

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 621 Session of
2013INTRODUCED BY GREENLEAF, ALLOWAY, ERICKSON, FERLO AND BROWNE,
MARCH 6, 2013

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MAY 6, 2014

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the
Pennsylvania Consolidated Statutes, IN ORPHANS' COURT <--
DIVISIONS, FURTHER PROVIDING FOR NONMANDATORY EXERCISE OF
JURISDICTION THROUGH ORPHANS' COURT DIVISION; in wills,
further providing for rules of interpretation; in
dispositions independent of letters, family exemption,
probate of wills and grant of letters, providing for
submission to jurisdiction; in administration and personal
representatives, further providing for continuation of
business and for incorporation of estate's business; in
accounts and distribution, further providing for
determination of title to decedent's interest in real estate;
IN HEALTH CARE, FURTHER PROVIDING FOR AUTHORITY OF HEALTH <--
CARE AGENT AND FOR RELATION OF HEALTH CARE AGENT TO COURT-
APPOINTED GUARDIAN AND OTHER AGENTS; IN POWERS OF ATTORNEY,
FURTHER PROVIDING FOR FORM OF POWER OF ATTORNEY, FOR
IMPLEMENTATION OF POWER OF ATTORNEY, FOR DURABLE POWERS OF
ATTORNEY AND FOR ACCOUNT; PROVIDING FOR INVESTIGATION OF
FINANCIAL ABUSE AND MISMANAGEMENT AND FOR JURISDICTION AND
VENUE; in estates, further providing for release or
disclaimer of powers or interests; in estates, providing for
release of powers and interests and disclaimer of powers;
providing for powers of appointment; in trusts, further
providing for nonjudicial settlement agreements - UTC 111,
for representation of parties in interest in general, for
division of trusts, for resignation of trustee and filing
resignation, for duty to inform and report, FOR LIMITATION OF <--
ACTION AGAINST TRUSTEE and for powers, duties and liabilities
identical with personal representatives; codifying provisions
of the Charitable Instruments Act of 1971; in principal and
income, further providing for charitable trusts; and making a
related repeal.

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 SECTION 1. SECTIONS 712(1) AND 2514(13) OF TITLE 20 OF THE <--
5 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

6 § 712. NONMANDATORY EXERCISE OF JURISDICTION THROUGH ORPHANS'
7 COURT DIVISION.

8 THE JURISDICTION OF THE COURT OF COMMON PLEAS OVER THE
9 FOLLOWING MAY BE EXERCISED THROUGH EITHER ITS ORPHANS' COURT
10 DIVISION OR OTHER APPROPRIATE DIVISION:

11 (1) TITLE TO REAL ESTATE.--THE DETERMINATION OF THE
12 PERSONS TO WHOM THE TITLE TO REAL ESTATE OF A DECEDENT OR OF
13 THE CREATOR OF AN ESTATE OR TRUST HAS PASSED BY DEVISE OR
14 DESCENT OR BY THE TERMS OF THE TRUST INSTRUMENT WHERE
15 JURISDICTION OF SUCH ESTATE OR TRUST IS EXERCISED THROUGH THE
16 ORPHANS' COURT DIVISION: PROVIDED, THAT NOTHING HEREIN SHALL
17 BE CONSTRUED TO RESTRICT THE PROVISIONS OF SECTION 711
18 (RELATING TO MANDATORY EXERCISE OF JURISDICTION THROUGH
19 ORPHANS' COURT DIVISION IN GENERAL) RELATING TO DISTRIBUTION
20 OF REAL ESTATE IN AN ESTATE OR TRUST. IF SECTION 3546
21 (RELATING TO DETERMINATION OF TITLE TO DECEDENT'S INTEREST IN
22 REAL ESTATE) APPLIES, THE PROCEDURES UNDER THAT SECTION SHALL
23 GOVERN. FOR OTHER ACTIONS TO QUIET TITLE TO REAL ESTATE, THIS
24 SECTION SHALL GOVERN.

25 * * *

26 § 2514. Rules of interpretation.

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

30 * * *

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

23 * * *

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

25 § 3163. Submission to jurisdiction.

26 A person granted letters testamentary or letters of
27 administration shall be deemed to submit to the jurisdiction of
28 the orphans' court division of the county in which the register
29 granted the letters.

30 Section 3. Sections 3314, 3315 ~~and 3546~~, 3546, 5456(A) AND <--

1 5460(A) of Title 20 are amended to read:

2 § 3314. Continuation of business.

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

16 (1) for the conduct of business, by the personal
17 representative alone or jointly with others, or, unless
18 restricted by the terms of the governing instrument, as a
19 corporation, partnership, limited liability company or other
20 entity to be formed;

21 (2) the extent of the liability of the estate or any
22 part thereof, or of the personal representative, for
23 obligations incurred in the continuation of the business;

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

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

30 (4.1) for the compensation of a personal representative

1 actively managing, supervising or engaging in the operation
2 of an entity or business, from the estate's assets or from
3 the entity or business, as appropriate, provided that the
4 compensation is reasonably based upon the actual
5 responsibilities assumed and performed; and

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

8 § 3315. Incorporation of or formation of entity to operate
9 estate's business.

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

23 § 3546. Determination of title to decedent's interest in real
24 estate.

25 [When a person shall die leaving an interest in real estate
26 within the Commonwealth and no letters testamentary or of
27 administration have been granted on the estate of the decedent
28 in the Commonwealth, and one year has expired since the
29 decedent's death, or if a personal representative has been
30 appointed and has not filed his account within six years of the

1 death of the decedent, any person claiming an interest in the
2 real estate as or through an heir or devisee of the decedent may
3 present a petition to establish title thereto in the orphans'
4 court division of the county where the letters testamentary or
5 of administration have been granted, or should no letters have
6 been granted, then in the orphans' court division of the county
7 within which was the family or principal residence of the
8 decedent. If the decedent was a nonresident of the Commonwealth,
9 the petition may be presented in the orphans' court division of
10 any county wherein any of the real estate shall lie. The court,
11 aided if necessary by the report of a master, may enter its
12 decree nisi adjudging that the title to the decedent's interest
13 in the real estate is in such person or persons as the court
14 shall determine. Notice of the decree nisi shall be given to
15 creditors and other parties in interest, by advertisement and
16 otherwise, as the court shall direct. If no exception to the
17 decree is filed within three months, it shall be confirmed
18 absolutely, free of all decedent's debts not then liens of
19 record, and regardless of the provisions of any testamentary
20 writing of the decedent thereafter probated. A certified copy of
21 the decree shall be recorded in the office of the recorder of
22 deeds of each county where real estate included in the decree
23 shall lie, shall be indexed by the recorder in the grantor's
24 index under the name of the decedent and in the grantee's index
25 under the name of each distributee, and shall be registered in
26 the survey bureau or with the proper authorities empowered to
27 keep a register of real estate in the county.]

