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HOUSE BILL 48

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Al Park

AN ACT

**RELATING TO TRUSTS; ENACTING THE UNIFORM TRUST CODE; REPEALING
SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section 1-101. SHORT TITLE. -- This act may be cited as the
"Uniform Trust Code".

Section 1-102. SCOPE. -- The Uniform Trust Code applies to
express trusts, charitable or noncharitable, and trusts created
pursuant to a statute, judgment or decree that requires the
trust to be administered in the manner of an express trust.

Section 1-103. DEFINITIONS. -- As used in the Uniform Trust
Code:

A. "action", with respect to an act of a trustee,

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1 includes a failure to act;

2 B. "beneficiary" means a person that:

3 (1) has a present or future beneficial
4 interest in a trust, vested or contingent; or

5 (2) in a capacity other than that of trustee,
6 holds a power of appointment over trust property;

7 C. "charitable trust" means a trust or portion of a
8 trust created for a charitable purpose described in Subsection
9 A of Section 4-405 of the Uniform Trust Code;

10 D. "conservator" means a person appointed by the
11 court to administer the estate of a minor or adult individual;

12 E. "environmental law" means a federal, state or
13 local law, rule, regulation or ordinance relating to protection
14 of the environment;

15 F. "guardian" means a person appointed by the court
16 or a parent to make decisions regarding the support, care,
17 education, health and welfare of a minor or adult person. The
18 term does not include a guardian ad litem;

19 G. "interests of the beneficiaries" means the
20 beneficial interests provided in the terms of the trust;

21 H. "jurisdiction", with respect to a geographic
22 area, includes a state or country;

23 I. "person" means an individual, corporation,
24 business trust, estate, trust, partnership, limited liability
25 company, association, joint venture, government, governmental

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1 subdivision, agency or instrumentality, public corporation or
2 any other legal or commercial entity;

3 J. "power of withdrawal" means an exercisable
4 general power of appointment other than a power exercisable
5 only upon consent of the trustee or a person holding an adverse
6 interest;

7 K. "property" means anything that may be the
8 subject of ownership, whether real or personal, legal or
9 equitable, or any interest therein;

10 L. "qualified beneficiary" means a beneficiary who,
11 on the date the beneficiary's qualification is determined:

12 (1) is a distributee or permissible
13 distributee of trust income or principal;

14 (2) would be a distributee or permissible
15 distributee of trust income or principal if the interests of
16 the distributees described in Paragraph (1) of this subsection
17 terminated on that date; or

18 (3) would be a distributee or permissible
19 distributee of trust income or principal if the trust
20 terminated on that date;

21 M. "revocable", as applied to a trust, means
22 revocable by the settlor without the consent of the trustee or
23 a person holding an adverse interest;

24 N. "settlor" means a person, including a testator,
25 who creates or contributes property to a trust. If more than

1 one person creates or contributes property to a trust, each
2 person is a settlor of the portion of the trust property
3 attributable to that person's contribution, except to the
4 extent another person has the power to revoke or withdraw that
5 portion;

6 0. "spendthrift provision" means a term of a trust
7 that restrains both voluntary and involuntary transfer of a
8 beneficiary's interest;

9 P. "state" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin
11 Islands or any territory or insular possession subject to the
12 jurisdiction of the United States. The term includes an Indian
13 tribe or band recognized by federal law or formally
14 acknowledged by a state;

15 Q. "terms of a trust" means the manifestation of
16 the settlor's intent regarding a trust's provisions as
17 expressed in the trust instrument or as may be established by
18 other evidence that would be admissible in a judicial
19 proceeding;

20 R. "trust instrument" means an instrument executed
21 by the settlor that contains terms of the trust, including any
22 amendments thereto; and

23 S. "trustee" includes an original trustee, an
24 additional trustee, a successor trustee and a co-trustee.

25 Section 1-104. KNOWLEDGE. --

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1 A. Subject to Subsection B of this section, a
2 person has knowledge of a fact if the person:

- 3 (1) has actual knowledge of it;
4 (2) has received a notice or notification of
5 it; or
6 (3) from all the facts and circumstances known
7 to the person at the time in question, has reason to know it.

8 B. An organization that conducts activities through
9 employees has notice or knowledge of a fact involving a trust
10 only from the time the information was received by an employee
11 having responsibility to act for the trust, or would have been
12 brought to the employee's attention if the organization had
13 exercised reasonable diligence. An organization exercises
14 reasonable diligence if it maintains reasonable routines for
15 communicating significant information to the employee having
16 responsibility to act for the trust and there is reasonable
17 compliance with the routines. Reasonable diligence does not
18 require an employee of the organization to communicate
19 information unless the communication is part of the employee's
20 regular duties or the employee knows that a matter involving
21 the trust would be materially affected by the information.

22 Section 1-105. DEFAULT AND MANDATORY RULES. --

23 A. Except as otherwise provided in the terms of the
24 trust, the Uniform Trust Code governs the duties and powers of
25 a trustee, relations among trustees and the rights and

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1 interests of a beneficiary.

2 B. The terms of a trust prevail over any provision
3 of the Uniform Trust Code except:

4 (1) the requirements for creating a trust;

5 (2) the duty of a trustee to act in good faith
6 and in accordance with the purposes of the trust;

7 (3) the requirement that a trust and its terms
8 be for the benefit of its beneficiaries;

9 (4) the power of the court to modify or
10 terminate a trust under Sections 4-410 through 4-416 of the
11 Uniform Trust Code;

12 (5) the effect of a spendthrift provision and
13 the rights of certain creditors and assignees to reach a trust
14 as provided in Article 5 of the Uniform Trust Code;

15 (6) the power of the court under Section 7-702
16 of the Uniform Trust Code to require, dispense with or modify
17 or terminate a bond;

18 (7) the power of the court under Subsection B
19 of Section 7-708 of the Uniform Trust Code to adjust a
20 trustee's compensation specified in the terms of the trust that
21 is unreasonably low or high;

22 (8) the duty to notify the qualified
23 beneficiaries of an irrevocable trust who have attained twenty-
24 five years of age of the existence of the trust and of their
25 right to request a trustee's reports and other information

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1 reasonably related to the administration of the trust;

2 (9) the duty to respond to the request of a
3 beneficiary of an irrevocable trust for a trustee's reports and
4 other information reasonably related to the administration of a
5 trust;

6 (10) the effect of an exculpatory term under
7 Section 10-1008 of the Uniform Trust Code;

8 (11) the rights under Sections 10-1010 through
9 10-1013 of the Uniform Trust Code of a person other than a
10 trustee or beneficiary;

11 (12) periods of limitation for commencing a
12 judicial proceeding;

13 (13) the power of the court to take such
14 action and exercise such jurisdiction as may be necessary in
15 the interests of justice; and

16 (14) the subject-matter jurisdiction of the
17 court and venue for commencing a proceeding as provided in
18 Sections 2-203 and 2-204 of the Uniform Trust Code.

19 Section 1-106. COMMON LAW OF TRUSTS--PRINCIPLES OF
20 EQUITY.--The common law of trusts and principles of equity
21 supplement the Uniform Trust Code, except to the extent
22 modified by that code or another statute of this state.

23 Section 1-107. GOVERNING LAW.--The meaning and effect of
24 the terms of a trust are determined by:

25 A. the law of the jurisdiction designated in the

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1 terms unless the designation of that jurisdiction's law is
2 contrary to a strong public policy of the jurisdiction having
3 the most significant relationship to the matter at issue; or

4 B. in the absence of a controlling designation in
5 the terms of the trust, the law of the jurisdiction having the
6 most significant relationship to the matter at issue.

7 Section 1-108. PRINCIPAL PLACE OF ADMINISTRATION. --

8 A. Without precluding other means for establishing
9 a sufficient connection with the designated jurisdiction, terms
10 of a trust designating the principal place of administration
11 are valid and controlling if:

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

15 (2) all or part of the administration occurs
16 in the designated jurisdiction.

17 B. A trustee is under a continuing duty to
18 administer the trust at a place appropriate to its purposes,
19 its administration and the interests of the beneficiaries.

20 C. Without precluding the right of the court to
21 order, approve or disapprove a transfer, the trustee, in
22 furtherance of the duty prescribed by Subsection B of this
23 section, may transfer the trust's principal place of
24 administration to another state or to a jurisdiction outside of
25 the United States.

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1 D. The trustee shall notify the qualified
2 beneficiaries of a proposed transfer of a trust's principal
3 place of administration not less than sixty days before
4 initiating the transfer. The notice of proposed transfer must
5 include:

6 (1) the name of the jurisdiction to which the
7 principal place of administration is to be transferred;

8 (2) the address and telephone number at the
9 new location at which the trustee can be contacted;

10 (3) an explanation of the reasons for the
11 proposed transfer;

12 (4) the date on which the proposed transfer is
13 anticipated to occur; and

14 (5) the date, not less than sixty days after
15 the giving of the notice, by which the qualified beneficiary
16 must notify the trustee of an objection to the proposed
17 transfer.

18 E. The authority of a trustee under this section to
19 transfer a trust's principal place of administration terminates
20 if a qualified beneficiary notifies the trustee of an objection
21 to the proposed transfer on or before the date specified in the
22 notice.

23 F. In connection with a transfer of the trust's
24 principal place of administration, the trustee may transfer
25 some or all of the trust property to a successor trustee

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1 designated in the terms of the trust or appointed pursuant to
2 Section 7-704 of the Uniform Trust Code.

3 Section 1-109. METHODS AND WAIVER OF NOTICE. --

4 A. Notice to a person under the Uniform Trust Code
5 or the sending of a document to a person under that code must
6 be accomplished in a manner reasonably suitable under the
7 circumstances and likely to result in receipt of the notice or
8 document. Permissible methods of notice or for sending a
9 document include first-class mail, personal delivery, delivery
10 to the person's last known place of residence or place of
11 business or a properly directed electronic message.

