

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1035 Session of
2022

INTRODUCED BY BROWNE, MENSCH, STEFANO, PITTMAN AND SCHWANK,
JANUARY 26, 2022

REFERRED TO JUDICIARY, JANUARY 26, 2022

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in trusts, further
3 providing for definitions, for trust instrument controls and
4 mandatory rules - UTC 105, for governing law - UTC 107, for
5 situs of trust, for nonjudicial settlement agreements - UTC
6 111, for charitable purposes; enforcement - UTC 405, for
7 trust for care of animal - UTC 408, for noncharitable trust
8 without ascertainable beneficiary - UTC 409, for reformation
9 to correct mistakes - UTC 415, for modification to achieve
10 settlor's tax objectives - UTC 416, for spendthrift provision
11 - UTC 502, for creditor's claim against settlor - UTC 505(a),
12 for overdue distribution - UTC 506, for revocation or
13 amendment of revocable trust - UTC 602, for trustee's duties
14 and powers of withdrawal - UTC 603, for accepting or
15 declining trusteeship - UTC 701, for trustee's bond - UTC
16 702, for cotrustees - UTC 703, for vacancy in trusteeship and
17 appointment of successor - UTC 704, for resignation of
18 trustee and filing resignation, for compensation of trustee -
19 UTC 708, for duty to administer trust - UTC 801, for duty of
20 loyalty - UTC 802, for powers to direct - UTC 808, for duty
21 to inform and report, for discretionary powers and for powers
22 of trustees - UTC 815, providing for directed trusts, further
23 providing for remedies for breach of trust--UTC 1001,
24 providing for nonjudicial account settlement and further
25 providing for reliance on trust instrument - UTC 1006, for
26 exculpation of trustee - UTC 1008, for certification of trust
27 - UTC 1013 and for title of purchaser.

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

30 Section 1. The definitions of "interests of the

1 beneficiaries" and "spendthrift provision" in section 7703 of
2 Title 20 of the Pennsylvania Consolidated Statutes are amended
3 and the section is amended by adding definitions to read:

4 § 7703. Definitions - UTC 103.

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

8 * * *

9 "Breach of trust." A violation by a trustee or trust
10 director of a duty that the trustee or trust director owes to a
11 beneficiary of the trust.

12 * * *

13 "Interests of the beneficiaries." The beneficial interests
14 provided in the [trust instrument] terms of a trust.

15 * * *

16 "Power of appointment." A power given to a person by the
17 terms of a trust, exercisable in a nonfiduciary capacity, to
18 grant and define a beneficial interest in trust property or to
19 grant a power of appointment over the trust property.

20 * * *

21 "Spendthrift provision." A [provision in a trust instrument]
22 term of a trust that restrains both voluntary and involuntary
23 transfer of a beneficiary's interest.

24 "Terms of a trust." Either of the following:

25 (1) Except as otherwise provided in paragraph (2), the
26 manifestation of the settlor's intent expressed in the trust
27 instrument.

28 (2) The trust's provisions, as established, determined
29 or amended by a trustee or other person in accordance with
30 applicable law, by a court order or by a nonjudicial

1 settlement agreement under section 7710.1 (relating to
2 nonjudicial settlement agreements - UTC 111) or rules of
3 construction.

4 * * *

5 Section 2. Sections 7705 heading, (a), (b) introductory
6 paragraph, (2) and (7), 7707, 7708(a), (b) heading and
7 introductory paragraph and (f), 7710.1(b) and (d) (1), 7735(b)
8 and (c), 7738(b) and (c), 7739(2) and (3), 7740.5, 7740.6,
9 7742(b), 7745 introductory paragraph, 7746(b) and 7752(a), (c)
10 and (e) of Title 20 are amended to read:

11 § 7705. Trust [instrument] controls; mandatory rules - UTC 105.

12 (a) Trust [instrument] controls.--Except as provided in
13 subsection (b), the [provisions] terms of a trust [instrument]
14 prevail over any contrary provisions of this chapter.

15 (b) Mandatory rules.--Notwithstanding a contrary provision
16 in the terms of the trust [instrument], the following rules
17 apply:

18 * * *

19 (2) [The] Subject to sections 7780.20 (relating to duty
20 and liability of directed trustee - UDTA 9), 7780.22
21 (relating to no duty to monitor, inform or advise - UDTA 11)
22 and 7780.23 (relating to application of cotrustee - UDTA 12),
23 the duty of a trustee to act in good faith and in accordance
24 with the terms and purposes of the trust as set forth in
25 section 7771 (relating to duty to administer trust - UTC
26 801).

27 * * *

28 (7) The power of the court under section 7768(b)
29 (relating to compensation of trustee - UTC 708) to adjust a
30 trustee's compensation specified in the terms of the trust

1 [instrument].

2 * * *

3 § 7707. Governing law - UTC 107.

4 The meaning and effect of the [provisions] terms of a trust
5 [instrument] shall be determined by:

6 (1) the law of the jurisdiction designated in the terms
7 of the trust [instrument], but the mandatory rules of section
8 7705(b) (relating to trust [instrument] controls; mandatory
9 rules - UTC 105) shall govern if different from the law of
10 the designated jurisdiction [designated in the trust
11 instrument]; or

12 (2) in the absence of an effective designation in the
13 terms of the trust [instrument], the law of the jurisdiction
14 in which the settlor is domiciled when the trust becomes
15 irrevocable.

16 § 7708. Situs of trust.

17 (a) Specified in trust [instrument].--Without precluding
18 other means for establishing a sufficient connection with the
19 designated jurisdiction, [provisions] the terms of a trust
20 [instrument] designating the situs of the trust are valid and
21 controlling if:

22 (1) a trustee's principal place of business is located
23 in or a trustee is a resident of the designated jurisdiction;

24 (2) all or part of the trust administration occurs in
25 the designated jurisdiction; [or]

26 (3) one or more of the beneficiaries resides in the
27 designated jurisdiction[.]; or

28 (4) a trust director's principal place of business is
29 located in or a trust director is a resident of the
30 designated jurisdiction.