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

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

1 (2) Either of the following occurs:

2 (i) No letters testamentary or letters of
3 administration have been granted on the estate of the
4 decedent in this Commonwealth and one year has expired
5 since the decedent's death.

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

9 (3) THERE IS A CONFLICT BETWEEN THIS SECTION AND EITHER <--
10 SECTION 2103(6) (RELATING TO SHARES OF OTHERS THAN SURVIVING
11 SPOUSE) OR ARTICLE XIII.1 OF THE ACT OF APRIL 9, 1929
12 (P.L.343, NO.176), KNOWN AS THE FISCAL CODE, WITH RESPECT TO
13 A PETITION BY AN ENTITY UNDER SUBSECTION (C) (2). THE RIGHTS
14 GRANTED UNDER THIS SECTION SHALL SUPERSEDE ANY RIGHT OF THE
15 COMMONWEALTH CREATED UNDER SECTION 2103(6) OR ARTICLE XIII.1
16 OF THE FISCAL CODE.

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

19 (1) terminate an interest in the real estate of other
20 heirs or devisees of the decedent who, after being given
21 proper notice as directed by the court under subsection
22 (f) (2), fail to file timely an exception to the court's
23 decree; or

24 (2) have declared as void, unenforceable and canceled of
25 record a fraudulent conveyance of the decedent's interest in
26 the real estate and to the extent otherwise authorized by law
27 any lien, title, claim or interest arising in the property
28 by, from or under the fraudulent conveyance, including any
29 subsequent transfers of property following the fraudulent
30 conveyance and any liens to the extent that they have

1 attached to the property as a result of the fraudulent
2 conveyance, after all interested parties have been given
3 proper notice as directed by the court under subsection
4 (f) (2).

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

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

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

9 (ii) through the decedent; or

10 (iii) through an heir or devisee of the decedent,
11 when the heir or devisee is deceased or has conveyed all
12 or part of the heir or devisee's interest in the property
13 to the person.

14 (2) A nonprofit corporation organized for community
15 development purposes under section 501(c) (3) of the Internal
16 Revenue Code (Public Law 99-514, 26 U.S.C. § 1 et seq.), a
17 municipality in which the real estate is located or a
18 redevelopment authority created and organized under the act
19 of May 24, 1945 (P.L.991, No.385), known as the Urban
20 Redevelopment Law, having jurisdiction in the municipality in
21 which the real estate is located:

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

23 (ii) Upon a showing by clear and convincing evidence
24 to the court that:

25 (A) No heirs or devisees exist or have taken
26 action with respect to the real estate for at least
27 five years since the decedent's death.

28 (B) The real estate is not occupied by a person
29 claiming rights by adverse possession.

30 (d) Priority of petitions.--Where there are two or more

petitions for the same real estate under subsection (c)(2), the
court shall give priority in entering a decree nisi or order to
one of the petitioners in the following order:

(1) The municipality.

(2) The redevelopment authority.

(3) The nonprofit corporation.

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

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

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

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

(f) Notice of petition.--

(1) Notice shall be given to all persons reasonably
identifiable as eligible to file a petition under subsection
(c), creditors that do not have liens of record, to the
extent known, and all other persons and parties in interest
reasonably known to hold or claim a lien, title, claim or
other interest in the property in accordance with
Pennsylvania Orphans' Court Rule 5.1 or, if the notice cannot
be given in accordance with Pennsylvania Orphans' Court Rule
5.1 (a) or (b), the petition shall be accompanied by a motion
for service pursuant to Pennsylvania Rule of Civil Procedure
430, including an affidavit, attested by the petitioner or
petitioner's counsel of record, stating the reasons why
notice cannot be given under Rule 5.1 (a) or (b) and the
nature and extent of the investigation that has been made to

1 determine the whereabouts of creditors that do not have liens
2 of record and other parties in interest.

3 (2) If letters testamentary or letters of administration
4 have been granted on the estate of the decedent, notice of
5 the petition under this section shall be given to the
6 personal representative of the decedent.

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

11 (g) Decree or order.--

12 (1) Aided if necessary by the report of a master, the
13 court may enter a decree nisi adjudging that the title to the
14 decedent's interest in the real estate is in the petitioner
15 or an order directing other appropriate relief as the court
16 determines.

17 (2) Notice of the decree nisi or order shall be given
18 to:

19 (i) creditors that do not have liens of record, to
20 the extent known;

21 (ii) creditors that have liens of record, if relief
22 is being sought under subsection (b) (2); and

23 (iii) other parties in interest, by advertisement or
24 as otherwise directed by the court.

25 (3) If no exception to the decree or order is filed
26 within three months after notice is given in accordance with
27 paragraph (2), it shall be confirmed absolutely, free of all
28 decedent's debts not then liens of record, and regardless of
29 the provisions of any testamentary writing of the decedent
30 thereafter probated.

1 (4) A certified copy of the decree or order shall be:

2 (i) Recorded in the office of the recorder of deeds
3 of each county where real estate included in the decree
4 or order shall lie.

5 (ii) Indexed by the recorder in the grantor's index
6 under the name of the decedent and in the grantee's index
7 under the name of each distributee.

8 (iii) Registered in the survey bureau or with the
9 proper authorities empowered to keep a register of real
10 estate in the county.