12 B. Notice otherwise required under the Uniform
13 Trust Code or a document otherwise required to be sent under
14 that code need not be provided to a person whose identity or
15 location is unknown to and not reasonably ascertainable by the
16 trustee.

17 C. Notice under the Uniform Trust Code or the
18 sending of a document under that code may be waived by the
19 person to be notified or sent the document.

20 D. Notice of a judicial proceeding must be given as
21 provided in the applicable rules of civil procedure.

22 Section 1-110. OTHERS TREATED AS QUALIFIED
23 BENEFICIARIES. --

24 A. Whenever notice to qualified beneficiaries of a
25 trust is required under the Uniform Trust Code, the trustee

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1 must also give notice to any other beneficiary who has sent the
2 trustee a request for notice.

3 B. A charitable organization expressly entitled to
4 receive benefits under the terms of a charitable trust or a
5 person appointed to enforce a trust created for the care of an
6 animal or another noncharitable purpose as provided in Section
7 4-408 or 4-409 of the Uniform Trust Code has the rights of a
8 qualified beneficiary under that code.

9 C. The attorney general of this state has the
10 rights of a qualified beneficiary with respect to a charitable
11 trust having its principal place of administration in this
12 state.

13 Section 1-111. NONJUDICIAL SETTLEMENT AGREEMENTS. --

14 A. For purposes of this section, "interested
15 persons" means persons whose consent would be required in order
16 to achieve a binding settlement were the settlement to be
17 approved by the court.

18 B. Except as otherwise provided in Subsection C of
19 this section, interested persons may enter into a binding
20 nonjudicial settlement agreement with respect to any matter
21 involving a trust.

22 C. A nonjudicial settlement agreement is valid only
23 to the extent it does not violate a material purpose of the
24 trust and includes terms and conditions that could be properly
25 approved by the court under the Uniform Trust Code or other

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1 applicable law.

2 D. Matters that may be resolved by a nonjudicial
3 settlement agreement include:

4 (1) the interpretation or construction of the
5 terms of the trust;

6 (2) the approval of a trustee's report or
7 accounting;

8 (3) direction to a trustee to refrain from
9 performing a particular act or the grant to a trustee of any
10 necessary or desirable power;

11 (4) the resignation or appointment of a
12 trustee and the determination of a trustee's compensation;

13 (5) transfer of a trust's principal place of
14 administration; and

15 (6) liability of a trustee for an action
16 relating to the trust.

17 E. Any interested person may request the court to
18 approve a nonjudicial settlement agreement to determine whether
19 the representation as provided in Article 3 of the Uniform
20 Trust Code was adequate and to determine whether the agreement
21 contains terms and conditions the court could have properly
22 approved.

23 Section 1-112. RULES OF CONSTRUCTION. --The rules of
24 construction that apply in this state to the interpretation of
25 and disposition of property by will also apply as appropriate

1 to the interpretation of the terms of a trust and the
2 disposition of the trust property.

3 ARTICLE 2

4 JUDICIAL PROCEEDINGS

5 Section 2-201. ROLE OF COURT IN ADMINISTRATION OF
6 TRUST. --

7 A. The court may intervene in the administration of
8 a trust to the extent its jurisdiction is invoked by an
9 interested person or as provided by law.

10 B. A trust is not subject to continuing judicial
11 supervision unless ordered by the court.

12 C. A judicial proceeding involving a trust may
13 relate to any matter involving the trust's administration,
14 including a request for instructions and an action to declare
15 rights.

16 Section 2-202. JURISDICTION OVER TRUSTEE AND
17 BENEFICIARY. --

18 A. By accepting the trusteeship of a trust having
19 its principal place of administration in this state or by
20 moving the principal place of administration to this state, the
21 trustee submits personally to the jurisdiction of the courts of
22 this state regarding any matter involving the trust.

23 B. With respect to their interests in the trust,
24 the beneficiaries of a trust having its principal place of
25 administration in this state are subject to the jurisdiction of

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1 the courts of this state regarding any matter involving the
2 trust. By accepting a distribution from such a trust, the
3 recipient submits personally to the jurisdiction of the courts
4 of this state regarding any matter involving the trust.

5 C. This section does not preclude other methods of
6 obtaining jurisdiction over a trustee, beneficiary or other
7 person receiving property from the trust.

8 Section 2-203. SUBJECT-MATTER JURISDICTION. --

9 A. The district court has exclusive jurisdiction of
10 proceedings in this state brought by a trustee or beneficiary
11 concerning the administration of a trust.

12 B. The district court has concurrent jurisdiction
13 with other courts of this state of other proceedings involving
14 a trust.

15 Section 2-204. VENUE. --

16 A. Except as otherwise provided in Subsection B of
17 this section, venue for a judicial proceeding involving a trust
18 is in the county of this state in which the trust's principal
19 place of administration is or will be located and, if the trust
20 is created by will and the estate is not yet closed, in the
21 county in which the decedent's estate is being administered.

22 B. If a trust has no trustee, venue for a judicial
23 proceeding for the appointment of a trustee is in a county of
24 this state in which a beneficiary resides, in a county in which
25 any trust property is located, and if the trust is created by

1 will, in the county in which the decedent's estate was or is
2 being administered.

3 ARTICLE 3

4 REPRESENTATION

5 Section 3-301. REPRESENTATION-- BASIC EFFECT. --

6 A. Notice to a person who may represent and bind
7 another person under this article has the same effect as if
8 notice were given directly to the other person.

9 B. The consent of a person who may represent and
10 bind another person under this article is binding on the person
11 represented unless the person represented objects to the
12 representation before the consent would otherwise have become
13 effective.

14 C. Except as otherwise provided in Sections 4-411
15 and 6-602 of the Uniform Trust Code, a person who under this
16 article may represent a settlor who lacks capacity may receive
17 notice and give a binding consent on the settlor's behalf.

18 Section 3-302. REPRESENTATION BY HOLDER OF GENERAL
19 TESTAMENTARY POWER OF APPOINTMENT. --To the extent there is no
20 conflict of interest between the holder of a general
21 testamentary power of appointment and the persons represented
22 with respect to the particular question or dispute, the holder
23 may represent and bind persons whose interests, as permissible
24 appointees, takers in default or otherwise, are subject to the
25 power.

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1 Section 3-303. **REPRESENTATION BY FIDUCIARIES AND**
2 **PARENTS.** --To the extent there is no conflict of interest
3 between the representative and the person represented or among
4 those being represented with respect to a particular question
5 or dispute:

6 A. a conservator may represent and bind the estate
7 that the conservator controls;

8 B. a guardian may represent and bind the ward if a
9 conservator of the ward's estate has not been appointed;

10 C. an agent having authority to act with respect to
11 the particular question or dispute may represent and bind the
12 principal;

13 D. a trustee may represent and bind the
14 beneficiaries of the trust;

15 E. a personal representative of a decedent's estate
16 may represent and bind persons interested in the estate; and

17 F. a parent may represent and bind the parent's
18 minor or unborn child if a conservator or guardian for the
19 child has not been appointed.

20 Section 3-304. **REPRESENTATION BY PERSON HAVING**
21 **SUBSTANTIALLY IDENTICAL INTEREST.** --Unless otherwise
22 represented, a minor, incapacitated or unborn person, or a
23 person whose identity or location is unknown and not reasonably
24 ascertainable, may be represented by and bound by another
25 having a substantially identical interest with respect to the

1 particular question or dispute, but only to the extent there is
2 no conflict of interest between the representative and the
3 person represented.

4 Section 3-305. APPOINTMENT OF REPRESENTATIVE. --

5 A. If the court determines that an interest is not
6 represented under this article, or that the otherwise available
7 representation might be inadequate, the court may appoint a
8 representative to receive notice, give consent and otherwise
9 represent, bind and act on behalf of a minor, incapacitated or
10 unborn person, or a person whose identity or location is
11 unknown. A representative may be appointed to represent
12 several persons or interests.

13 B. A representative may act on behalf of the person
14 represented with respect to any matter arising under the
15 Uniform Trust Code, whether or not a judicial proceeding
16 concerning the trust is pending.

17 C. In making decisions, a representative may
18 consider the general benefit accruing to the living members of
19 the person's family.

20 ARTICLE 4

21 CREATION, VALIDITY, MODIFICATION

22 AND TERMINATION OF TRUST

23 Section 4-401. METHODS OF CREATING TRUST. -- A trust may be
24 created by:

25 A. transfer of property to another person as trustee

1 during the settlor's lifetime or by will or other disposition
2 taking effect upon the settlor's death;

3 B. declaration by the owner of property that the
4 owner holds identifiable property as trustee; or

5 C. exercise of a power of appointment in favor of a
6 trustee.

7 Section 4-402. REQUIREMENTS FOR CREATION. --

8 A. A trust is created only if:

9 (1) the settlor has capacity to create a
10 trust;

11 (2) the settlor indicates an intention to
12 create the trust;

13 (3) the trust has a definite beneficiary or
14 is:

15 (a) a charitable trust;

16 (b) a trust for the care of an animal, as
17 provided in Section 4-408 of the Uniform Trust Code; or

18 (c) a trust for a noncharitable purpose,
19 as provided in Section 4-409 of the Uniform Trust Code;

20 (4) the trustee has duties to perform; and

21 (5) the same person is not the sole trustee
22 and sole beneficiary.

23 B. A beneficiary is definite if the beneficiary can
24 be ascertained now or in the future, subject to any applicable
25 rule against perpetuities.