1 (b) Unspecified in trust [instrument].--If the terms of a
2 trust [instrument does] do not specify a situs:

3 * * *

4 (f) Successor trustee.--In connection with a transfer of the
5 trust's situs, the trustee may transfer some or all of the trust
6 property to a successor trustee designated in the terms of a
7 trust [instrument] or appointed pursuant to section 7764
8 (relating to vacancy in trusteeship; appointment of successor -
9 UTC 704).

10 * * *

11 § 7710.1. Nonjudicial settlement agreements - UTC 111.

12 * * *

13 (b) General rule.--Except as otherwise provided in
14 subsection (c), all beneficiaries [and trustees of], all
15 trustees and other persons, if any, who have an interest in a
16 matter relating to a trust may enter into a binding nonjudicial
17 settlement agreement with respect to [any matter involving the
18 trust] the matter. The rules of Subchapter C (relating to
19 representation) shall apply to a settlement agreement under this
20 section. Persons having interests in the matter shall be the
21 same as indispensable parties to a court action seeking the same
22 result.

23 * * *

24 (d) Matters that may be resolved.--Matters that may be
25 resolved by a nonjudicial settlement agreement include the
26 following:

27 (1) The interpretation or construction of the
28 [provisions] terms of a trust [instrument].

29 * * *

30 § 7735. Charitable purposes; enforcement - UTC 405.

1 * * *

2 (b) Selection by court.--If the [provisions] terms of a
3 charitable trust [instrument] do not indicate or authorize the
4 trustee to select a particular charitable purpose or
5 beneficiary, the court may select one or more charitable
6 purposes or beneficiaries. The selection must be consistent with
7 the settlor's intention to the extent it can be ascertained.

8 (c) Proceeding to enforce trust.--A proceeding to enforce a
9 charitable trust may be brought by the settlor during the
10 settlor's lifetime or at any time by the Attorney General, a
11 charitable organization expressly named in the terms of the
12 trust [instrument] to receive distributions from the trust or
13 any other person who has standing to do so.

14 § 7738. Trust for care of animal - UTC 408.

15 * * *

16 (b) Enforcement.--A trust authorized by this section may be
17 enforced by a person appointed in the terms of the trust
18 [instrument] or, if no person is so appointed, by a person
19 appointed by the court. A person having an interest in the
20 welfare of the animal may request the court to appoint a person
21 to enforce the trust or to remove a person appointed.

22 (c) Limitation.--Property of a trust authorized by this
23 section may be applied only to its intended use, except to the
24 extent the court determines that the value of the trust property
25 exceeds the amount required for the intended use. Except as
26 otherwise provided in the terms of the trust [instrument],
27 property not required for the intended use must be distributed
28 to the settlor if then living, otherwise to the settlor's
29 successors in interest.

30 § 7739. Noncharitable trust without ascertainable beneficiary -

1 UTC 409.

2 Except as otherwise provided in section 7738 (relating to
3 trust for care of animal - UTC 408) or by another statute:

4 * * *

5 (2) A trust authorized by this section may be enforced
6 by a person appointed in the terms of the trust [instrument]
7 or, if no person is so appointed, by a person appointed by
8 the court.

9 (3) Property of a trust authorized by this section may
10 be applied only to its intended use, except to the extent the
11 court determines that the value of the trust property exceeds
12 the amount required for the intended use. Except as otherwise
13 provided in the terms of the trust [instrument], property not
14 required for the intended use must be distributed to the
15 settlor if then living, otherwise to the settlor's successors
16 in interest.

17 § 7740.5. Reformation to correct mistakes - UTC 415.

18 The court may reform the terms of a trust [instrument], even
19 if unambiguous, to conform to the settlor's probable intention
20 if it is proved by clear and convincing evidence that both the
21 settlor's intent [as expressed in] and the terms of the trust
22 [instrument was] were affected by a mistake of fact or law,
23 whether in expression or inducement. The court may provide that
24 the modification have retroactive effect.

25 § 7740.6. Modification to achieve settlor's tax objectives -
26 UTC 416.

27 The court may modify the terms of a trust [instrument] in a
28 manner that is not contrary to the settlor's probable intention
29 in order to achieve the settlor's tax objectives. The court may
30 provide that the modification have retroactive effect.

1 § 7742. Spendthrift provision - UTC 502.

2 * * *

3 (b) Creation.--A term of a trust [instrument] providing that
4 the interest of a beneficiary is held subject to a "spendthrift
5 trust," or words of similar import, is sufficient to restrain
6 both voluntary and involuntary transfer of the beneficiary's
7 interest.

8 * * *

9 § 7745. Creditor's claim against settlor - UTC 505(a).

10 Whether or not the terms of a trust [instrument contains]
11 contain a spendthrift provision and notwithstanding section 7744
12 (relating to discretionary trusts; effect of standard - UTC
13 504):

14 * * *

15 § 7746. Overdue distribution - UTC 506.

16 * * *

17 (b) Definition.--As used in this section, the term
18 "mandatory distribution" means a distribution of income or
19 principal that the trustee is required by the terms of the trust
20 [instrument] to make to a beneficiary, including a distribution
21 upon the termination of the trust. The term excludes a
22 distribution that is subject to the exercise of the trustee's
23 discretion regardless of whether the terms of the trust
24 [instrument includes] include a support or other standard to
25 guide the trustee in making distribution decisions or provides
26 that the trustee "may" or "shall" make discretionary
27 distributions, including distributions pursuant to a support or
28 other standard.

29 § 7752. Revocation or amendment of revocable trust - UTC 602.

30 (a) Power to revoke or amend.--The settlor may revoke or

1 amend a trust unless the terms of the trust [instrument]
2 expressly [provides] provide that the trust is irrevocable.

3 * * *

4 (c) How to revoke or amend.--The settlor may revoke or amend
5 a revocable trust only:

6 (1) by substantial compliance with a method provided in
7 the terms of the trust [instrument]; or

8 (2) if the terms of the trust [instrument does] do not
9 provide a method or the method provided in the terms of the
10 trust [instrument] is not expressly made exclusive, by a
11 later writing, other than a will or codicil, that is signed
12 by the settlor and expressly refers to the trust or
13 specifically conveys property that would otherwise have
14 passed according to the terms of the trust [instrument].