11 (h) Parcel number or identifier.--

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

18 (2) A decree presented for recording under subsection
19 (g) shall comply with section 3 of the act of April 24, 1931
20 (P.L.48, No.40), entitled "An act requiring the recording of
21 certain written agreements pertaining to real property, and
22 prescribing the effect thereof as to subsequent purchasers,
23 mortgages, and judgment creditors of the parties thereto."

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

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

29 (2) the grantor being induced by fraud,
30 misrepresentation, duress or coercion to sign a document

1 purporting to make such transfer; or
2 (3) some other inappropriate means used to obtain the
3 grantor's signature on the document purporting to make such
4 transfer, as determined by a court.

5 § 5456. AUTHORITY OF HEALTH CARE AGENT. <--

6 (A) EXTENT OF AUTHORITY.--EXCEPT AS EXPRESSLY PROVIDED
7 OTHERWISE IN A HEALTH CARE POWER OF ATTORNEY AND SUBJECT TO
8 SUBSECTION (B) AND SECTION 5460 (RELATING TO RELATION OF HEALTH
9 CARE AGENT TO COURT-APPOINTED GUARDIAN AND OTHER AGENTS), A
10 HEALTH CARE AGENT SHALL HAVE THE AUTHORITY TO MAKE ANY HEALTH
11 CARE DECISION AND TO EXERCISE ANY RIGHT AND POWER REGARDING THE
12 PRINCIPAL'S CARE, CUSTODY AND HEALTH CARE TREATMENT THAT THE
13 PRINCIPAL COULD HAVE MADE AND EXERCISED. THE FOREGOING POWER
14 SHALL INCLUDE THE POWER TO AUTHORIZE ADMISSION TO A MEDICAL,
15 NURSING, RESIDENTIAL OR SIMILAR FACILITY, OR TO ENTER INTO
16 AGREEMENTS FOR THE PRINCIPAL'S CARE. THE HEALTH CARE AGENT'S
17 AUTHORITY MAY EXTEND BEYOND THE PRINCIPAL'S DEATH TO MAKE
18 ANATOMICAL GIFTS, DISPOSE OF THE REMAINS AND CONSENT TO
19 AUTOPSIES.

20 * * *

21 § 5460. RELATION OF HEALTH CARE AGENT TO COURT-APPOINTED
22 GUARDIAN AND OTHER AGENTS.

23 (A) ACCOUNTABILITY OF HEALTH CARE AGENT.--IF A PRINCIPAL WHO
24 HAS EXECUTED A HEALTH CARE POWER OF ATTORNEY IS LATER
25 ADJUDICATED AN INCAPACITATED PERSON AND A GUARDIAN OF THE PERSON
26 TO MAKE HEALTH CARE DECISIONS IS APPOINTED BY A COURT, THE
27 HEALTH CARE AGENT IS ACCOUNTABLE TO THE GUARDIAN AS WELL AS TO
28 THE PRINCIPAL. [THE GUARDIAN SHALL HAVE THE SAME POWER TO REVOKE
29 OR AMEND THE APPOINTMENT OF A HEALTH CARE AGENT THAT THE
30 PRINCIPAL WOULD HAVE IF THE PRINCIPAL WERE NOT INCAPACITATED BUT

MAY NOT REVOKE OR AMEND OTHER INSTRUCTIONS IN AN ADVANCE HEALTH
DIRECTIVE ABSENT JUDICIAL AUTHORIZATION.] IN ITS GUARDIANSHIP
ORDER AND DETERMINATION OF A PERSON'S INCAPACITY, THE COURT
SHALL DETERMINE THE EXTENT TO WHICH THE HEALTH CARE AGENT'S
AUTHORITY TO ACT REMAINS IN EFFECT.

* * *

SECTION 4. SECTION 5602(A) OF TITLE 20 IS AMENDED BY ADDING
PARAGRAPHS TO READ:

§ 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
FOLLOWING, EACH OF WHICH IS DEFINED IN SECTION 5603 (RELATING TO
IMPLEMENTATION OF POWER OF ATTORNEY):

* * *

(24) "TO OPERATE A BUSINESS OR ENTITY."

(25) "TO PROVIDE FOR PERSONAL AND FAMILY MAINTENANCE."

* * *

SECTION 5. SECTION 5603(D) AND (R) OF TITLE 20 ARE AMENDED
AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO READ:

§ 5603. IMPLEMENTATION OF POWER OF ATTORNEY.

* * *

(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

1 PERTAINING TO THE ELECTION, INCLUDING PETITIONS TO EXTEND THE
2 TIME FOR ELECTING AND PETITIONS FOR ORDERS, DECREES AND
3 JUDGMENTS IN ACCORDANCE WITH SECTION 2211(C) AND (D) (RELATING
4 TO DETERMINATION OF EFFECT OF ELECTION; ENFORCEMENT), AND TAKE
5 ALL OTHER ACTIONS WHICH THE AGENT DEEMS APPROPRIATE IN ORDER TO
6 EFFECTUATE THE ELECTION: PROVIDED, HOWEVER, THAT THE ELECTION
7 SHALL BE MADE ONLY UPON THE APPROVAL OF THE COURT HAVING
8 JURISDICTION OF THE PRINCIPAL'S ESTATE IN ACCORDANCE WITH
9 SECTION 2206 (RELATING TO RIGHT OF ELECTION PERSONAL TO
10 SURVIVING SPOUSE) IN THE CASE OF A PRINCIPAL WHO [HAS BEEN
11 ADJUDICATED] IS AN INCAPACITATED PERSON, OR UPON THE APPROVAL OF
12 THE COURT HAVING JURISDICTION OF THE DECEASED SPOUSE'S ESTATE IN
13 THE CASE OF A PRINCIPAL WHO [HAS NOT BEEN ADJUDICATED] IS NOT
14 AN INCAPACITATED PERSON.