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1 C. A power in a trustee to select a beneficiary from
2 an indefinite class is valid. If the power is not exercised
3 within a reasonable time, the power fails and the property
4 subject to the power passes to the persons who would have taken
5 the property had the power not been conferred.

6 Section 4-403. TRUSTS CREATED IN OTHER JURISDICTIONS. -- A
7 trust not created by will is validly created if its creation
8 complies with the law of the jurisdiction in which the trust
9 instrument was executed or the law of the jurisdiction in
10 which, at the time of creation:

11 A. the settlor was domiciled, had a place of abode
12 or was a national;

13 B. a trustee was domiciled or had a place of
14 business; or

15 C. any trust property was located.

16 Section 4-404. TRUST PURPOSES. -- A trust may be created
17 only to the extent its purposes are lawful, not contrary to
18 public policy and possible to achieve. A trust and its terms
19 must be for the benefit of its beneficiaries.

20 Section 4-405. CHARITABLE PURPOSES-- ENFORCEMENT. --

21 A. A charitable trust may be created for the relief
22 of poverty, the advancement of education or religion, the
23 promotion of health, governmental or municipal purposes or
24 other purposes the achievement of which is beneficial to the
25 community.

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1 B. If the terms of a charitable trust do not
2 indicate a particular charitable purpose or beneficiary, the
3 court may select one or more charitable purposes or
4 beneficiaries. The selection must be consistent with the
5 settlor's intention to the extent it can be ascertained.

6 C. The settlor of a charitable trust, among others,
7 may maintain a proceeding to enforce the trust.

8 Section 4-406. CREATION OF TRUST INDUCED BY FRAUD, DURESS
9 OR UNDUE INFLUENCE.--A trust is void to the extent its creation
10 was induced by fraud, duress or undue influence.

11 Section 4-407. EVIDENCE OF ORAL TRUST.--Except as
12 required by a statute other than the Uniform Trust Code, a
13 trust need not be evidenced by a trust instrument, but the
14 creation of an oral trust and its terms may be established only
15 by clear and convincing evidence.

16 Section 4-408. TRUST FOR CARE OF ANIMAL.--

17 A. A trust may be created to provide for the care of
18 an animal alive during the settlor's lifetime. The trust
19 terminates upon the death of the animal or, if the trust was
20 created to provide for the care of more than one animal alive
21 during the settlor's lifetime, upon the death of the last
22 surviving animal.

23 B. A trust authorized by this section may be
24 enforced by a person appointed in the terms of the trust or, if
25 no person is so appointed, by a person appointed by the court.

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1 A person having an interest in the welfare of the animal may
2 request the court to appoint a person to enforce the trust or
3 to remove a person appointed.

4 C. Property of a trust authorized by this section
5 may be applied only to its intended use, except to the extent
6 the court determines that the value of the trust property
7 exceeds the amount required for the intended use. Except as
8 otherwise provided in the terms of the trust, property not
9 required for the intended use must be distributed to the
10 settlor, if then living, otherwise to the settlor's successors
11 in interest.

12 Section 4-409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE
13 BENEFICIARY. -- Except as otherwise provided in Section 4-408 of
14 the Uniform Trust Code or by another statute, the following
15 rules apply:

16 A. a trust may be created for a noncharitable
17 purpose without a definite or definitely ascertainable
18 beneficiary or for a noncharitable but otherwise valid purpose
19 to be selected by the trustee. The trust may not be enforced
20 for more than twenty-one years.

21 B. a trust authorized by this section may be
22 enforced by a person appointed in the terms of the trust or, if
23 no person is so appointed, by a person appointed by the court;
24 and

25 C. property of a trust authorized by this section

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1 may be applied only to its intended use, except to the extent
2 the court determines that the value of the trust property
3 exceeds the amount required for the intended use. Except as
4 otherwise provided in the terms of the trust, property not
5 required for the intended use must be distributed to the
6 settlor, if then living, otherwise to the settlor's successors
7 in interest.

8 Section 4-410. MODIFICATION OR TERMINATION OF TRUST--
9 PROCEEDINGS FOR APPROVAL OR DISAPPROVAL. --

10 A. In addition to the methods of termination
11 prescribed by Sections 4-411 through 4-414 of the Uniform Trust
12 Code, a trust terminates to the extent the trust is revoked or
13 expires pursuant to its terms, no purpose of the trust remains
14 to be achieved or the purposes of the trust have become
15 unlawful, contrary to public policy or impossible to achieve.

16 B. A proceeding to approve or disapprove a proposed
17 modification or termination under Sections 4-411 through 4-416
18 of the Uniform Trust Code or a trust combination or division
19 under Section 4-417 of that code may be commenced by a trustee
20 or beneficiary, and a proceeding to approve or disapprove a
21 proposed modification or termination under Section 4-411 of
22 that code may be commenced by the settlor. The settlor of a
23 charitable trust may maintain a proceeding to modify the trust
24 under Section 4-413 of that code.

25 Section 4-411. MODIFICATION OR TERMINATION OF

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1 NONCHARITABLE IRREVOCABLE TRUST BY CONSENT. --

2 A. A noncharitable irrevocable trust may be modified
3 or terminated upon consent of the settlor and all
4 beneficiaries, even if the modification or termination is
5 inconsistent with a material purpose of the trust. A settlor's
6 power to consent to a trust's termination may be exercised by
7 an agent under a power of attorney only to the extent expressly
8 authorized by the power of attorney or the terms of the trust;
9 by the settlor's conservator with the approval of the court
10 supervising the conservatorship if an agent is not so
11 authorized; or by the settlor's guardian with the approval of
12 the court supervising the guardianship if an agent is not so
13 authorized and a conservator has not been appointed.

14 B. A noncharitable irrevocable trust may be
15 terminated upon consent of all of the beneficiaries if the
16 court concludes that continuance of the trust is not necessary
17 to achieve any material purpose of the trust. A noncharitable
18 irrevocable trust may be modified upon consent of all of the
19 beneficiaries if the court concludes that modification is not
20 inconsistent with a material purpose of the trust.

21 C. A spendthrift provision in the terms of the trust
22 is not presumed to constitute a material purpose of the trust.

23 D. Upon termination of a trust under Subsection A or
24 B of this section, the trustee shall distribute the trust
25 property as agreed by the beneficiaries.

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1 E. If not all of the beneficiaries consent to a
2 proposed modification or termination of the trust under
3 Subsection A or B of this section, the modification or
4 termination may be approved by the court if the court is
5 satisfied that:

6 (1) if all of the beneficiaries had consented,
7 the trust could have been modified or terminated under this
8 section; and

9 (2) the interests of a beneficiary who does
10 not consent will be adequately protected.

11 Section 4-412. MODIFICATION OR TERMINATION BECAUSE OF
12 UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST
13 EFFECTIVELY. --

14 A. The court may modify the administrative or
15 dispositive terms of a trust or terminate the trust if, because
16 of circumstances not anticipated by the settlor, modification
17 or termination will further the purposes of the trust. To the
18 extent practicable, the modification must be made in accordance
19 with the settlor's probable intention.

20 B. The court may modify the administrative terms of
21 a trust if continuation of the trust on its existing terms
22 would be impracticable or wasteful or impair the trust's
23 administration.

24 C. Upon termination of a trust under this section,
25 the trustee shall distribute the trust property in a manner

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1 consistent with the purposes of the trust.

2 Section 4-413. CY PRES. --

3 A. Except as otherwise provided in Subsection B of
4 this section, if a particular charitable purpose becomes
5 unlawful, impracticable, impossible to achieve or wasteful:

6 (1) the trust does not fail, in whole or in
7 part;

8 (2) the trust property does not revert to the
9 settlor or the settlor's successors in interest; and

10 (3) the court may apply cy pres to modify or
11 terminate the trust by directing that the trust property be
12 applied or distributed, in whole or in part, in a manner
13 consistent with the settlor's charitable purposes.

14 B. A provision in the terms of a charitable trust
15 that would result in distribution of the trust property to a
16 noncharitable beneficiary prevails over the power of the court
17 under Subsection A of this section to apply cy pres to modify
18 or terminate the trust only if, when the provision takes
19 effect:

20 (1) the trust property is to revert to the
21 settlor and the settlor is still living; or

22 (2) fewer than twenty-one years have elapsed
23 since the date of the trust's creation.

24 Section 4-414. TERMINATION OF UNECONOMIC TRUST. --

25 A. After notice to the qualified beneficiaries, the

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1 trustee of a trust consisting of trust property having a total
2 value less than fifty thousand dollars (\$50,000) may terminate
3 the trust if the trustee concludes that the value of the trust
4 property is insufficient to justify the cost of administration.

5 B. The court may modify or terminate a trust or
6 remove the trustee and appoint a different trustee if it
7 determines that the value of the trust property is insufficient
8 to justify the cost of administration.

9 C. Upon termination of a trust under this section,
10 the trustee shall distribute the trust property in a manner
11 consistent with the purposes of the trust.

12 D. This section does not apply to an easement for
13 conservation or preservation.

14 Section 4-415. REFORMATION TO CORRECT MISTAKES. --The
15 court may reform the terms of a trust, even if unambiguous, to
16 conform the terms to the settlor's intention if it is proved by
17 clear and convincing evidence that both the settlor's intent
18 and the terms of the trust were affected by a mistake of fact
19 or law, whether in expression or inducement.

20 Section 4-416. MODIFICATION TO ACHIEVE SETTLOR'S TAX
21 OBJECTIVES. --To achieve the settlor's tax objectives, the court
22 may modify the terms of a trust in a manner that is not
23 contrary to the settlor's probable intention. The court may
24 provide that the modification has retroactive effect.

