(a)(1) or (2)), which is or is treated as a  
3 private foundation under section 509 of the Internal Revenue  
4 Code of 1986 (26 U.S.C. § 509).

5 (2) A trust governed by Pennsylvania law that is or is  
6 treated as a pooled income fund under section 642(c)(5) of  
7 the Internal Revenue Code of 1986 (26 U.S.C. § 642(c)(5)).  
8 § 7903. Deemed provisions of governing instrument.

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

12 (1) Require distributions for each taxable year in such  
13 amounts and at such times and in such manner as not to  
14 subject the organization to tax under section 4942 of the  
15 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
16 4942).

17 (2) Prohibit the organization from:

18 (i) Engaging in an act of self-dealing, as defined  
19 in section 4941(d) of the Internal Revenue Code of 1986  
20 (26 U.S.C. § 4941(d)).

21 (ii) Retaining excess business holdings, as defined  
22 in section 4943(c) of the Internal Revenue Code of 1986  
23 (26 U.S.C. § 4943(c)).

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

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

30 (b) Effect of contrary provision.--The deemed provisions

1 under subsection (a) supersede any contrary provision of the  
2 governing instrument.

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

7 § 7904. Power to amend governing instrument.

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

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

16 (2) The charitable organization qualifies for tax  
17 exemptions available for Federal income tax purposes.

18 § 7905. Court authority.

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

22 § 7906. Applicability.

23 This chapter shall apply to:

24 (1) A charitable organization created after December 31,  
25 1969.

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

1 the charitable organization involved in that proceeding.

2 Section 19. Section 8113(f) of Title 20 is amended to read:

3 § 8113. Charitable trusts.

4 \* \* \*

5 (f) Charitable organizations.--For a charitable organization  
6 defined under [the act of June 17, 1971 (P.L.181, No.23), known  
7 as the Charitable Instruments Act of 1971,] Chapter 79 (relating  
8 to charitable instruments) the provisions of [that act] Chapter  
9 79 shall supersede subsection (c) if necessary to comply with  
10 the minimum investment return requirements.

11 Section 20. This act shall apply as follows:

12 (1) Except as set forth in paragraph (2), this act shall  
13 apply to all powers of attorney executed on or after the  
14 effective date of this section.

15 (2) (i) Nothing in this act shall be construed to limit  
16 the effectiveness of powers of attorney in effect prior  
17 to the effective date of this section.

18 (ii) Any provision in a power of attorney  
19 incorporating by reference a power under 20 Pa.C.S. §  
20 5602(a)(8), (9) or (23), prior to the repeal of 20  
21 Pa.C.S. § 5602(a)(8), (9) or (23), shall continue to be  
22 governed by the respective paragraph of 20 Pa.C.S. §  
23 5602(a) as if no repeal occurred.

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

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

30 (i) All activities initiated under the Charitable

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

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

19 Section 21. Repeals are as follows:

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

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

25 Section 22. This act shall take effect as follows:

26 (1) The following provisions shall take effect in 60  
27 days:

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

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

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

- (iv) The amendment of 20 Pa.C.S. § 5603(e).
  - (v) The repeal of 20 Pa.C.S. § 6103.
  - (vi) The addition of 20 Pa.C.S. § 6103.1.
  - (vii) The amendment of 20 Pa.C.S. § 7710.1(c).
  - (viii) The amendment of 20 Pa.C.S. § 7722.
  - (ix) The amendment of 20 Pa.C.S. § 7740.7(b).
  - (x) The amendment or addition of 20 Pa.C.S. § 7765(a), (a.1), (b) and (c).
  - (xi) The addition of 20 Pa.C.S. § 7780.3(k.1).
  - (xii) The amendment of 20 Pa.C.S. § 7792.
- (2) The following provisions shall take effect in six months:
- (i) The definition of "health care decision" in 20 Pa.C.S. § 5422.
  - (ii) The amendment of 20 Pa.C.S. § 5456(a).
  - (iii) The amendment of 20 Pa.C.S. § 5460(a).
  - (iv) The amendment of 20 Pa.C.S. § 5601(b), (d) and (e).
  - (v) The amendment or addition of 20 Pa.C.S. § 5601.2(a), (b), (c), (c.1), (c.2), (d) and (g).
  - (vi) The amendment or addition of 20 Pa.C.S. § 5602(a), (c) and (d).
  - (vii) The amendment or addition of 20 Pa.C.S. § 5603(a), (d), (h), (k)(4), (p), (q), (u.1), (u.2) and (u.3).
  - (viii) The amendment or addition of 20 Pa.C.S. § 5604(c) and (d.1).
  - (ix) The amendment of 20 Pa.C.S. § 5610.
  - (x) The addition of 20 Pa.C.S. § 5612.
  - (xi) The addition of 20 Pa.C.S. § 5613.

1                   (xii) The addition of 20 Pa.C.S. § 5614.  
2                   (xiii) Section 20(1) and (2).  
3           (3) The remainder of this act shall take effect  
4 immediately.