15 * * *

16 (R) POWER TO HANDLE INTERESTS IN ESTATES AND TRUSTS.--A
17 POWER TO "HANDLE INTERESTS IN ESTATES AND TRUSTS" SHALL MEAN
18 THAT THE AGENT MAY RECEIVE A BEQUEST, DEVISE, GIFT OR OTHER
19 TRANSFER OF REAL OR PERSONAL PROPERTY TO THE PRINCIPAL IN THE
20 PRINCIPAL'S OWN RIGHT OR AS A FIDUCIARY FOR ANOTHER AND GIVE
21 FULL RECEIPT AND ACQUITTANCE THEREFOR OR A REFUNDING BOND
22 THEREFOR; APPROVE ACCOUNTS OF ANY ESTATE, TRUST, PARTNERSHIP OR
23 OTHER TRANSACTION IN WHICH THE PRINCIPAL MAY HAVE AN INTEREST;
24 [AND] ENTER INTO ANY COMPROMISE AND RELEASE IN REGARD THERETO;
25 AND RECEIVE ON BEHALF OF THE PRINCIPAL ALL NOTICES AND REPORTS
26 REQUIRED BY SECTION 7780.3 (RELATING TO DUTY TO INFORM AND
27 REPORT) OR PERMITTED BY SECTION 7785(A) (RELATING TO LIMITATION
28 OF ACTION AGAINST TRUSTEE).

29 * * *

30 (U.2) POWER TO OPERATE A BUSINESS OR ENTITY.--A POWER "TO

1 OPERATE A BUSINESS OR ENTITY" SHALL MEAN THAT THE AGENT MAY:

2 (1) CONTINUE OR PARTICIPATE IN THE OPERATION OF ANY
3 BUSINESS OR OTHER ENTITY IN WHICH THE PRINCIPAL HOLDS AN
4 INTEREST, WHETHER ALONE OR WITH OTHERS, BY MAKING AND
5 IMPLEMENTING DECISIONS REGARDING ITS FINANCING, OPERATIONS,
6 EMPLOYEES AND ALL OTHER MATTERS PERTINENT TO THE BUSINESS OR
7 ENTITY.

8 (2) CHANGE THE FORM OF OWNERSHIP OF THE BUSINESS OR
9 ENTITY TO A CORPORATION, PARTNERSHIP, LIMITED LIABILITY
10 COMPANY OR OTHER ENTITY, AND INITIATE OR TAKE PART IN A
11 CORPORATE REORGANIZATION, INCLUDING A MERGER, CONSOLIDATION,
12 DISSOLUTION OR OTHER CHANGE IN ORGANIZATIONAL FORM.

13 (3) COMPENSATE AN AGENT ACTIVELY MANAGING, SUPERVISING
14 OR ENGAGING IN THE OPERATION OF A BUSINESS OR ENTITY, AS
15 APPROPRIATE, FROM THE PRINCIPAL'S ASSETS OR FROM THE BUSINESS
16 OR ENTITY, PROVIDED THAT THE COMPENSATION IS REASONABLY BASED
17 UPON THE ACTUAL RESPONSIBILITIES ASSUMED AND PERFORMED.

18 (4) IN GENERAL, EXERCISE ALL POWERS WITH RESPECT TO
19 OPERATING A BUSINESS OR ENTITY THAT THE PRINCIPAL COULD IF
20 PRESENT.

21 (U.3) POWER TO PROVIDE FOR PERSONAL AND FAMILY
22 MAINTENANCE.--

23 (1) A POWER "TO PROVIDE FOR PERSONAL AND FAMILY
24 MAINTENANCE" SHALL MEAN THAT THE AGENT MAY PROVIDE FOR THE
25 HEALTH, EDUCATION, MAINTENANCE AND SUPPORT, IN ORDER TO
26 MAINTAIN THE CUSTOMARY STANDARD OF LIVING OF THE PRINCIPAL'S
27 SPOUSE AND THE FOLLOWING INDIVIDUALS, WHETHER LIVING WHEN THE
28 POWER OF ATTORNEY IS EXECUTED OR LATER BORN:

29 (I) THE PRINCIPAL'S MINOR CHILDREN.

30 (II) OTHER INDIVIDUALS LEGALLY ENTITLED TO BE

1 SUPPORTED BY THE PRINCIPAL.

2 (III) THE INDIVIDUALS WHOM THE PRINCIPAL HAS
3 CUSTOMARILY SUPPORTED AND INTENDS TO SUPPORT.

4 (2) IN ACTING UNDER THIS SUBSECTION, THE AGENT SHALL:

5 (I) TAKE INTO ACCOUNT THE LONG-TERM NEEDS OF THE
6 PRINCIPAL.

7 (II) CONSIDER ANY INDEPENDENT MEANS AVAILABLE TO
8 THOSE INDIVIDUALS APART FROM THE SUPPORT PROVIDED BY THE
9 PRINCIPAL.

10 (3) AUTHORITY WITH RESPECT TO PERSONAL AND FAMILY
11 MAINTENANCE IS IN ADDITION TO AND NOT LIMITED BY AUTHORITY
12 THAT AN AGENT MAY OR MAY NOT HAVE OR COURT APPROVAL THAT MAY
13 BE NECESSARY WITH RESPECT TO GIFTS UNDER THIS CHAPTER.

14 SECTION 6. SECTION 5604(C)(1) OF TITLE 20 IS AMENDED AND
15 SUBSECTION (C) IS AMENDED BY ADDING A PARAGRAPH TO READ:

16 § 5604. DURABLE POWERS OF ATTORNEY.

17 * * *

18 (C) RELATION OF AGENT TO COURT-APPOINTED GUARDIAN.--

19 (1) IF, FOLLOWING EXECUTION OF A DURABLE POWER OF
20 ATTORNEY, THE PRINCIPAL [IS ADJUDICATED] BECOMES AN
21 INCAPACITATED PERSON AND A GUARDIAN IS APPOINTED FOR HIS
22 ESTATE, THE AGENT IS ACCOUNTABLE TO THE GUARDIAN AS WELL AS
23 TO THE PRINCIPAL. [THE GUARDIAN SHALL HAVE THE SAME POWER TO
24 REVOKE OR AMEND THE POWER OF ATTORNEY THAT THE PRINCIPAL
25 WOULD HAVE HAD IF HE WERE NOT AN INCAPACITATED PERSON.]

26 * * *

27 (3) IN ITS GUARDIANSHIP ORDER AND DETERMINATION OF A
28 PERSON'S INCAPACITY, THE COURT SHALL DETERMINE WHETHER AND
29 THE EXTENT TO WHICH THE INCAPACITATED PERSON'S DURABLE POWER
30 OF ATTORNEY REMAINS IN EFFECT.