25 Section 4-417. COMBINATION AND DIVISION OF TRUSTS. --After

1 notice to the qualified beneficiaries, a trustee may combine
2 two or more trusts into a single trust or divide a trust into
3 two or more separate trusts, if the result does not impair
4 rights of any beneficiary or adversely affect achievement of
5 the purposes of the trust.

6 ARTICLE 5

7 CREDITOR' S CLAIMS-- SPENDTHRIFT AND DISCRETIONARY TRUSTS

8 Section 5-501. RIGHTS OF BENEFICIARY' S CREDITOR OR
9 ASSIGNEE. --To the extent a beneficiary' s interest is not
10 protected by a spendthrift provision, the court may authorize a
11 creditor or assignee of the beneficiary to reach the
12 beneficiary' s interest by attachment of present or future
13 distributions to or for the benefit of the beneficiary or other
14 means. The court may limit the award to such relief as is
15 appropriate under the circumstances.

16 Section 5-502. SPENDTHRIFT PROVISION. --

17 A. A spendthrift provision is valid only if it
18 restrains both voluntary and involuntary transfer of a
19 beneficiary' s interest.

20 B. A term of a trust providing that the interest of
21 a beneficiary is held subject to a "spendthrift trust", or
22 words of similar import, is sufficient to restrain both
23 voluntary and involuntary transfer of the beneficiary' s
24 interest.

25 C. A beneficiary may not transfer an interest in a

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1 trust in violation of a valid spendthrift provision and, except
2 as otherwise provided in this article, a creditor or assignee
3 of the beneficiary may not reach the interest or a distribution
4 by the trustee before its receipt by the beneficiary.

5 Section 5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION. --

6 A. As used in this section, "child" includes any
7 person for whom an order or judgment for child support has been
8 entered in this or another state.

9 B. Even if a trust contains a spendthrift provision,
10 a beneficiary's child, spouse or former spouse who has a
11 judgment or court order against the beneficiary for support or
12 maintenance, or a judgment creditor who has provided services
13 for the protection of a beneficiary's interest in the trust,
14 may obtain from a court an order attaching present or future
15 distributions to or for the benefit of the beneficiary.

16 C. A spendthrift provision is unenforceable against
17 a claim of this state or the United States to the extent a
18 statute of this state or federal law so provides.

19 Section 5-504. DISCRETIONARY TRUSTS--EFFECT OF
20 STANDARD. --

21 A. As used in this section, "child" includes any
22 person for whom an order or judgment for child support has been
23 entered in this or another state.

24 B. Except as otherwise provided in Subsection C of
25 this section, whether or not a trust contains a spendthrift

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1 provision, a creditor of a beneficiary may not compel a
2 distribution that is subject to the trustee's discretion, even
3 if:

4 (1) the discretion is expressed in the form of
5 a standard of distribution; or

6 (2) the trustee has abused the discretion.

7 C. To the extent a trustee has not complied with a
8 standard of distribution or has abused a discretion:

9 (1) a distribution may be ordered by the court
10 to satisfy a judgment or court order against the beneficiary
11 for support or maintenance of the beneficiary's child, spouse
12 or former spouse; and

13 (2) the court shall direct the trustee to pay
14 to the child, spouse or former spouse such amount as is
15 equitable under the circumstances but not more than the amount
16 the trustee would have been required to distribute to or for
17 the benefit of the beneficiary had the trustee complied with
18 the standard or not abused the discretion.

19 D. This section does not limit the right of a
20 beneficiary to maintain a judicial proceeding against a trustee
21 for an abuse of discretion or failure to comply with a standard
22 for distribution.

23 Section 5-505. CREDITOR'S CLAIM AGAINST SETTLOR. --

24 A. Whether or not the terms of a trust contain a
25 spendthrift provision, the following rules apply:

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1 (1) during the lifetime of the settlor, the
2 property of a revocable trust is subject to claims of the
3 settlor's creditors;

4 (2) with respect to an irrevocable trust, a
5 creditor or assignee of the settlor may reach the maximum
6 amount that can be distributed to or for the settlor's benefit.
7 If a trust has more than one settlor, the amount the creditor
8 or assignee of a particular settlor may reach may not exceed
9 the settlor's interest in the portion of the trust attributable
10 to that settlor's contribution; and

11 (3) after the death of a settlor, and subject
12 to the settlor's right to direct the source from which
13 liabilities will be paid, the property of a trust that was
14 revocable at the settlor's death is subject to claims of the
15 settlor's creditors, costs of administration of the settlor's
16 estate, the expenses of the settlor's funeral and disposal of
17 remains and statutory allowances to a surviving spouse and
18 children to the extent the settlor's probate estate is
19 inadequate to satisfy those claims, costs, expenses and
20 allowances.

21 B. For purposes of this section:

22 (1) during the period the power may be
23 exercised, the holder of a power of withdrawal is treated in
24 the same manner as the settlor of a revocable trust to the
25 extent of the property subject to the power; and

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1 (2) upon the lapse, release or waiver of the
2 power, the holder is treated as the settlor of the trust only
3 to the extent the value of the property affected by the lapse,
4 release or waiver exceeds the greater of the amount specified
5 in Section 2041(b)(2), 2514(e) or 2503(b) of the Internal
6 Revenue Code of 1986, as amended.

7 Section 5-506. OVERDUE DISTRIBUTION. -- Whether or not a
8 trust contains a spendthrift provision, a creditor or assignee
9 of a beneficiary may reach a mandatory distribution of income
10 or principal, including a distribution upon termination of the
11 trust, if the trustee has not made the distribution to the
12 beneficiary within a reasonable time after the required
13 distribution date.

14 Section 5-507. PERSONAL OBLIGATIONS OF TRUSTEE. -- Trust
15 property is not subject to personal obligations of the trustee,
16 even if the trustee becomes insolvent or bankrupt.

17 ARTICLE 6

18 REVOCABLE TRUSTS

19 Section 6-601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. --
20 The capacity required to create, amend, revoke or add property
21 to a revocable trust, or to direct the actions of the trustee
22 of a revocable trust, is the same as that required to make a
23 will.

24 Section 6-602. REVOCATION OR AMENDMENT OF REVOCABLE
25 TRUST. --

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1 A. Unless the terms of a trust expressly provide
2 that the trust is irrevocable, the settlor may revoke or amend
3 the trust. This subsection does not apply to a trust created
4 under an instrument executed before the effective date of the
5 Uniform Trust Code.

6 B. If a revocable trust is created or funded by more
7 than one settlor:

8 (1) to the extent the trust consists of
9 community property, the trust may be revoked by either spouse
10 acting alone but may be amended only by joint action of both
11 spouses; and

12 (2) to the extent the trust consists of
13 property other than community property, each settlor may revoke
14 or amend the trust with regard to the portion of the trust
15 property attributable to that settlor's contribution.

16 C. The settlor may revoke or amend a revocable
17 trust:

18 (1) by substantially complying with a method
19 provided in the terms of the trust; or

20 (2) if the terms of the trust do not provide a
21 method or the method provided in the terms is not expressly
22 made exclusive, by:

23 (a) executing a later will or codicil
24 that expressly refers to the trust or specifically devises
25 property that would otherwise have passed according to the

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1 terms of the trust; or

2 (b) any other method manifesting clear
3 and convincing evidence of the settlor's intent.

4 D. Upon revocation of a revocable trust, the trustee
5 shall deliver the trust property as the settlor directs.

6 E. A settlor's powers with respect to revocation,
7 amendment or distribution of trust property may be exercised by
8 an agent under a power of attorney only to the extent expressly
9 authorized by the terms of the trust or the power.

10 F. A conservator of the settlor or, if no
11 conservator has been appointed, a guardian of the settlor may
12 exercise a settlor's powers with respect to revocation,
13 amendment or distribution of trust property only with the
14 approval of the court supervising the conservatorship or
15 guardianship.

16 G. A trustee who does not know that a trust has been
17 revoked or amended is not liable to the settlor or settlor's
18 successors in interest for distributions made and other actions
19 taken on the assumption that the trust had not been amended or
20 revoked.

21 Section 6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

22 A. While a trust is revocable and the settlor has
23 capacity to revoke the trust, rights of the beneficiaries are
24 subject to the control of, and the duties of the trustee are
25 owed exclusively to, the settlor.

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1 B. While a trust is revocable and the settlor does
2 not have capacity to revoke the trust, rights of the
3 beneficiaries are held by the beneficiaries.

4 C. If a revocable trust has more than one settlor,
5 the duties of the trustee are owed to all of the settlors
6 having capacity to revoke the trust.

7 D. During the period the power may be exercised, the
8 holder of a power of withdrawal has the rights of a settlor of
9 a revocable trust under this section to the extent of the
10 property subject to the power.

11 Section 6-604. LIMITATION ON ACTION CONTESTING VALIDITY
12 OF REVOCABLE TRUST--DISTRIBUTION OF TRUST PROPERTY.--

13 A. A person may commence a judicial proceeding to
14 contest the validity of a trust that was revocable at the
15 settlor's death within the earlier of:

- 16 (1) three years after the settlor's death; or
 - 17 (2) one hundred twenty days after the trustee
- 18 sent the person a copy of the trust instrument and a notice
19 informing the person of the trust's existence, of the trustee's
20 name and address and of the time allowed for commencing a
21 proceeding.

22 B. Upon the death of the settlor of a trust that was
23 revocable at the settlor's death, the trustee may proceed to
24 distribute the trust property in accordance with the terms of
25 the trust. The trustee is not subject to liability for doing

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1 so unless:

2 (1) the trustee knows of a pending judicial
3 proceeding contesting the validity of the trust; or

4 (2) a potential contestant has notified the
5 trustee of a possible judicial proceeding to contest the trust
6 and a judicial proceeding is commenced within sixty days after
7 the contestant sent the notification.