15 * * *

16 (e) Agent.--A settlor's powers with respect to revocation or
17 amendment of the nondispositive provisions of or withdrawal of
18 property from a trust may be exercised by an agent under a power
19 of attorney only to the extent expressly authorized by the terms
20 of the trust [instrument] or the power. The agent under a power
21 of attorney that expressly authorizes the agent to do so may
22 amend the dispositive provisions of a revocable trust as the
23 court may direct.

24 * * *

25 Section 3. Section 7753(a) of Title 20 is amended and the
26 section is amended by adding a subsection to read:

27 § 7753. Trustee's duties; powers of withdrawal - UTC 603.

28 (a) Power of settlor.--Regardless of the legal capacity of
29 the settlor, the rights of the beneficiaries are subject to the
30 control of, and the duties of the trustee are owed exclusively

1 to, the settlor [while] to the extent a trust is revocable.

2 * * *

3 (c) Direction contrary to trust terms.--While a trust is
4 revocable, the trustee may follow a written direction of the
5 settlor that is contrary to the terms of the trust. To the
6 extent a trust is revocable by a settlor in conjunction with
7 other persons, the trustee may follow a written direction from
8 the settlor and those persons that is contrary to the terms of
9 the trust.

10 Section 4. Sections 7761(a), 7762(a) and (c), 7763(a.1), (c)
11 and (g), 7764(b), (c) (1) and (d) (1), 7765(a.1) (2), 7768(a) and
12 (b), 7771, 7772(b) (1) and 7778 of Title 20 are amended to read:
13 § 7761. Accepting or declining trusteeship - UTC 701.

14 (a) Accepting trusteeship.--Except as otherwise provided in
15 subsection (c), a person designated as trustee accepts the
16 trusteeship:

17 (1) by substantially complying with a method of
18 acceptance provided in the terms of the trust [instrument];
19 or

20 (2) if the terms of the trust [instrument does] do not
21 provide a method or the method provided in the terms of the
22 trust [instrument] is not expressly made exclusive, by
23 accepting delivery of the trust property, exercising powers
24 or performing duties as trustee or by otherwise indicating
25 acceptance of the trusteeship.

26 * * *

27 § 7762. Trustee's bond - UTC 702.

28 (a) When required.--A trustee shall give bond to secure
29 performance of the trustee's duties only if the court finds that
30 a bond is needed to protect the interests of the beneficiaries

1 or is required by the [provisions] terms of the trust
2 [instrument] and the court has not dispensed with the
3 requirement.

4 * * *

5 (c) Institutional trustees.--An institution qualified to do
6 trust business in this Commonwealth need not give bond even if
7 required by the terms of the trust [instrument].

8 § 7763. Cotrustees - UTC 703.

9 * * *

10 (a.1) When no majority.--When a dispute arises among
11 trustees as to the exercise or nonexercise of any of their
12 powers and there is no agreement by a majority of them, unless
13 otherwise provided by the terms of the trust [instrument], the
14 court in its discretion, upon petition filed by any of the
15 trustees or any party in interest, aided if necessary by the
16 report of a master, may direct the exercise or nonexercise of
17 the power as it deems necessary for the best interest of the
18 trust.

19 * * *

20 (c) Performance.--[A] Subject to section 7780.23 (relating
21 to application to cotrustee - UDTA 12), a cotrustee shall
22 participate in the performance of a trustee's function unless
23 the cotrustee is unavailable to perform the function because of
24 absence, illness, disqualification under the law or other reason
25 or the cotrustee has properly delegated the performance of the
26 function to another trustee.

27 * * *

28 (g) Reasonable care.--[Each] Subject to section 7780.23,
29 each trustee shall exercise reasonable care to:

30 (1) prevent a cotrustee from committing a breach of

1 trust involving fraud or self-dealing; and

2 (2) compel a cotrustee to redress a breach of trust
3 involving fraud or self-dealing.

4 * * *

5 § 7764. Vacancy in trusteeship; appointment of successor - UTC
6 704.

7 * * *

8 (b) Filling of vacancy.--A vacancy in a trusteeship need not
9 be filled if one or more cotrustees remain in office and the
10 terms of the trust [instrument does] do not require that it be
11 filled. A vacancy shall be filled if the trust has no remaining
12 trustee.

13 (c) Filling vacancy for noncharitable trust.--A vacancy in a
14 trusteeship of a noncharitable trust that is required to be
15 filled shall be filled in the following order of priority:

16 (1) by a person designated in or pursuant to the
17 [provisions] terms of the trust [instrument] to act as
18 successor trustee;

19 * * *

20 (d) Filling vacancy for charitable trust.--A vacancy in a
21 trusteeship of a charitable trust that is required to be filled
22 shall be filled in the following order of priority:

23 (1) by a person designated in or [under] pursuant to the
24 [provisions] terms of the trust [instrument] to act as
25 successor trustee;

26 * * *

27 § 7765. Resignation of trustee; filing resignation.

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

29 * * *

30 (2) without court approval if authorized to resign by

1 the terms of the trust [instrument]; or

2 * * *

3 § 7768. Compensation of trustee - UTC 708.

4 (a) If unspecified.--If neither the terms of a trust
5 [instrument] nor a separate written agreement signed by the
6 settlor or anyone who is authorized by the terms of the trust
7 [instrument] to do so specifies the trustee's compensation, the
8 trustee is entitled to compensation that is reasonable under the
9 circumstances. Neither a compensation provision in the terms of
10 a trust [instrument] nor a fee agreement governs compensation
11 payable from trust principal unless it explicitly so provides.

12 (b) If specified; adjustment.--If the terms of a trust
13 [instrument] or written fee agreement signed by the settlor or
14 anyone who is authorized by the terms of the trust [instrument]
15 to do so specifies a trustee's compensation, the trustee is
16 entitled to the specified compensation. The court may allow
17 reasonable compensation that is more or less than that specified
18 if:

19 (1) the duties of the trustee have become substantially
20 different from those contemplated when the trust was created
21 or when the fee agreement was executed;

22 (2) the compensation specified in the terms of the trust
23 [instrument] or fee agreement would be unreasonable; or

24 (3) the trustee performed extraordinary services, and
25 the [trust instrument or fee agreement does not specify the]
26 trustee's compensation for those services is not specified in
27 the terms of the trust or fee agreement.