1 * * *

2 SECTION 7. SECTION 5610 OF TITLE 20 IS AMENDED TO READ:

3 § 5610. ACCOUNT.

4 AN AGENT SHALL FILE AN ACCOUNT OF HIS ADMINISTRATION WHENEVER
5 DIRECTED TO DO SO BY THE COURT AND MAY FILE AN ACCOUNT AT ANY
6 OTHER TIME. ALL ACCOUNTS SHALL BE FILED IN THE OFFICE OF THE
7 CLERK IN THE COUNTY WHERE THE PRINCIPAL RESIDES. THE COURT MAY
8 ASSESS THE COSTS OF THE ACCOUNTING PROCEEDING AS IT DEEMS
9 APPROPRIATE, INCLUDING THE COSTS OF PREPARING AND FILING THE
10 ACCOUNT.

11 SECTION 8. TITLE 20 IS AMENDED BY ADDING A SECTION TO READ:
12 § 5612. JURISDICTION AND VENUE.

13 (A) COUNTY HAVING VENUE.--VENUE OF ANY MATTER PERTAINING TO
14 THE EXERCISE OF A POWER BY AN AGENT ACTING UNDER A POWER OF
15 ATTORNEY AS PROVIDED IN THIS CHAPTER SHALL BE IN THE COUNTY IN
16 WHICH THE PRINCIPAL IS DOMICILED, A RESIDENT OR RESIDING IN A
17 LONG-TERM CARE FACILITY.

18 (B) DECLINING JURISDICTION.--

19 (1) A COURT HAVING JURISDICTION MAY DECLINE TO EXERCISE
20 JURISDICTION IF AT ANY TIME IT DETERMINES THAT A COURT OF
21 ANOTHER COUNTY OR STATE IS A MORE APPROPRIATE FORUM.

22 (2) IF A COURT OF THIS COMMONWEALTH DECLINES TO EXERCISE
23 JURISDICTION, IT SHALL EITHER DISMISS THE PROCEEDING OR STAY
24 THE PROCEEDING UPON CONDITION THAT A PROCEEDING BE PROMPTLY
25 COMMENCED IN ANOTHER COUNTY OR STATE. A COURT MAY IMPOSE ANY
26 OTHER CONDITION THAT IT DEEMS APPROPRIATE.

27 Section ~~4~~ 9. Section 6103 of Title 20 is repealed:

<--

28 [§ 6103. Release or disclaimer of powers or interests.

29 (a) Powers and interests releasable.--Any power of
30 appointment, or power of consumption, whether general or

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

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

30 (c) Delivery of release or disclaimer.--Such release or

1 disclaimer may be delivered to any one of the following:

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

4 (2) Any trustee of the property to which the power or
5 interest relates.

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

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

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

19 Section 5 10. Title 20 is amended by adding a section to <--
20 read:

21 § 6103.1. Release of powers and interests and disclaimer of
22 powers.

23 (a) Interests releasable.--

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

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

29 (b) Effect of release of interest.--A releasor of an
30 interest in property shall be treated as having died at the time

1 of the release for purposes of determining and accelerating the
2 interests of other parties in the property.

3 (c) Nonfiduciary powers disclaimable or releasable.--A power
4 of appointment, power of withdrawal or other power held in a
5 nonfiduciary capacity may be disclaimed prior to its acceptance
6 or released after its acceptance.

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

<--

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

12 (2) A disclaimer or release under this subsection is
13 effective as to a successor fiduciary if the disclaimer or
14 release so provides.

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

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

18 (i) Be absolute or conditional.

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

21 (iii) Reduce or limit the persons or objects or
22 classes of persons or objects in whose favor the power or
23 interest would otherwise be exercisable.

24 (2) Unless the disclaimer or release so provides, a
25 disclaimer or release under this section shall not make
26 imperative a power or interest that was not imperative prior
27 to the disclaimer or release.

28 (f) Date of effect.--

29 (1) A disclaimer of a power held in a fiduciary capacity
30 that is not imperative takes effect as of the time the

instrument creating the power becomes irrevocable.

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

(D) TERMS OF DISCLAIMER OR RELEASE.--A RELEASE OF A POWER OR <--
INTEREST OR A DISCLAIMER OF A POWER UNDER THIS SECTION MAY:

(1) BE ABSOLUTE OR CONDITIONAL.

(2) BE MADE WITH RESPECT TO THE WHOLE OR ANY PART OF THE
PROPERTY SUBJECT TO THE POWER OR INTEREST.

(3) REDUCE OR LIMIT THE PERSONS OR OBJECTS OR CLASSES OF
PERSONS OR OBJECTS IN WHOSE FAVOR THE POWER OR INTEREST WOULD
OTHERWISE BE EXERCISABLE.

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

Section ~~6~~ 11. Title 20 is amended by adding a chapter to <--
read:

CHAPTER 76

POWERS OF APPOINTMENT

Sec.

7601. Definitions.

7602. Exercise of powers of appointment.

7603. Contract to exercise power.

7604. Manner of appointment.

7605. Antilapse provision.

7606. Partially effective exercise.

~~7607. Creditors' rights.~~ <--

§ 7601. Definitions.

The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Broad power of appointment." A power of appointment that
4 the donee may exercise in favor of any one or more of the
5 following:

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

7 (2) The donee.

8 (3) The donee's estate.

9 (4) Every person other than the donee, the donee's
10 creditors, the donee's estate or the creditors of the donee's
11 estate.

12 "Limited power of appointment." A power of appointment that
13 is not a broad power of appointment. The term includes a power
14 to appoint to the donee's creditors or the creditors of the
15 donee's estate.

16 § 7602. Exercise of powers of appointment.

17 (a) Broad power of appointment.--Subject to subsection (c),
18 in the absence of a contrary intent appearing in the instrument
19 creating a broad power of appointment or in the donee's
20 instrument exercising the power, a broad power of appointment
21 may be exercised only by the donee's instrument making:

22 (1) specific reference to the power;

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

25 (3) a testamentary or inter vivos gift specifically
26 describing the appointive property;

27 (4) an insufficiently funded testamentary pecuniary
28 legacy, to the extent to satisfy the legacy;

29 (5) a general testamentary gift; or

30 (6) a testamentary residuary gift.