8 C. A beneficiary of a trust that is determined to
9 have been invalid is liable to return any distribution
10 received.

11 ARTICLE 7

12 OFFICE OF TRUSTEE

13 Section 7-701. ACCEPTING OR DECLINING TRUSTEESHIP. --

14 A. Except as otherwise provided in Subsection C of
15 this section, a person designated as trustee accepts the
16 trusteeship:

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

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

24 B. A person designated as trustee who has not yet
25 accepted the trusteeship may reject the trusteeship. A

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1 designated trustee who does not accept the trusteeship within a
2 reasonable time after knowing of the designation is deemed to
3 have rejected the trusteeship.

4 C. A person designated as trustee, without accepting
5 the trusteeship, may:

6 (1) act to preserve the trust property if,
7 within a reasonable time after acting, the person sends a
8 rejection of the trusteeship to the settlor or, if the settlor
9 is dead or lacks capacity, to a qualified beneficiary; and

10 (2) inspect or investigate trust property to
11 determine potential liability under environmental law or other
12 law or for any other purpose.

13 Section 7-702. TRUSTEE' S BOND. --

14 A. A trustee shall give bond to secure performance
15 of the trustee's duties only if the court finds that a bond is
16 needed to protect the interests of the beneficiaries or is
17 required by the terms of the trust and the court has not
18 dispensed with the requirement.

19 B. The court may specify the amount of a bond, its
20 liabilities and whether sureties are necessary. The court may
21 modify or terminate a bond at any time.

22 Section 7-703. CO-TRUSTEES. --

23 A. Co-trustees who are unable to reach a unanimous
24 decision may act by majority decision.

25 B. If a vacancy occurs in a co-trusteeship, the

1 remaining co-trustees may act for the trust.

2 C. A co-trustee must participate in the performance
3 of a trustee's function unless the co-trustee is unavailable to
4 perform the function because of absence, illness,
5 disqualification under other law or other temporary incapacity,
6 or the co-trustee has properly delegated the performance of the
7 function to another trustee.

8 D. If a co-trustee is unavailable to perform duties
9 because of absence, illness, disqualification under other law
10 or other temporary incapacity, and prompt action is necessary
11 to achieve the purposes of the trust or to avoid injury to the
12 trust property, the remaining co-trustee or a majority of the
13 remaining co-trustees may act for the trust.

14 E. A trustee may not delegate to a co-trustee the
15 performance of a function the settlor reasonably expected the
16 trustees to perform jointly. Unless a delegation was
17 irrevocable, a trustee may revoke a delegation previously made.

18 F. Except as otherwise provided in Subsection G of
19 this section, a trustee who does not join in an action of
20 another trustee is not liable for the action.

21 G. Each trustee shall exercise reasonable care to:

22 (1) prevent a co-trustee from committing a
23 serious breach of trust; and

24 (2) compel a co-trustee to redress a serious
25 breach of trust.

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1 H. A dissenting trustee who joins in an action at
2 the direction of the majority of the trustees and who notified
3 any co-trustee of the dissent at or before the time of the
4 action is not liable for the action unless the action is a
5 serious breach of trust.

6 Section 7-704. VACANCY IN TRUSTEESHIP--APPOINTMENT OF
7 SUCCESSOR. --

8 A. A vacancy in a trusteeship occurs if:

9 (1) a person designated as trustee rejects the
10 trusteeship;

11 (2) a person designated as trustee cannot be
12 identified or does not exist;

13 (3) a trustee resigns;

14 (4) a trustee is disqualified or removed;

15 (5) a trustee dies; or

16 (6) a guardian or conservator is appointed for
17 an individual serving as trustee.

18 B. If one or more co-trustees remain in office, a
19 vacancy in a trusteeship need not be filled. A vacancy in a
20 trusteeship must be filled if the trust has no remaining
21 trustee.

22 C. A vacancy in a trusteeship required to be filled
23 must be filled in the following order of priority:

24 (1) by a person designated in the terms of the
25 trust to act as successor trustee;

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- (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) by a person appointed by the court.

D. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

Section 7-705. RESIGNATION OF TRUSTEE. --

A. A trustee may resign:

- (1) upon at least thirty days' notice to the qualified beneficiaries and all co-trustees; or
- (2) with the approval of the court.

B. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

C. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

Section 7-706. REMOVAL OF TRUSTEE. --

A. The settlor, a co-trustee or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.

B. The court may remove a trustee if:

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

3 (2) lack of cooperation among co-trustees
4 substantially impairs the administration of the trust;

5 (3) because of unfitness, unwillingness or
6 persistent failure of the trustee to administer the trust
7 effectively, the court determines that removal of the trustee
8 best serves the interests of the beneficiaries; or

9 (4) there has been a substantial change of
10 circumstances or removal is requested by all of the qualified
11 beneficiaries, the court finds that removal of the trustee best
12 serves the interests of all of the beneficiaries and is not
13 inconsistent with a material purpose of the trust, and a
14 suitable co-trustee or successor trustee is available.

15 C. Pending a final decision on a request to remove a
16 trustee, or in lieu of or in addition to removing a trustee,
17 the court may order such appropriate relief under Subsection B
18 of Section 10-1001 of the Uniform Trust Code as may be
19 necessary to protect the trust property or the interests of the
20 beneficiaries.

21 Section 7-707. DELIVERY OF PROPERTY BY FORMER TRUSTEE. --

22 A. Unless a co-trustee remains in office or the
23 court otherwise orders, and until the trust property is
24 delivered to a successor trustee or other person entitled to
25 it, a trustee who has resigned or been removed has the duties

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1 of a trustee and the powers necessary to protect the trust
2 property.

3 B. A trustee who has resigned or been removed shall
4 proceed expeditiously to deliver the trust property within the
5 trustee's possession to the co-trustee, successor trustee or
6 other person entitled to it.

7 Section 7-708. COMPENSATION OF TRUSTEE. --

8 A. If the terms of a trust do not specify the
9 trustee's compensation, a trustee is entitled to compensation
10 that is reasonable under the circumstances.

11 B. If the terms of a trust specify the trustee's
12 compensation, the trustee is entitled to be compensated as
13 specified, but the court may allow more or less compensation
14 if:

15 (1) the duties of the trustee are
16 substantially different from those contemplated when the trust
17 was created; or

18 (2) the compensation specified by the terms of
19 the trust would be unreasonably low or high.

20 Section 7-709. REIMBURSEMENT OF EXPENSES. --

21 A. A trustee is entitled to be reimbursed out of the
22 trust property, with interest as appropriate, for:

23 (1) expenses that were properly incurred in
24 the administration of the trust; and

25 (2) to the extent necessary to prevent unjust

1 enrichment of the trust, expenses that were not properly
2 incurred in the administration of the trust.

3 B. An advance by the trustee of money for the
4 protection of the trust gives rise to a lien against trust
5 property to secure reimbursement with reasonable interest.

6 ARTICLE 8

7 DUTIES AND POWERS OF TRUSTEE

8 Section 8-801. DUTY TO ADMINISTER TRUST. -- Upon acceptance
9 of a trusteeship, the trustee shall administer the trust in
10 good faith, in accordance with its terms and purposes and the
11 interests of the beneficiaries and in accordance with the
12 Uniform Trust Code.

13 Section 8-802. DUTY OF LOYALTY. --

14 A. A trustee shall administer the trust solely in
15 the interests of the beneficiaries.

16 B. Subject to the rights of persons dealing with or
17 assisting the trustee as provided in Section 10-1012 of the
18 Uniform Trust Code, a sale, encumbrance or other transaction
19 involving the investment or management of trust property
20 entered into by the trustee for the trustee's own personal
21 account or which is otherwise affected by a conflict between
22 the trustee's fiduciary and personal interests is voidable by a
23 beneficiary affected by the transaction unless:

24 (1) the transaction was authorized by the
25 terms of the trust;

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1 (2) the transaction was approved by the court;

2 (3) the beneficiary did not commence a
3 judicial proceeding within the time allowed by Section 10-1005
4 of the Uniform Trust Code;

5 (4) the beneficiary consented to the trustee's
6 conduct, ratified the transaction or released the trustee in
7 compliance with Section 10-1009 of the Uniform Trust Code; or

8 (5) the transaction involved a contract
9 entered into or claim acquired by the trustee before the person
10 became or contemplated becoming trustee.

11 C. A sale, encumbrance or other transaction
12 involving the investment or management of trust property is
13 presumed to be affected by a conflict between personal and
14 fiduciary interests if it is entered into by the trustee with:

15 (1) the trustee's spouse;

16 (2) the trustee's descendants, siblings,
17 parents or the spouse of any of them;

18 (3) an agent or attorney of the trustee; or

19 (4) a corporation or other person or
20 enterprise in which the trustee, or a person that owns a
21 significant interest in the trustee, has an interest that might
22 affect the trustee's best judgment.

23 D. A transaction between a trustee and a beneficiary
24 that does not concern trust property but that occurs during the
25 existence of the trust or while the trustee retains significant

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1 influence over the beneficiary and from which the trustee
2 obtains an advantage is voidable by the beneficiary unless the
3 trustee establishes that the transaction was fair to the
4 beneficiary.

5 E. A transaction not concerning trust property in
6 which the trustee engages in the trustee's individual capacity
7 involves a conflict between personal and fiduciary interests if
8 the transaction concerns an opportunity properly belonging to
9 the trust.

10 F. An investment by a trustee in securities of an
11 investment company or investment trust to which the trustee, or
12 its affiliate, provides services in a capacity other than as
13 trustee is not presumed to be affected by a conflict between
14 personal and fiduciary interests if the investment complies
15 with the prudent investor rule of Article 9 of the Uniform
16 Trust Code. The trustee may be compensated by the investment
17 company or investment trust for providing those services out of
18 fees charged to the trust if the trustee at least annually
19 notifies the persons entitled under Section 8-813 of the
20 Uniform Trust Code to receive a copy of the trustee's annual
21 report of the rate and method by which the compensation was
22 determined.