28 * * *

29 § 7771. Duty to administer trust - UTC 801.

30 Upon acceptance of a trusteeship, the trustee shall

1 administer the trust in good faith, in accordance with its
2 [provisions] terms and purposes and the interests of the
3 beneficiaries and in accordance with applicable law.

4 § 7772. Duty of loyalty - UTC 802.

5 * * *

6 (b) Effect of conflict of interest.--Subject to the rights
7 of persons dealing with or assisting the trustee as provided in
8 section 7790.2 (relating to protection of person dealing with
9 trustee - UTC 1012), a sale, purchase, exchange, encumbrance or
10 other disposition of property between a trust and either the
11 trustee in the trustee's individual capacity or one of the
12 persons identified in subsection (c) is voidable by a court upon
13 application by a beneficiary affected by the transaction unless:

14 (1) the transaction was authorized by the terms of the
15 trust [instrument];

16 * * *

17 § 7778. Powers to direct [- UTC 808].

18 [(a) Direction of settlor.--While a trust is revocable, the
19 trustee may follow a written direction of the settlor that is
20 contrary to the trust instrument.]

21 [(b) Compliance with power.--If a trust instrument confers
22 upon a person other than the settlor of a revocable trust power
23 to direct certain actions of the trustee, the trustee shall act
24 in accordance with a written exercise of the power unless the
25 attempted exercise is manifestly contrary to the trust
26 instrument or the trustee knows the attempted exercise would
27 constitute a serious breach of a fiduciary duty that the person
28 holding the power owes to the beneficiaries of the trust.]

29 [(c) Modification or termination of trust.--A trust
30 instrument may confer upon a trustee or other person a power to

1 modify or terminate the trust.

2 (d) Fiduciary relationship.--A person other than a
3 beneficiary who holds a power to direct certain actions of a
4 trustee is presumptively a fiduciary who, as such, is required
5 to act in good faith with regard to the purposes of the trust
6 and the interests of the beneficiaries. The holder of a power to
7 direct is liable for any loss that results from breach of the
8 holder's fiduciary duty.]

9 (e) Directed trust.--If the terms of a trust provide that a
10 person who is not a trustee may direct a trustee to take or not
11 take certain actions, or that a person who is not a trustee may
12 change the terms of the trust, Subchapter H.1 (relating to
13 directed trusts) applies.

14 Section 5. Section 7780.3(a) and (k) introductory paragraph
15 of Title 20 are amended and subsection (i) is amended by adding
16 a paragraph to read:

17 § 7780.3. Duty to inform and report.

18 (a) Duty to respond to requests.--A trustee shall promptly
19 respond to a reasonable request by the settlor of a trust or by
20 a beneficiary of an irrevocable trust for information related to
21 the trust's administration. A trustee shall promptly respond to
22 the Department of [Public Welfare's] Human Services' reasonable
23 request for information related to the trust's administration
24 when a settlor or beneficiary is a resident in a State-owned
25 facility or an applicant for or recipient of cash or medical
26 assistance from the Commonwealth and the department certifies in
27 writing that it has obtained a currently valid consent for the
28 disclosure of such information from the settlor or beneficiary
29 of the trust. A trustee may rely upon the department's
30 certification without investigating its accuracy.

1 * * *

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

5 * * *

6 (6) The name, address and telephone number of each trust
7 director.

8 * * *

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

18 * * *

19 Section 6. Sections 7780.4 and 7780.5(a) of Title 20 are
20 amended to read:

21 § 7780.4. Discretionary powers.

22 The trustee shall exercise a discretionary power in good
23 faith and in accordance with the [provisions] terms and purposes
24 of the trust and the interests of the beneficiaries,
25 notwithstanding the breadth of discretion granted to a trustee
26 [in] by the terms of the trust [instrument], including the use
27 of such terms as "absolute," "sole" or "uncontrolled."

28 § 7780.5. Powers of trustees - UTC 815.

29 (a) Exercise of power.--Except as otherwise provided in the
30 terms of the trust [instrument] or in other provisions of this

1 title, a trustee has all the powers over the trust property that
2 an unmarried competent owner has over individually owned
3 property and may exercise those powers without court approval
4 from the time of creation of the trust until final distribution
5 of the assets of the trust.

6 * * *

7 Section 7. Chapter 77 of Title 20 is amended by adding a
8 subchapter to read:

9 SUBCHAPTER H.1

10 DIRECTED TRUSTS

11 Sec.

12 7780.11. Short title of subchapter.

13 7780.12. Definitions - UDTA 2.

14 7780.13. Application - UDTA 3.

15 7780.14. Exclusions - UDTA 5.

16 7780.15. Powers of trust director and shared powers - UDTA 6.

17 7780.16. Trust director for investments.

18 7780.17. Trust protector.

19 7780.18. Limitations on powers of trust director - UDTA 7.

20 7780.19. Duty and liability of trust director - UDTA 8.

21 7780.20. Duty and liability of directed trustee - UDTA 9.

22 7780.21. Duty to provide information to trust director or

23 directed trustee - UDTA 10.

24 7780.22. No duty to monitor, inform or advise - UDTA 11.

25 7780.23. Application to cotrustee - UDTA 12.

26 7780.24. Limitation of action against trust director - UDTA 13.

27 7780.25. Defenses in action against trust director - UDTA 14.

28 7780.26. Jurisdiction over trust director - UDTA 15.

29 7780.27. Office of trust director - UDTA 16.

30 § 7780.11. Short title of subchapter.

1 This subchapter shall be known and may be cited as the
2 Directed Trust Act.

3 § 7780.12. Definitions - UDTA 2.

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

7 "Directed trust." A trust for which the terms of the trust
8 grant a power of direction.

9 "Directed trustee." A trustee that is subject to a trust
10 director's power of direction.

11 "Power of direction." As follows:

12 (1) A power over a trust granted to a person by the
13 terms of the trust to the extent the power is exercisable
14 while the person is not serving as a trustee.