1 (b) Limited power of appointment.--

2 (1) Subject to paragraph (2) and subsection (c), in the
3 absence of a contrary intent appearing in the instrument
4 creating a limited power of appointment or in the donee's
5 instrument exercising the power, a limited power of
6 appointment may be exercised only by the donee's instrument
7 making:

8 (i) specific reference to the power;

9 (ii) a testamentary or inter vivos gift specifically
10 describing the appointive property;

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

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

15 (2) The objects of the power described in paragraph (1)
16 (iii) and (iv) who have a common ancestor shall be only those
17 descendants of the common ancestor determined on a per
18 stirpes basis.

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

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

29 (e) Testamentary powers.--

30 (1) Notwithstanding any contrary provision in an

1 instrument creating a power of appointment, a testamentary
2 power of appointment shall not be exercisable in favor of the
3 donee or the donee's creditors.

4 (2) A grant of a testamentary power to appoint to the
5 donee's creditors shall be construed as a power to appoint to
6 the creditors of the donee's estate.

7 (3) An attempted exercise of a testamentary power of
8 appointment in favor of the donee's creditors shall be
9 construed as an exercise in favor of those creditors of the
10 donee's estate who were also creditors of the donee at the
11 time of the donee's death.

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

16 § 7603. Contract to exercise power.

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

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

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

29 § 7604. Manner of appointment.

30 (a) Outright or in trust.--Subject to section 7602(e)

1 (relating to exercise of powers of appointment), unless
2 expressly prohibited by the instrument creating a power of
3 appointment, a donee may exercise a power by appointing in any
4 manner, including, but not limited to:

5 (1) Appointing outright to one or more objects of the
6 power.

7 (2) Appointing to one or more trustees to hold the
8 appointive property in trust for the benefit of one or more
9 objects of the power and specifying the terms and
10 administrative provisions of the trust and the powers and
11 duties of the trustees, even if the trustees themselves are
12 not objects of the power.

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

20 (i) All the objects of the original power are among
21 the objects of the new power.

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

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

30 § 7605. Antilapse provision.

1 (a) General rule.--

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

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

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

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

12 (2) Paragraph (1) applies if:

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

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

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

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

1 power.

2 § 7606. Partially effective exercise.

3 In the absence of a contrary intent appearing in the
4 instrument creating a power of appointment or in the donee's
5 instrument exercising the power, a partially ineffective
6 exercise of a power of appointment shall not make ineffective
7 any otherwise effective portion of the exercise, unless the
8 appointment regarded as a whole constitutes such an integrated
9 plan that the parts cannot be separated without defeating the
10 plan.

11 ~~§ 7607. Creditors' rights.~~

<--

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

16 Section 7 12. Sections 7710.1(c), 7722 and 7740.7(b) of
17 Title 20 are amended to read:

<--

18 § 7710.1. Nonjudicial settlement agreements - UTC 111.

19 * * *

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

25 * * *

26 § 7722. Representation of parties in interest in general.

27 (a) Judicial proceeding.--In a judicial proceeding involving
28 a trust matter, an order or decree of the court that binds the
29 representative [or representatives] is binding upon a person,
30 class of persons or both represented in accordance with section

1 7723 (relating to representatives and persons represented) if:

2 (1) the trustee notifies the [representatives]
3 representative in writing whom [they represent, they do] he
4 represents, AND the representative does not decline the <--
5 representation as provided in section 7725 (relating to
6 notice of representation) [~~and {they act} the representative~~ <--
7 ~~acts~~ in good faith~~}.];~~ <--

8 (2) the A petitioner, WHETHER OR NOT A TRUSTEE, avers <--
9 the representation in the petition A PETITION BEFORE THE <--
10 COURT, the representative is the petitioner or a respondent
11 over whom the court has jurisdiction and, if a respondent,
12 the representative does not decline the representation in a
13 responsive pleading filed and served as required by law; or

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

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

23 (1) the trustee notifies the [representatives]
24 representative in writing whom [they represent, they do] he
25 represents, AND the representative does not decline the <--
26 representation as provided in section 7725 [~~and {they act}~~ <--
27 ~~the representative acts~~ in good faith~~}.]; or~~ <--

28 (2) the representative has signed a certification of
29 representation described in subsection (d) and has not
30 rescinded the certification in a writing received by the

1 trustee by the time of the nonjudicial settlement.

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

5 (d) Certification of representation.--

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

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

11 or

12 (ii) the trustee, in the case of a nonjudicial
13 resolution of a trust matter.

14 (2) A SUBJECT TO PARAGRAPH (3), A certification of
15 representation may be rescinded in a writing signed by the
16 representative and filed with:

<--

17 (i) the court at any time before the court acts in
18 reliance upon the certification, in the case of a
19 judicial proceeding; or

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

22 (3) A REPRESENTATIVE'S RESCISSION OF A CERTIFICATION OF
23 REPRESENTATION SHALL HAVE NO EFFECT UPON ACTIONS TAKEN BY A
24 TRUSTEE IN GOOD FAITH RELIANCE UPON THE CERTIFICATION.

<--

25 § 7740.7. Division of trusts.

26 * * *

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

1 * * *

2 Section 8 13. Section 7765(a), (b) and (c) of Title 20 are <--
3 amended and the section is amended by adding a subsection to
4 read:

5 § 7765. Resignation of trustee; filing resignation.

6 [(a) Court approval.--A trustee may resign with court
7 approval.

8 (b) Without court approval if authorized by trust
9 instrument.--A trustee may resign without court approval if
10 authorized to resign by the trust instrument.

11 (c) Without court approval and without authorization in
12 trust instrument.--

13 (1) Unless expressly provided to the contrary in the
14 trust instrument, an individual trustee may resign without
15 court approval and without authorization in the trust
16 instrument if:

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

19 (ii) all the qualified beneficiaries consent in
20 writing to the resignation.

21 (2) This subsection shall not authorize the sole trustee
22 of a trust to resign unless the trust instrument names a
23 successor trustee or provides a method for appointing a
24 successor trustee, and in either case the resignation shall
25 not be effective until the successor trustee accepts the
26 appointment in writing.]