23 G. In voting shares of stock or in exercising powers
24 of control over similar interests in other forms of enterprise,
25 the trustee shall act in the best interests of the

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1 beneficiaries. If the trust is the sole owner of a corporation
2 or other form of enterprise, the trustee shall elect or appoint
3 directors or other managers who will manage the corporation or
4 enterprise in the best interests of the beneficiaries.

5 H. This section does not preclude the following
6 transactions, if fair to the beneficiaries:

7 (1) an agreement between a trustee and a
8 beneficiary relating to the appointment or compensation of the
9 trustee;

10 (2) payment of reasonable compensation to the
11 trustee;

12 (3) a transaction between a trust and another
13 trust, decedent's estate or conservatorship of which the
14 trustee is a fiduciary or in which a beneficiary has an
15 interest;

16 (4) a deposit of trust money in a regulated
17 financial-service institution operated by the trustee; or

18 (5) an advance by the trustee of money for the
19 protection of the trust.

20 I. The court may appoint a special fiduciary to make
21 a decision with respect to any proposed transaction that might
22 violate this section if entered into by the trustee.

23 Section 8-803. IMPARTIALITY.--If a trust has two or more
24 beneficiaries, the trustee shall act impartially in investing,
25 managing and distributing the trust property, giving due regard

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1 to the beneficiaries' respective interests.

2 Section 8-804. PRUDENT ADMINISTRATION. -- A trustee shall
3 administer the trust as a prudent person would, by considering
4 the purposes, terms, distributional requirements and other
5 circumstances of the trust. In satisfying this standard, the
6 trustee shall exercise reasonable care, skill and caution.

7 Section 8-805. COSTS OF ADMINISTRATION. -- In administering
8 a trust, the trustee may incur only costs that are reasonable
9 in relation to the trust property, the purposes of the trust
10 and the skills of the trustee.

11 Section 8-806. TRUSTEE'S SKILLS. -- A trustee who has
12 special skills or expertise, or is named trustee in reliance
13 upon the trustee's representation that the trustee has special
14 skills or expertise, shall use those special skills or
15 expertise.

16 Section 8-807. DELEGATION BY TRUSTEE. --

17 A. A trustee may delegate duties and powers that a
18 prudent trustee of comparable skills could properly delegate
19 under the circumstances. The trustee shall exercise reasonable
20 care, skill and caution in:

- 21 (1) selecting an agent;
- 22 (2) establishing the scope and terms of the
23 delegation, consistent with the purposes and terms of the
24 trust; and
- 25 (3) periodically reviewing the agent's actions

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1 in order to monitor the agent's performance and compliance with
2 the terms of the delegation.

3 B. In performing a delegated function, an agent owes
4 a duty to the trust to exercise reasonable care to comply with
5 the terms of the delegation.

6 C. A trustee who complies with Subsection A of this
7 section is not liable to the beneficiaries or to the trust for
8 an action of the agent to whom the function was delegated.

9 D. By accepting a delegation of powers or duties
10 from the trustee of a trust that is subject to the law of this
11 state, an agent submits to the jurisdiction of the courts of
12 this state.

13 Section 8-808. POWERS TO DIRECT. --

14 A. While a trust is revocable, the trustee may
15 follow a direction of the settlor that is contrary to the terms
16 of the trust.

17 B. If the terms of a trust confer upon a person
18 other than the settlor of a revocable trust power to direct
19 certain actions of the trustee, the trustee shall act in
20 accordance with an exercise of the power unless the attempted
21 exercise is manifestly contrary to the terms of the trust or
22 the trustee knows the attempted exercise would constitute a
23 serious breach of a fiduciary duty that the person holding the
24 power owes to the beneficiaries of the trust.

25 C. The terms of a trust may confer upon a trustee or

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1 other person a power to direct the modification or termination
2 of the trust.

3 D. A person, other than a beneficiary, who holds a
4 power to direct is presumptively a fiduciary who, as such, is
5 required to act in good faith with regard to the purposes of
6 the trust and the interests of the beneficiaries. The holder
7 of a power to direct is liable for any loss that results from
8 breach of a fiduciary duty.

9 Section 8-809. CONTROL AND PROTECTION OF TRUST

10 PROPERTY. -- A trustee shall take reasonable steps to take
11 control of and protect the trust property.

12 Section 8-810. RECORDKEEPING AND IDENTIFICATION OF TRUST
13 PROPERTY. --

14 A. A trustee shall keep adequate records of the
15 administration of the trust.

16 B. A trustee shall keep trust property separate from
17 the trustee's own property.

18 C. Except as otherwise provided in Subsection D of
19 this section, a trustee shall cause the trust property to be
20 designated so that the interest of the trust, to the extent
21 feasible, appears in records maintained by a party other than a
22 trustee or beneficiary.

23 D. If the trustee maintains records clearly
24 indicating the respective interests, a trustee may invest as a
25 whole the property of two or more separate trusts.

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1 Section 8-811. **ENFORCEMENT AND DEFENSE OF CLAIMS.** -- A
2 trustee shall take reasonable steps to enforce claims of the
3 trust and to defend claims against the trust.

4 Section 8-812. **COLLECTING TRUST PROPERTY.** -- A trustee
5 shall take reasonable steps to compel a former trustee or other
6 person to deliver trust property to the trustee and to redress
7 a breach of trust known to the trustee to have been committed
8 by a former trustee.

9 Section 8-813. **DUTY TO INFORM AND REPORT.** --

10 A. A trustee shall keep the qualified beneficiaries
11 of the trust reasonably informed about the administration of
12 the trust and of the material facts necessary for them to
13 protect their interests. Unless unreasonable under the
14 circumstances, a trustee shall promptly respond to a
15 beneficiary's request for information related to the
16 administration of the trust.

17 B. A trustee:

18 (1) upon request of a beneficiary, shall
19 promptly furnish to the beneficiary a copy of the trust
20 instrument;

21 (2) within sixty days after accepting a
22 trusteeship, shall notify the qualified beneficiaries of the
23 acceptance and of the trustee's name, address and telephone
24 number;

25 (3) within sixty days after the date the

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1 trustee acquires knowledge of the creation of an irrevocable
2 trust, or the date the trustee acquires knowledge that a
3 formerly revocable trust has become irrevocable, whether by the
4 death of the settlor or otherwise, shall notify the qualified
5 beneficiaries of the trust's existence, of the identity of the
6 settlor or settlors, of the right to request a copy of the
7 trust instrument and of the right to a trustee's report as
8 provided in Subsection C of this section; and

9 (4) shall notify the qualified beneficiaries
10 in advance of any change in the method or rate of the trustee's
11 compensation.

12 C. A trustee shall send to the distributees or
13 permissible distributees of trust income or principal, and to
14 other qualified or nonqualified beneficiaries who request it,
15 at least annually and at the termination of the trust, a report
16 of the trust property, liabilities, receipts and disbursements,
17 including the source and amount of the trustee's compensation,
18 a listing of the trust assets and, if feasible, their
19 respective market values. Upon a vacancy in a trusteeship,
20 unless a co-trustee remains in office, a report must be sent to
21 the qualified beneficiaries by the former trustee. A personal
22 representative, conservator or guardian may send the qualified
23 beneficiaries a report on behalf of a deceased or incapacitated
24 trustee.

25 D. A beneficiary may waive the right to a trustee's

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1 report or other information otherwise required to be furnished
2 under this section. A beneficiary, with respect to future
3 reports and other information, may withdraw a waiver previously
4 given.

5 Section 8-814. DISCRETIONARY POWERS--TAX SAVINGS.--

6 A. Notwithstanding the breadth of discretion granted
7 to a trustee in the terms of the trust, including the use of
8 such terms as "absolute", "sole" or "uncontrolled", the trustee
9 shall exercise a discretionary power in good faith and in
10 accordance with the terms and purposes of the trust and the
11 interests of the beneficiaries.

12 B. Subject to Subsection D of this section, and
13 unless the terms of the trust expressly indicate that a rule in
14 this subsection does not apply:

15 (1) a person other than a settlor who is a
16 beneficiary and trustee of a trust that confers on the trustee
17 a power to make discretionary distributions to or for the
18 trustee's personal benefit may exercise the power only in
19 accordance with an ascertainable standard relating to the
20 trustee's individual health, education, support or maintenance
21 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of
22 the Internal Revenue Code of 1986, as amended; and

23 (2) a trustee may not exercise a power to make
24 discretionary distributions to satisfy a legal obligation of
25 support that the trustee personally owes another person.

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1 C. A power whose exercise is limited or prohibited
2 by Subsection B of this section may be exercised by a majority
3 of the remaining trustees whose exercise of the power is not so
4 limited or prohibited. If the power of all trustees is so
5 limited or prohibited, the court may appoint a special
6 fiduciary with authority to exercise the power.

7 D. Subsection B of this section does not apply to:

8 (1) a power held by the settlor's spouse who
9 is the trustee of a trust for which a marital deduction, as
10 defined in Section 2056(b)(5) or 2523(b)(5) of the Internal
11 Revenue Code of 1986, as amended, was previously allowed;

12 (2) any trust during any period that the trust
13 may be revoked or amended by its settlor; or

14 (3) a trust if contributions to the trust
15 qualify for the annual exclusion under Section 2503(c) of the
16 Internal Revenue Code of 1986, as amended.