15 (2) The term includes a power over the investment,
16 management or distribution of trust property or other matters
17 of trust administration and, in the case of a trust
18 protector, may include powers to modify the terms of the
19 trust.

20 (3) A power of direction includes incidental powers that
21 are appropriate and necessary to the exercise or nonexercise
22 of the power of direction. The rules specified in this
23 subchapter govern the exercise of such incidental powers.

24 "Trust director." As follows:

25 (1) A person that is granted a power of direction by the
26 terms of a trust to the extent the power is exercisable while
27 the person is not serving as a trustee.

28 (2) A beneficiary or settlor of a trust may serve as a
29 trust director of the trust.

30 "Trust protector." A trust director authorized by the terms

1 of a trust to modify one or more terms of the trust.

2 "Willful misconduct." As follows:

3 (1) Intentional conduct that is malicious, designed to
4 defraud or unconscionable.

5 (2) Mere negligence, gross negligence and recklessness
6 do not constitute "willful misconduct."

7 § 7780.13. Application - UDTA 3.

8 (a) General rule.--This subchapter applies to a trust,
9 whenever and wherever created, that is governed by Pennsylvania
10 law.

11 (b) Exclusion.--This subchapter has no application to
12 decisions or actions that occurred before the effective date of
13 this subchapter.

14 § 7780.14. Exclusions - UDTA 5.

15 This subchapter does not apply to:

16 (1) A power of appointment.

17 (2) A power held by the settlor or a beneficiary of a
18 trust to appoint or remove a trustee or a trust director
19 unless the terms of the trust provide that the power is
20 exercisable by the settlor or beneficiary acting as a trust
21 director.

22 (3) A settlor's power over a trust to the extent the
23 settlor may revoke the trust.

24 (4) A power of a beneficiary over a trust to the extent
25 the exercise or nonexercise of the power affects the
26 beneficial interest of:

27 (i) the beneficiary; or

28 (ii) another beneficiary who is represented by the
29 beneficiary under Subchapter C (relating to
30 representation) with respect to the exercise or

1 nonexercise of the power.

2 (5) A power over a trust that must be held in a
3 nonfiduciary capacity to achieve the settlor's tax objectives
4 under the Internal Revenue Code of 1986 (Public Law 99-514,
5 26 U.S.C. § 1 et seq.), as amended, and regulations issued
6 thereunder, as amended.

7 § 7780.15. Powers of trust director and shared powers - UDTA 6.

8 (a) Grant of powers.--The terms of a trust may grant a power
9 of direction to one or more trust directors. A power of
10 direction may extend to any one or more of a trustee's powers,
11 subject to section 7780.18 (relating to limitations on powers of
12 trust director - UDTA 7).

13 (b) Shared powers.--Trust directors that share powers may
14 act by majority decision unless the terms of the trust provide
15 otherwise.

16 § 7780.16. Trust director for investments.

17 The explicit appointment by the terms of a trust of a "trust
18 director for investments," accompanied by a citation to this
19 section, grants to the trust director the following powers
20 unless the terms of the trust provide otherwise:

21 (1) To direct the trustee, or veto the trustee's
22 recommendations, as to the investment of the trust's assets.

23 (2) To direct the trustee, or veto the trustee's
24 recommendations, as to the voting of proxies and the exercise
25 of other voting powers associated with the trust's assets.

26 (3) To select, change and determine reasonable
27 compensation of one or more investment advisors or managers,
28 and authorize or engage them to perform any of the investment
29 duties of a trustee or trust director.

30 (4) To determine the frequency and methodology for

1 valuing trust assets.

2 (5) To exercise, or veto the trustee's exercise of, any
3 other investment power the trustee has or might have.

4 (6) To perform other acts relating to the investment of
5 the trust's assets as the terms of the trust specify.

6 § 7780.17. Trust protector.

7 (a) General rule.--The terms of a trust may expressly grant
8 to a trust director powers, alone or together with powers to
9 direct a trustee's actions, to modify the terms of a trust. In
10 that event, the trust director is a trust protector.

11 (b) Illustrative powers.--Among the powers the terms of a
12 trust may grant explicitly to a trust protector are the
13 following:

14 (1) To increase, decrease or otherwise modify what is
15 distributable to one or more beneficiaries of the trust.

16 (2) To terminate the trust and direct how the trustee
17 shall distribute the trust property to or in further trust
18 for any one or more of the beneficiaries.

19 (3) To expand, modify, limit or terminate a power of
20 appointment, and to grant a power of appointment to a
21 beneficiary of the trust on terms as the trust protector
22 specifies.

23 (4) The powers described in section 8104 (relating to
24 trustee's power to adjust) to adjust between income and
25 principal and to convert the trust to a unitrust in
26 accordance with section 8105 (relating to power to convert to
27 unitrust).

28 (5) To convert a trust in whole or in part to a special
29 needs trust, or provide that a special needs trust shall
30 arise or be established at a specific time or upon the

1 occurrence of an event with respect to some or all of the
2 trust's assets.

3 (6) To appoint or remove trustees, investment advisors
4 and investment managers, and prescribe a plan of succession
5 for future holders of any of these offices.

6 (7) To appoint or remove trust directors, specify their
7 powers and modify the powers of a trust director.

8 (8) To appoint one or more successor trust protectors,
9 and prescribe a plan of succession for future holders of that
10 office.

11 (9) To renounce, release, limit or modify any power
12 given to a trustee by the terms of the trust or by law.

13 (10) To resolve disagreements among trustees.

14 (11) To change the trust's situs or governing law, or
15 both.

16 (12) To apply to a court of competent jurisdiction to
17 interpret any terms of the trust or pass upon an action that
18 the trust protector, another trust director or a trustee
19 proposes to take or not take.

20 (13) Any other or different power that the settlor
21 expressly grants to the trust protector.

22 (c) Limitation.--Unless the terms of the trust expressly
23 provide otherwise, no trust protector may exercise a power in a
24 manner that would benefit the trust protector personally or vest
25 in the trust protector a taxable power of appointment described
26 in section 2041 or 2514 of the Internal Revenue Code of 1986
27 (Public Law 99-514, 26 U.S.C. § 2041 or 2514), as amended, or
28 the corresponding provision of any later Federal tax statute.