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

28 (1) with court approval;

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

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

* * *

Section 9 14. Section 7780.3 of Title 20 is amended by
adding ~~a subsection~~ SUBSECTIONS to read:

§ 7780.3. Duty to inform and report.

* * *

(k.1) Nomination by current beneficiary.--A IN A WRITING
GIVEN TO THE TRUSTEE, A current beneficiary of a trust who has
capacity may nominate another person to receive, on behalf of
the current beneficiary, the notice NOTICES 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 BY GIVING THE NOTICES REQUIRED BY THIS
SECTION TO THE NOMINEE OF THE CURRENT BENEFICIARY, THE TRUSTEE
satisfies the trustee's duty to give to the named current
beneficiary the notice NOTICES required by this section if:

(1) the trustee notifies the nominee that the notice is
being given to the nominee as representing the named
REPRESENTATIVE OF THE current beneficiary AND THAT FUTURE
NOTICES REQUIRED BY THIS SECTION WILL BE GIVEN TO THE NOMINEE
IN THE SAME CAPACITY; and

(2) the nominee does not decline to receive the notice
NOTICES ON BEHALF OF THE CURRENT BENEFICIARY in a writing
that is given to the trustee no later than 60 days after
receipt of the trustee's notice DESCRIBED IN PARAGRAPH (1).

(K.2) RELIANCE ON NOMINATION.--THE TRUSTEE MAY RELY UPON THE
CURRENT BENEFICIARY'S NOMINATION OF ANOTHER PERSON TO RECEIVE
THE NOTICES REQUIRED BY THIS SECTION ON BEHALF OF THE CURRENT

BENEFICIARY AND THE NOMINEE'S PRESUMED ACCEPTANCE OF THAT
REPRESENTATION UNDER SUBSECTION (K.1) (2) UNTIL THE TRUSTEE
RECEIVES A WRITTEN RESCISSION OF THE NOMINATION FROM THE CURRENT
BENEFICIARY OR A WRITTEN DECLINATION TO RECEIVE FURTHER NOTICES
FROM THE NOMINEE. NO SUCH RESCISSION OR DECLINATION SHALL RENDER
INEFFECTIVE ANY NOTICE GIVEN BY THE TRUSTEE TO THE NOMINEE
BEFORE THE TRUSTEE RECEIVED THE RESCISSION OR DECLINATION.

* * *

SECTION 15. SECTION 7785(A) OF TITLE 20 IS AMENDED BY ADDING <--
PARAGRAPHS TO READ:

§ 7785. LIMITATION OF ACTION AGAINST TRUSTEE.

(A) IMPOSED BY TRUSTEE'S WRITTEN REPORTS.--

* * *

(3) IN A WRITING GIVEN TO THE TRUSTEE, A BENEFICIARY OF
A TRUST MAY NOMINATE ANOTHER PERSON TO RECEIVE, ON BEHALF OF
THE BENEFICIARY, THE REPORTS REQUIRED BY THIS SECTION. BY
GIVING THE REPORTS REQUIRED BY THIS SECTION TO THE NOMINEE OF
THE BENEFICIARY, THE TRUSTEE SATISFIES THE TRUSTEE'S DUTY TO
GIVE THE BENEFICIARY THE REPORTS REQUIRED BY THIS SECTION IF:

(I) THE TRUSTEE NOTIFIES THE NOMINEE THAT THE REPORT
AND FUTURE REPORTS REQUIRED BY THIS SECTION ARE BEING
GIVEN TO THE NOMINEE AS REPRESENTATIVE OF THE
BENEFICIARY; AND

(II) THE NOMINEE DOES NOT DECLINE TO RECEIVE REPORTS
ON BEHALF OF THE BENEFICIARY IN A WRITING GIVEN TO THE
TRUSTEE NO LATER THAN 60 DAYS AFTER RECEIPT OF THE NOTICE
DESCRIBED IN THIS SUBSECTION.

(4) THE TRUSTEE MAY RELY UPON THE BENEFICIARY'S
NOMINATION OF ANOTHER PERSON TO RECEIVE THE REPORTS REQUIRED
BY THIS SECTION ON BEHALF OF THE BENEFICIARY AND THE

1 NOMINEE'S PRESUMED ACCEPTANCE OF THAT REPRESENTATION UNDER
2 THIS SUBSECTION UNTIL THE TRUSTEE RECEIVES A WRITTEN
3 RESCISSION OF THE NOMINATION FROM THE BENEFICIARY OR A
4 WRITTEN DECLINATION TO RECEIVE FURTHER REPORTS FROM THE
5 NOMINEE. NO SUCH RESCISSION OR DECLINATION SHALL RENDER
6 INEFFECTIVE ANY REPORT GIVEN BY THE TRUSTEE TO THE NOMINEE
7 BEFORE THE TRUSTEE RECEIVED THE RESCISSION OR DECLINATION.

8 * * *

9 Section ~~10~~ 16. Section 7792 of Title 20 is amended to read: <--

10 § 7792. Powers, duties and liabilities identical with personal
11 representatives.

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

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

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

21 Section 3323 (relating to compromise of controversies).

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

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

24 Section 3353 (relating to order of court).

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

27 Section 3355 (relating to restraint of sale).

28 Section 3356 (relating to purchase by personal
29 representative).

30 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 ~~44~~ 17. 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 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 4947(a)(1) or (2)), which is or is treated as a private foundation under section 509 of the Internal Revenue Code of 1986 (26 U.S.C. § 509).

(2) A trust governed by Pennsylvania law that is or is

1 treated as a pooled income fund under section 642(c)(5) of
2 the Internal Revenue Code of 1986 (26 U.S.C. § 642(c)(5)).
3 § 7903. Deemed provisions of governing instrument.

4 (a) Effect of deemed provisions.--The governing instrument
5 of a charitable organization is deemed to include provisions,
6 the effects of which are to:

7 (1) Require distributions for each taxable year in such
8 amounts and at such times and in such manner as not to
9 subject the organization to tax under section 4942 of the
10 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
11 4942).