17 Section 8-815. GENERAL POWERS OF TRUSTEE. --

18 A. A trustee, without authorization by the court,
19 may exercise:

20 (1) powers conferred by the terms of the
21 trust; or

22 (2) except as limited by the terms of the
23 trust:

24 (a) all powers over the trust property
25 that an unmarried competent owner has over individually owned

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1 property;

2 (b) any other powers appropriate to
3 achieve the proper investment, management and distribution of
4 the trust property; and

5 (c) any other powers conferred by the
6 Uniform Trust Code.

7 B. The exercise of a power is subject to the
8 fiduciary duties prescribed by this article.

9 Section 8-816. SPECIFIC POWERS OF TRUSTEE. -- Without
10 limiting the authority conferred by Section 8-815 of the
11 Uniform Trust Code, a trustee may:

12 A. collect trust property and accept or reject
13 additions to the trust property from a settlor or any other
14 person;

15 B. acquire or sell property, for cash or on credit,
16 at public or private sale;

17 C. exchange, partition or otherwise change the
18 character of trust property;

19 D. deposit trust money in an account in a regulated
20 financial-service institution;

21 E. borrow money, with or without security, and
22 mortgage or pledge trust property for a period within or
23 extending beyond the duration of the trust;

24 F. with respect to an interest in a proprietorship,
25 partnership, limited liability company, business trust,

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1 corporation or other form of business or enterprise, continue
2 the business or other enterprise and take any action that may
3 be taken by shareholders, members or property owners, including
4 merging, dissolving or otherwise changing the form of business
5 organization or contributing additional capital;

6 G. with respect to stocks or other securities,
7 exercise the rights of an absolute owner, including the right
8 to:

9 (1) vote, or give proxies to vote, with or
10 without power of substitution, or enter into or continue a
11 voting trust agreement;

12 (2) hold a security in the name of a nominee
13 or in other form without disclosure of the trust so that title
14 may pass by delivery;

15 (3) pay calls, assessments and other sums
16 chargeable or accruing against the securities and sell or
17 exercise stock subscription or conversion rights; and

18 (4) deposit the securities with a depository
19 or other regulated financial-service institution;

20 H. with respect to an interest in real property,
21 construct, or make ordinary or extraordinary repairs to,
22 alterations to, or improvements in, buildings or other
23 structures, demolish improvements, raze existing or erect new
24 party walls or buildings, subdivide or develop land, dedicate
25 land to public use or grant public or private easements, and

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1 make or vacate plats and adjust boundaries;

2 I. enter into a lease for any purpose as lessor or
3 lessee, including a lease or other arrangement for exploration
4 and removal of natural resources, with or without the option to
5 purchase or renew, for a period within or extending beyond the
6 duration of the trust;

7 J. grant an option involving a sale, lease or other
8 disposition of trust property or acquire an option for the
9 acquisition of property, including an option exercisable beyond
10 the duration of the trust, and exercise an option so acquired;

11 K. insure the property of the trust against damage
12 or loss and insure the trustee, the trustee's agents and
13 beneficiaries against liability arising from the administration
14 of the trust;

15 L. abandon or decline to administer property of no
16 value or of insufficient value to justify its collection or
17 continued administration;

18 M with respect to possible liability for violation
19 of environmental law:

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

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

6 (3) decline to accept property into trust or
7 disclaim any power with respect to property that is or may be
8 burdened with liability for violation of environmental law;

9 (4) compromise claims against the trust that
10 may be asserted for an alleged violation of environmental law;
11 and

12 (5) pay the expense of any inspection, review,
13 abatement or remedial action to comply with environmental law;

14 N. pay or contest any claim, settle a claim by or
15 against the trust and release, in whole or in part, a claim
16 belonging to the trust;

17 O. pay taxes, assessments, compensation of the
18 trustee and of employees and agents of the trust, and other
19 expenses incurred in the administration of the trust;

20 P. exercise elections with respect to federal, state
21 and local taxes;

22 Q. select a mode of payment under any employee
23 benefit or retirement plan, annuity or life insurance payable
24 to the trustee, exercise rights thereunder, including exercise
25 of the right to indemnification for expenses and against

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1 liabilities, and take appropriate action to collect the
2 proceeds;

3 R. make loans out of trust property, including loans
4 to a beneficiary on terms and conditions the trustee considers
5 to be fair and reasonable under the circumstances, and the
6 trustee has a lien on future distributions for repayment of
7 those loans;

8 S. pledge trust property to guarantee loans made by
9 others to the beneficiary;

10 T. appoint a trustee to act in another jurisdiction
11 with respect to trust property located in the other
12 jurisdiction, confer upon the appointed trustee all of the
13 powers and duties of the appointing trustee, require that the
14 appointed trustee furnish security and remove any trustee so
15 appointed;

16 U. pay an amount distributable to a beneficiary who
17 is under a legal disability or who the trustee reasonably
18 believes is incapacitated, by paying it directly to the
19 beneficiary or applying it for the beneficiary's benefit, or
20 by:

21 (1) paying it to the beneficiary's conservator
22 or, if the beneficiary does not have a conservator, the
23 beneficiary's guardian;

24 (2) paying it to the beneficiary's custodian
25 under the Uniform Transfers to Minors Act or custodial trustee

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1 under the Uniform Custodial Trust Act, and, for that purpose,
2 creating a custodianship or custodial trust;

3 (3) if the trustee does not know of a
4 conservator, guardian, custodian or custodial trustee, paying
5 it to an adult relative or other person having legal or
6 physical care or custody of the beneficiary, to be expended on
7 the beneficiary's behalf; or

8 (4) managing it as a separate fund on the
9 beneficiary's behalf, subject to the beneficiary's continuing
10 right to withdraw the distribution;

11 V. on distribution of trust property or the division
12 or termination of a trust, make distributions in divided or
13 undivided interests, allocate particular assets in
14 proportionate or disproportionate shares, value the trust
15 property for those purposes and adjust for resulting
16 differences in valuation;

17 W. resolve a dispute concerning the interpretation
18 of the trust or its administration by mediation, arbitration or
19 other procedure for alternative dispute resolution;

20 X. prosecute or defend an action, claim or judicial
21 proceeding in any jurisdiction to protect trust property and
22 the trustee in the performance of the trustee's duties;

23 Y. sign and deliver contracts and other instruments
24 that are useful to achieve or facilitate the exercise of the
25 trustee's powers; and

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1 Z. on termination of the trust, exercise the powers
2 appropriate to wind up the administration of the trust and
3 distribute the trust property to the persons entitled to it.

4 Section 8-817. DISTRIBUTION UPON TERMINATION. --

5 A. Upon termination or partial termination of a
6 trust, the trustee may send to the beneficiaries a proposal for
7 distribution. The right of any beneficiary to object to the
8 proposed distribution terminates if the beneficiary does not
9 notify the trustee of an objection within thirty days after the
10 proposal was sent, but only if the proposal informed the
11 beneficiary of the right to object and of the time allowed for
12 objection.

13 B. Upon the occurrence of an event terminating or
14 partially terminating a trust, the trustee shall proceed
15 expeditiously to distribute the trust property to the persons
16 entitled to it, subject to the right of the trustee to retain a
17 reasonable reserve for the payment of debts, expenses and
18 taxes.

19 C. A release by a beneficiary of a trustee from
20 liability for breach of trust is invalid to the extent:

21 (1) it was induced by improper conduct of the
22 trustee; or

23 (2) the beneficiary, at the time of the
24 release, did not know of the beneficiary's rights or of the
25 material facts relating to the breach.

1 ARTICLE 9 is reserved.

2 ARTICLE 10

3 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH
4 TRUSTEES

5 Section 10- 1001. REMEDIES FOR BREACH OF TRUST. --

6 A. A violation by a trustee of a duty the trustee
7 owes to a beneficiary is a breach of trust.

8 B. To remedy a breach of trust that has occurred or
9 may occur, the court may:

10 (1) compel the trustee to perform the
11 trustee's duties;

12 (2) enjoin the trustee from committing a
13 breach of trust;

14 (3) compel the trustee to redress a breach of
15 trust by paying money, restoring property or other means;

16 (4) order the trustee to account;

17 (5) appoint a special fiduciary to take
18 possession of the trust property and administer the trust;

19 (6) suspend the trustee;

20 (7) remove the trustee as provided in Section
21 7- 706 of the Uniform Trust Code;

22 (8) reduce or deny compensation to the
23 trustee;

24 (9) subject to Section 10- 1012 of the Uniform
25 Trust Code, void an act of the trustee, impose a lien or a

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1 constructive trust on trust property or trace trust property
2 wrongfully disposed of and recover the property or its
3 proceeds; or

4 (10) order any other appropriate relief.

5 Section 10-1002. DAMAGES FOR BREACH OF TRUST. --

6 A. A trustee who commits a breach of trust is liable
7 to the beneficiaries affected for the greater of:

8 (1) the amount required to restore the value
9 of the trust property and trust distributions to what they
10 would have been had the breach not occurred; or

11 (2) the profit the trustee made by reason of
12 the breach.

13 B. Except as otherwise provided in this subsection,
14 if more than one trustee is liable to the beneficiaries for a
15 breach of trust, a trustee is entitled to contribution from the
16 other trustee or trustees. A trustee is not entitled to
17 contribution if the trustee was substantially more at fault
18 than another trustee or if the trustee committed the breach of
19 trust in bad faith or with reckless indifference to the
20 purposes of the trust or the interests of the beneficiaries. A
21 trustee who received a benefit from the breach of trust is not
22 entitled to contribution from another trustee to the extent of
23 the benefit received.

24 Section 10-1003. DAMAGES IN ABSENCE OF BREACH. --

25 A. A trustee is accountable to an affected

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1 beneficiary for any profit made by the trustee arising from the
2 administration of the trust, even absent a breach of trust.