29 (d) Notice to qualified beneficiaries.--A trust protector
30 shall notify the trustees and the qualified beneficiaries of the

1 trust in writing of the trust protector's exercise of a power
2 with respect to the trust unless the terms of the trust
3 explicitly direct that no such notice be given.

4 (e) Conflicts.--If the terms of a trust grant the same power
5 to both a trust protector and a trust director that is not a
6 trust protector and do not provide a different rule, the trust
7 protector shall control the exercise of the power.

8 § 7780.18. Limitations on powers of trust director - UDTA 7.

9 In the exercise or nonexercise of powers affecting the
10 following, a trust director is subject to the same rules as a
11 trustee that holds the same power regarding:

12 (1) A payback provision in the terms of a trust
13 necessary to comply with the reimbursement requirements of
14 Medicaid law in section 1917(d)(4)(A) of the Social Security
15 Act (49 Stat. 620, 42 U.S.C. § 1396p(d)(4)(A)), as amended,
16 and regulations issued thereunder, as amended.

17 (2) A charitable interest in a trust, including notice
18 regarding the interest to the Office of Attorney General.

19 § 7780.19. Duty and liability of trust director - UDTA 8.

20 (a) Scope.--Except as provided in subsections (b) and (c),
21 with respect to a power of direction, a trust director has the
22 same fiduciary duty and liability in the exercise or nonexercise
23 of the power if the power:

24 (1) may be exercised by only one trust director, as a
25 sole trustee in a like position and under similar
26 circumstances; or

27 (2) is shared with a trustee or another trust director,
28 as a cotrustee in a like position and under similar
29 circumstances.

30 (b) Licensed or certified trust directors.--If a trust

1 director is licensed, certified or otherwise authorized or
2 permitted by law other than this subchapter to provide health
3 care in the ordinary course of the trust director's business or
4 practice of a profession, to the extent that the trust director
5 acts in that capacity, the trust director is not subject to duty
6 or liability under this subchapter unless the terms of the trust
7 provide otherwise.

8 (c) Effect of terms of the trust.--The terms of a trust may
9 vary a trust director's duty or liability to the same extent
10 that the terms of the trust may vary the duty or liability of a
11 trustee in a like position and under similar circumstances.

12 § 7780.20. Duty and liability of directed trustee - UDTA 9.

13 (a) Duty to comply with power of direction.--Subject to
14 subsection (b), a directed trustee shall take reasonable action
15 to comply with a trust director's exercise or nonexercise of a
16 power of direction, and the directed trustee is not be liable
17 for that action.

18 (b) Exception for willful misconduct.--A directed trustee
19 shall not comply with a trust director's exercise or nonexercise
20 of a power of direction to the extent that, by doing so, the
21 directed trustee would engage in willful misconduct.

22 (c) When release from liability ineffective.--An exercise of
23 a power of direction under which a trust director purports to
24 release a trustee or another trust director from liability for
25 breach of trust is ineffective:

26 (1) to the extent that it would relieve the trustee or
27 the other trust director of liability for a breach of trust
28 committed in bad faith or with reckless indifference to the
29 purposes of the trust or the interests of the beneficiaries;

30 (2) if the release was induced by improper conduct of

1 the trustee or the other trust director in procuring the
2 release; or

3 (3) if, at the time of the release, the trust director
4 that exercised the power did not know of the material facts
5 relating to the breach.

6 (d) Petition for declaratory judgment.--A directed trustee
7 that has reasonable doubt about its duty under this section may
8 petition the court for a declaratory judgment.

9 (e) Additional duties and liabilities.--The terms of the
10 trust may impose a duty or liability on a directed trustee in
11 addition to the duties and liabilities prescribed by this
12 section.

13 § 7780.21. Duty to provide information to trust director or
14 directed trustee - UDTA 10.

15 (a) Duty of directed trustee.--Subject to section 7780.22
16 (relating to no duty to monitor, inform or advise - UDTA 11), a
17 directed trustee shall provide information to a trust director
18 to the extent that the information is reasonably related to
19 powers or duties of the:

20 (1) directed trustee; and

21 (2) trust director, or the powers or duties of another
22 trust director over which the trust director may exercise
23 authority.

24 (b) Duty of trust director.--Subject to section 7780.22, a
25 trust director shall provide information to a directed trustee
26 or another trust director to the extent that the information is
27 reasonably related to the powers or duties of the:

28 (1) trust director; and

29 (2) directed trustee, or the other trust director or a
30 trust director over which the other trust director may

1 exercise authority.

2 (c) Limitation on liability of directed trustee.--A directed
3 trustee that acts in reliance upon information provided by a
4 trust director is not liable for a breach of trust to the extent
5 that the breach resulted from the reliance unless the
6 information was outside the scope of the trust director's
7 authority or the directed trustee engages in willful misconduct
8 by doing so.

9 (d) Limitation on liability of trust director.--A trust
10 director that acts in reliance upon information provided by a
11 directed trustee or another trust director is not liable for a
12 breach of trust to the extent that the breach resulted from the
13 reliance unless the trust director engages in willful misconduct
14 by doing so.

15 § 7780.22. No duty to monitor, inform or advise - UDTA 11.

16 (a) Directed trustee.--Unless the terms of the trust provide
17 otherwise:

18 (1) A directed trustee does not have a duty to:

19 (i) monitor a trust director; or

20 (ii) inform or advise a settlor, beneficiary,

21 cotrustee or trust director as to any matter on which the
22 directed trustee might not have acted as the trust
23 director acted or as to any matter on which the directed
24 trustee might have acted but the trust director did not
25 act.

26 (2) By taking an action described in paragraph (1), a
27 directed trustee does not thereby assume a duty that is
28 excluded by paragraph (1).

29 (b) Trust director.--Unless the terms of the trust provide
30 otherwise:

1 (1) A trust director does not have a duty to:

2 (i) monitor a trustee or another trust director over
3 which the trust director has no authority; or

4 (ii) inform or advise a settlor, beneficiary,
5 cotrustee or other trust director as to any matter on
6 which the trust director might not have acted as a
7 trustee or other trust director acted or as to any matter
8 on which the trust director might have acted but the
9 trustee or another trust director did not act.