12 (2) Prohibit the organization from:

13 (i) Engaging in an act of self-dealing, as defined
14 in section 4941(d) of the Internal Revenue Code of 1986
15 (26 U.S.C. § 4941(d)).

16 (ii) Retaining excess business holdings, as defined
17 in section 4943(c) of the Internal Revenue Code of 1986
18 (26 U.S.C. § 4943(c)).

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

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

25 (b) Effect of contrary provision.--The deemed provisions
26 under subsection (a) supersede any contrary provision of the
27 governing instrument.

28 (c) Applicability.--This section applies only to the extent
29 that the charitable organization is subject to one or more of
30 the sections of the Internal Revenue Code of 1986 set forth in

1 subsection (a).

2 § 7904. Power to amend governing instrument.

3 The trustees or directors of every charitable organization
4 have the power, acting alone, without the approval of a member,
5 court, donor or beneficiary, to amend the instrument governing
6 the charitable organization in any manner required for the sole
7 purpose of ensuring that:

8 (1) Gifts and bequests to the charitable organization
9 qualify for charitable deductions available for Federal
10 income, gift and estate tax purposes.

11 (2) The charitable organization qualifies for tax
12 exemptions available for Federal income tax purposes.

13 § 7905. Court authority.

14 Nothing in this chapter precludes a court of competent
15 jurisdiction from authorizing a deviation from the express terms
16 of an instrument governing a charitable organization.

17 § 7906. Applicability.

18 This chapter shall apply to:

19 (1) A charitable organization created after December 31,
20 1969.

21 (2) A charitable organization created before January 1,
22 1970, unless a court of competent jurisdiction in a
23 proceeding instituted before January 1, 1972, explicitly
24 decided that the operation of this chapter would
25 substantially impair the accomplishment of the purposes of
26 the charitable organization involved in that proceeding.

27 ~~Section 12~~ 18. Section 8113(f) of Title 20 is amended to
28 read:

29 § 8113. Charitable trusts.

30 * * *

<--

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

Section ~~13~~ 19. This act shall apply as follows: <--

(1) EXCEPT AS SET FORTH IN PARAGRAPH (2), THIS ACT SHALL <--
APPLY TO ALL POWERS OF ATTORNEY EXECUTED ON OR AFTER THE
EFFECTIVE DATE OF THIS SECTION.

(2) (I) NOTHING IN THIS ACT SHALL BE CONSTRUED TO LIMIT
THE EFFECTIVENESS OF POWERS OF ATTORNEY IN EFFECT PRIOR
TO THE EFFECTIVE DATE OF THIS SECTION.

(II) THE AMENDMENT OF 20 PA.C.S. § 5603(R) SHALL
APPLY TO ALL POWERS OF ATTORNEY EXECUTED BEFORE, ON OR
AFTER THE EFFECTIVE DATE OF THIS SECTION.

~~(1)~~ (3) The addition of 20 Pa.C.S. Ch. 76 shall apply to <--
all powers of appointment created before, on or after the
effective date of that chapter.

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

(i) All activities initiated under the Charitable
Instruments Act of 1971 shall continue and remain in full
force and effect and may be completed under 20 Pa.C.S.
Ch. 79. Resolutions, orders, regulations, rules and
decisions which were made under the Charitable
Instruments Act of 1971 and which are in effect on the
effective date of this section shall remain in full force

1 and effect until revoked, vacated or modified under 20
2 Pa.C.S. Ch. 79. Contracts, obligations and agreements
3 entered into under the Charitable Instruments Act of 1971
4 are not affected nor impaired by the repeal of the
5 Charitable Instruments Act of 1971.

6 (ii) Any difference in language between 20 Pa.C.S.
7 Ch. 79 and the Charitable Instruments Act of 1971 is
8 intended only to conform to the style of the Pennsylvania
9 Consolidated Statutes and is not intended to change or
10 affect the legislative intent, judicial construction or
11 administrative interpretation and implementation of the
12 Charitable Instruments Act of 1971.

13 Section ~~14~~ 20. Repeals are as follows: <--

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

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

19 Section ~~15~~ 21. This act shall take effect as follows: <--

20 (1) The following provisions shall take effect ~~in 60~~ <--
21 ~~days~~ JANUARY 1, 2015, OR IN 180 DAYS, WHICHEVER IS LATER: <--

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

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

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

25 (IV) THE AMENDMENT OF 20 PA.C.S. § 5456(A). <--

26 (V) THE AMENDMENT OF 20 PA.C.S. § 5460(A).

27 (VI) THE ADDITION OF 20 PA.C.S. § 5602(A)(24) AND
28 (25).

29 (VII) THE AMENDMENT OR ADDITION OF 20 PA.C.S. §
30 5603(D), (R), (U.2) AND (U.3).

1 (VIII) THE AMENDMENT OR ADDITION OF 20 PA.C.S. §
2 5604(C) (1) AND (3) .
3 (IX) THE AMENDMENT OF 20 PA.C.S. § 5610.
4 (X) THE ADDITION OF 20 PA.C.S. § 5612.
5 ~~(iv)~~ (XI) The repeal of 20 Pa.C.S. § 6103. <--
6 ~~(v)~~ (XII) The addition of 20 Pa.C.S. § 6103.1. <--
7 ~~(vi)~~ (XIII) The amendment of 20 Pa.C.S. § 7710.1(c) . <--
8 ~~(vii)~~ (XIV) The amendment of 20 Pa.C.S. § 7722. <--
9 ~~(viii)~~ (XV) The amendment of 20 Pa.C.S. § 7740.7(b) . <--
10 ~~(ix)~~ (XVI) The amendment or addition of 20 Pa.C.S. § <--
11 7765(a), (a.1), (b) and (c) .
12 ~~(x)~~ (XVII) The addition of 20 Pa.C.S. § 7780.3(k.1) <--
13 AND (K.2) . <--
14 (XVIII) THE ADDITION OF 20 PA.C.S. § 7785(A) (3) AND <--
15 (4) .
16 ~~(xi)~~ (XIX) The amendment of 20 Pa.C.S. § 7792. <--
17 (XX) SECTION 19(1) AND (2) . <--
18 (2) The remainder of this act shall take effect
19 immediately.