10 (2) By taking an action described in paragraph (1), a
11 trust director does not thereby assume a duty that is
12 excluded by paragraph (1).

13 § 7780.23. Application to cotrustee - UDTA 12.

14 The terms of a trust may assign different duties and
15 standards of care to different trustees and, in doing so,
16 relieve a trustee from liability with respect to a duty assigned
17 to another trustee to the same extent that, in a directed trust,
18 a directed trustee is relieved from duty and liability with
19 respect to a trust director's power of direction under sections
20 7780.20 (relating to duty and liability of directed trustee -
21 UDTA 9), 7780.21 (relating to duty to provide information to
22 trust director or directed trustee - UDTA 10) and 7780.22
23 (relating to no duty to monitor, inform or advise - UDTA 11).

24 § 7780.24. Limitation of action against trust director - UDTA
25 13.

26 (a) Commencement of action.--An action against a trust
27 director for breach of trust must be commenced within the same
28 limitation period as under section 7785 (relating to limitation
29 of action against trustee) for an action for breach of trust
30 against a trustee in a like position and under similar

1 circumstances.

2 (b) Effect of report or accounting.--A report or accounting
3 has the same effect on the limitation period for an action
4 against a trust director for breach of trust that the report or
5 accounting would have under section 7785 in an action for breach
6 of trust against a trustee in a like position and under similar
7 circumstances.

8 § 7780.25. Defenses in action against trust director - UDTA 14.

9 In an action against a trust director for breach of trust,
10 the trust director may assert the same defenses that a trustee
11 in a like position and under similar circumstances could assert
12 in an action for breach of trust against the trustee.

13 § 7780.26. Jurisdiction over trust director - UDTA 15.

14 (a) Effect of acceptance of appointment.--By accepting an
15 appointment as a trust director, the trust director submits to
16 personal jurisdiction of the courts of this Commonwealth
17 regarding any matter related to a power or duty of the trust
18 director.

19 (b) Other methods of obtaining jurisdiction.--This section
20 does not preclude other methods of obtaining jurisdiction over a
21 trust director.

22 § 7780.27. Office of trust director - UDTA 16.

23 Unless the terms of the trust provide otherwise, the rules
24 applicable to a trustee apply to a trust director regarding the
25 following matters:

26 (1) Acceptance or declining under section 7761 (relating
27 to accepting or declining trusteeship - UTC 701), except that
28 if a trustee requests in writing that a person designated as
29 a trust director accept that role in writing and the person
30 does not do so in writing within 60 days after receipt of the

1 trustee's request, the person shall be deemed to have
2 rejected the appointment to serve as a trust director.

3 (2) Giving of bond to secure performance under section
4 7762 (relating to trustee's bond - UTC 702).

5 (3) Reasonable compensation under section 7768 (relating
6 to compensation of trustee - UTC 708).

7 (4) Resignation under section 7765 (relating to
8 resignation of trustee; filing resignation), or upon at least
9 30 days' advance notice in writing to the qualified
10 beneficiaries of the trust, the settlor if sui juris and all
11 trustees.

12 (5) Removal under section 7766 (relating to removal of
13 trustee - UTC 706).

14 (6) Vacancy and appointment of a successor under section
15 7764 (relating to vacancy in trusteeship; appointment of
16 successor - UTC 704), except that if a trust director does
17 not accept an appointment or there is a vacancy in the
18 position, the powers and duties of the trustee or another
19 trust director shall be determined as if the office of the
20 nonaccepting trust director had not been created.

21 Section 8. Section 7781(a) of Title 20 is amended to read:

22 § 7781. Remedies for breach of trust - UTC 1001.

23 [(a) What constitutes breach of trust.--A violation by a
24 trustee of a duty the trustee owes to a beneficiary is a breach
25 of trust.]

26 * * *

27 Section 9. Title 20 is amended by adding a section to read:

28 § 7785.1. Nonjudicial account settlement.

29 (a) Election.--A trustee may elect to proceed under this
30 section to obtain a nonjudicial settlement of account when:

1 (1) the trust terminates in whole or in part;
2 (2) the trustee ceases or intends to cease to serve for
3 any reason; or
4 (3) the trustee seeks discharge for an interim
5 accounting period when the trust is continuing.

6 (b) Mandatory notice.--Within a reasonable time after a
7 trustee elects to proceed under this section, the trustee shall
8 give notice of a request for nonjudicial account settlement in
9 the manner and to the extent required by section 7709(a), (b)
10 and (c) (relating to methods and waiver of notice - UTC 109) to:

11 (1) the qualified beneficiaries of the trust;
12 (2) any other beneficiary who has sent the trustee a
13 written request for notice;
14 (3) any person who has the notification rights of a
15 beneficiary under section 7710 (relating to notice; others
16 treated as beneficiaries - UTC 110); and
17 (4) any cotrustee, trust director or similar fiduciary
18 or successor trustee.

19 (c) Permissive notice.--The trustee may also provide notice
20 to any other person who the trustee reasonably believes may have
21 an interest in the trust.

22 (d) Representation.--Whether notice is mandatory or
23 permissive, the trustee may give notice to a representative in
24 accordance with Subchapter C (relating to representation). The
25 time period for the presumption of the representative's
26 acceptance of the representation shall be deemed to run
27 concurrently with the notice period provided under this section.

28 (e) Contents of notice.--The notice under subsection (b) or
29 (c) shall provide:

30 (1) The reason for providing notice under this section.

1 (2) To the extent applicable, the proposed distribution
2 of the net assets of the trust including the distributees and
3 proportions to be distributed.

4 (3) To the extent applicable, an estimate of
5 disbursements anticipated to be made prior to distribution
6 including legal fees and trustee fees, if any.

7 (4) Trust account statements showing all transactions,
8 the fair market value of all assets and realized and
9 unrealized gains and losses on assets held in the account for
10 30 months prior to the date a trust terminates, the cessation
11 of the trustee's service or statement of intent to cease to
12 serve, or the end of the interim accounting period, or for
13 the entire term of the trust if the term of the trust is
14 shorter than the 30-month period.

15 (5) A statement that the trustee seeks settlement of the
16 account of the trust, including the period of time for which
17 the trustee seeks discharge of the account of the trust, and
18 that clearly and conspicuously states that claims against a
19 trustee under Subchapter I (relating to liability of trustees
20 and rights of persons dealing with trustees) and section 7754
21 (relating to actions contesting validity of revocable trust),
22 if applicable, will be forever barred if no objections are
23 received within the time period described in subsection (g).

24 (6) The name and mailing address of the trustee.

25 (7) The name and telephone number of a person who may be
26 contacted for additional information.

27 (f) Distributions.--To the extent applicable, distributions
28 from a terminating trust, and any fees and expenses due or
29 anticipated as of the date that the settlement of account is
30 requested, may be held by or on behalf of the trustee until the

1 settlement of account is approved or deemed approved as provided
2 by this section.

3 (g) Objection.--A person provided notice under subsection
4 (b) or (c) may object to the settlement of account by giving
5 written notice to the trustee within 60 days after the notice
6 was sent. If a person given notice under subsection (b) or (c)
7 makes timely objections to the settlement of account, the
8 trustee or the person making the objections may:

9 (1) submit the written objection to the court and
10 commence a proceeding for its resolution; or

11 (2) resolve the objection by nonjudicial settlement
12 agreement under section 7710.1 (relating to nonjudicial
13 settlement agreements - UTC 111) or otherwise.

14 (h) Approval.--If no timely objections are raised under
15 subsection (g), or objections are resolved as provided by
16 subsection (g), the settlement of account shall be deemed
17 approved and any assets held in trust shall, within a reasonable
18 time thereafter, be distributed subject to payment of expenses
19 as provided in subsection (f) or shall continue to be
20 administered in trust subject to payment of expenses.

21 (i) Reliance.--The trustee may rely upon the written
22 statement of a person receiving notice that the person does not
23 object.

24 (j) Limitation of action and preclusive effect.--

25 (1) When a settlement of account is deemed approved
26 under this section for a terminated trust or with respect to
27 the duties of a trustee who ceased to serve or stated an
28 intent to cease to serve, each person who was sent notice as
29 provided by subsection (b) or (c) is barred from bringing a
30 claim against the trustee or challenging the distribution of

1 assets of the trust to the same extent and with the same
2 preclusive effect as if the court had entered a final,
3 unappealable order approving the trustee's final account.

4 (2) When a settlement of account for a trustee seeking
5 final settlement of an interim trust account is deemed
6 approved under this section, each person who was sent notice
7 as provided by subsection (b) or (c) is barred from bringing
8 a claim against the trustee for the period of the interim
9 trust account to the same extent and with the same preclusive
10 effect as if the court had entered a final, unappealable
11 order approving the trustee's interim trust account.

12 (k) Representation.--The provisions of Subchapter C shall
13 apply to an account settlement under this section.

14 (l) Filing account.--Nothing in this section shall preclude
15 a trustee from proceeding under section 7797 (relating to filing
16 accounts) or 7710.1.

17 Section 10. Sections 7786, 7788(a) introductory paragraph,
18 7790.3(d) and (f) and 7794 of Title 20 are amended to read:

19 § 7786. Reliance on trust instrument - UTC 1006.

20 A trustee who acts in reasonable reliance on the [express
21 provisions] terms of the trust as expressed in the trust
22 instrument is not liable to a beneficiary for a breach of trust
23 to the extent the breach resulted from the reliance.

24 § 7788. Exculpation of trustee - UTC 1008.

25 (a) When exculpatory provision unenforceable.--A [provision]
26 term of a trust [instrument] relieving a trustee of liability
27 for breach of trust is unenforceable to the extent that it:

28 * * *

29 § 7790.3. Certification of trust - UTC 1013.

30 * * *

1 (d) Dispositive trust provisions.--A certification of trust
2 need not contain the dispositive [provisions] terms of the trust
3 [instrument].

4 * * *

5 (f) Reliance on certification.--A person who acts in
6 reliance upon a certification of trust without knowledge that
7 the representations contained in the certification are incorrect
8 is not liable to any person for so acting and may assume without
9 inquiry the existence of the facts contained in the
10 certification. Knowledge of the [provisions] terms of the trust
11 [instrument] may not be inferred solely from the fact that a
12 copy of all or part of the trust instrument is held by the
13 person relying upon the certification.

14 * * *

15 § 7794. Title of purchaser.

16 If the trustee has given a bond as required in accordance
17 with this title, any sale, pledge, mortgage or exchange by a
18 trustee, whether pursuant to a decree or to the exercise of a
19 power conferred by the terms of a trust [instrument] or of a
20 power under this title, shall pass the full title of the trust
21 in the property, unless otherwise specified. Persons dealing
22 with the trustee shall have no obligation to see to the proper
23 application of the cash or other assets given in exchange for
24 the property of the trust. A sale or exchange by a trustee
25 pursuant to a decree under section 3353 (relating to order of
26 court) shall have the effect of a judicial sale as to the
27 discharge of liens, but the court may decree a sale or exchange
28 freed and discharged from the lien of any mortgage otherwise
29 preserved from discharge by existing law if the holder of the
30 mortgage consents by writing filed in the proceeding. No sale,

1 mortgage, exchange or conveyance shall be prejudiced by the
2 subsequent dismissal of the trustee. No sale, mortgage, exchange
3 or conveyance by a testamentary trustee shall be prejudiced by
4 the terms of a will or codicil thereafter probated if the person
5 dealing with the trustee did so in good faith.

6 Section 11. The letters "UTC" in section headings refer to
7 the Uniform Trust Code. The letters "UDTA" in section headings
8 refer to the Uniform Directed Trust Act. The number that follows
9 these letters refers to a particular section of the applicable
10 uniform act. Where a section in 20 Pa.C.S. has these references,
11 that section shall be construed and applied consistent with 1
12 Pa.C.S. §§ 1927 and 1939.

13 Section 12. This act shall take effect in 90 days.