3 B. Absent a breach of trust, a trustee is not liable
4 to a beneficiary for a loss or depreciation in the value of
5 trust property or for not having made a profit.

6 Section 10-1004. ATTORNEY FEES AND COSTS. --In a judicial
7 proceeding involving the administration of a trust, the court,
8 as justice and equity may require, may award costs and
9 expenses, including reasonable attorney fees, to any party, to
10 be paid by another party or from the trust that is the subject
11 of the controversy.

12 Section 10-1005. LIMITATION OF ACTION AGAINST TRUSTEE. --

13 A. A beneficiary may not commence a proceeding
14 against a trustee for breach of trust more than one year after
15 the date the beneficiary or a representative of the beneficiary
16 was sent a report that adequately disclosed the existence of a
17 potential claim for breach of trust and informed the
18 beneficiary of the time allowed for commencing a proceeding.

19 B. A report adequately discloses the existence of a
20 potential claim for breach of trust if it provides sufficient
21 information so that the beneficiary or representative knows of
22 the potential claim or should have inquired into its existence.

23 C. If Subsection A of this section does not apply, a
24 judicial proceeding by a beneficiary against a trustee for
25 breach of trust must be commenced within five years after the

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1 first to occur of:

2 (1) the removal, resignation or death of the
3 trustee;

4 (2) the termination of the beneficiary's
5 interest in the trust; or

6 (3) the termination of the trust.

7 Section 10-1006. RELIANCE ON TRUST INSTRUMENT. --A trustee
8 who acts in reasonable reliance on the terms of the trust as
9 expressed in the trust instrument is not liable to a
10 beneficiary for a breach of trust to the extent the breach
11 resulted from the reliance.

12 Section 10-1007. EVENT AFFECTING ADMINISTRATION OR
13 DISTRIBUTION. --If the happening of an event, including
14 marriage, divorce, performance of educational requirements or
15 death, affects the administration or distribution of a trust, a
16 trustee who has exercised reasonable care to ascertain the
17 happening of the event is not liable for a loss resulting from
18 the trustee's lack of knowledge.

19 Section 10-1008. EXCULPATION OF TRUSTEE. --

20 A. A term of a trust relieving a trustee of
21 liability for breach of trust is unenforceable to the extent
22 that it:

23 (1) relieves the trustee of liability for
24 breach of trust committed in bad faith or with reckless
25 indifference to the purposes of the trust or the interests of

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1 the beneficiaries; or

2 (2) was inserted as the result of an abuse by
3 the trustee of a fiduciary or confidential relationship to the
4 settlor.

5 B. An exculpatory term drafted or caused to be
6 drafted by the trustee is invalid as an abuse of a fiduciary or
7 confidential relationship unless the trustee proves that the
8 exculpatory term is fair under the circumstances and that its
9 existence and contents were adequately communicated to the
10 settlor.

11 Section 10- 1009. BENEFICIARY' S CONSENT, RELEASE OR
12 RATIFICATION. --A trustee is not liable to a beneficiary for
13 breach of trust if the beneficiary, while having capacity,
14 consented to the conduct constituting the breach, released the
15 trustee from liability for the breach or ratified the
16 transaction constituting the breach, unless:

17 A. the consent, release or ratification of the
18 beneficiary was induced by improper conduct of the trustee; or

19 B. at the time of the consent, release or
20 ratification, the beneficiary did not know of the beneficiary' s
21 rights or of the material facts relating to the breach.

22 Section 10- 1010. LIMITATION ON PERSONAL LIABILITY OF
23 TRUSTEE. --

24 A. Except as otherwise provided in the contract, a
25 trustee is not personally liable on a contract properly entered

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1 into in the trustee's fiduciary capacity in the course of
2 administering the trust if the trustee in the contract
3 disclosed the fiduciary capacity.

4 B. A trustee is personally liable for torts
5 committed in the course of administering a trust, or for
6 obligations arising from ownership or control of trust
7 property, including liability for violation of environmental
8 law, only if the trustee is personally at fault.

9 C. A claim based on a contract entered into by a
10 trustee in the trustee's fiduciary capacity, on an obligation
11 arising from ownership or control of trust property, or on a
12 tort committed in the course of administering a trust, may be
13 asserted in a judicial proceeding against the trustee in the
14 trustee's fiduciary capacity, whether or not the trustee is
15 personally liable for the claim.

16 Section 1011 is reserved.

17 Section 10- 1012. PROTECTION OF PERSON DEALING WITH
18 TRUSTEE. --

19 A. A person other than a beneficiary who in good
20 faith assists a trustee, or who in good faith and for value
21 deals with a trustee, without knowledge that the trustee is
22 exceeding or improperly exercising the trustee's powers is
23 protected from liability as if the trustee properly exercised
24 the power.

25 B. A person other than a beneficiary who in good

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1 faith deals with a trustee is not required to inquire into the
2 extent of the trustee's powers or the propriety of their
3 exercise.

4 C. A person who in good faith delivers assets to a
5 trustee need not ensure their proper application.

6 D. A person other than a beneficiary who in good
7 faith assists a former trustee, or who in good faith and for
8 value deals with a former trustee, without knowledge that the
9 trusteeship has terminated, is protected from liability as if
10 the former trustee were still a trustee.

11 E. Comparable protective provisions of other laws
12 relating to commercial transactions or transfer of securities
13 by fiduciaries prevail over the protection provided by this
14 section.

15 Section 10- 1013. CERTIFICATION OF TRUST. --

16 A. Instead of furnishing a copy of the trust
17 instrument to a person other than a beneficiary, the trustee
18 may furnish to the person a certification of trust containing
19 the following information:

20 (1) that the trust exists and the date the
21 trust instrument was executed;

22 (2) the identity of the settlor;

23 (3) the identity and address of the currently
24 acting trustee;

25 (4) the powers of the trustee;

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1 (5) the revocability or irrevocability of the
2 trust and the identity of any person holding a power to revoke
3 the trust;

4 (6) the authority of co-trustees to sign or
5 otherwise authenticate and whether all or less than all are
6 required in order to exercise powers of the trustee;

7 (7) the trust's taxpayer identification
8 number; and

9 (8) the manner of taking title to trust
10 property.

11 B. A certification of trust may be signed or
12 otherwise authenticated by any trustee.

13 C. A certification of trust must state that the
14 trust has not been revoked, modified or amended in any manner
15 that would cause the representations contained in the
16 certification of trust to be incorrect.

17 D. A certification of trust need not contain the
18 dispositive terms of a trust.

19 E. A recipient of a certification of trust may
20 require the trustee to furnish copies of those excerpts from
21 the original trust instrument and later amendments that
22 designate the trustee and confer upon the trustee the power to
23 act in the pending transaction.

24 F. A person who acts in reliance upon a
25 certification of trust without knowledge that the

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1 representations contained therein are incorrect is not liable
2 to any person for so acting and may assume without inquiry the
3 existence of the facts contained in the certification.
4 Knowledge of the terms of the trust may not be inferred solely
5 from the fact that a copy of all or part of the trust
6 instrument is held by the person relying upon the
7 certification.

8 G. A person who in good faith enters into a
9 transaction in reliance upon a certification of trust may
10 enforce the transaction against the trust property as if the
11 representations contained in the certification were correct.

12 H. A person making a demand for the trust instrument
13 in addition to a certification of trust or excerpts is liable
14 for damages if the court determines that the person did not act
15 in good faith in demanding the trust instrument.

16 I. This section does not limit the right of a person
17 to obtain a copy of the trust instrument in a judicial
18 proceeding concerning the trust.

19 ARTICLE 11

20 MISCELLANEOUS PROVISIONS

21 Section 11-1101. UNIFORMITY OF APPLICATION AND
22 CONSTRUCTION. --In applying and construing the Uniform Trust
23 Code, consideration must be given to the need to promote
24 uniformity of the law with respect to its subject matter among
25 states that enact it.

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1 Section 11-1102. ELECTRONIC RECORDS AND SIGNATURES. --The
2 provisions of the Uniform Trust Code governing the legal
3 effect, validity or enforceability of electronic records or
4 electronic signatures, and of contracts formed or performed
5 with the use of such records or signatures, conform to the
6 requirements of Section 102 of the federal Electronic
7 Signatures in Global and National Commerce Act and supersede,
8 modify and limit the requirements of the federal Electronic
9 Signatures in Global and National Commerce Act.

10 Section 11-1103. SEVERABILITY. --If any provision of the
11 Uniform Trust Code or its application to any person or
12 circumstances is held invalid, the invalidity does not affect
13 other provisions or applications of that code which can be
14 given effect without the invalid provision or application, and
15 to this end the provisions of the code are severable.

16 Section 11-1104. APPLICATION TO EXISTING RELATIONSHIPS. --

17 A. Except as otherwise provided in the Uniform Trust
18 Code, on the effective date of the Uniform Trust Code:

19 (1) the Uniform Trust Code applies to all
20 trusts created before, on or after its effective date;

21 (2) the Uniform Trust Code applies to all
22 judicial proceedings concerning trusts commenced on or after
23 its effective date;

24 (3) the Uniform Trust Code applies to judicial
25 proceedings concerning trusts commenced before its effective

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1 date, unless the court finds that application of a particular
2 provision of the Uniform Trust Code would substantially
3 interfere with the effective conduct of the judicial
4 proceedings or prejudice the rights of the parties, in which
5 case the particular provision of the Uniform Trust Code does
6 not apply and the superseded law applies;

7 (4) any rule of construction or presumption
8 provided in the Uniform Trust Code applies to trust instruments
9 executed before the effective date of the Uniform Trust Code
10 unless there is a clear indication of a contrary intent in the
11 terms of the trust; and

12 (5) an act done before the effective date of
13 the Uniform Trust Code is not affected by the Uniform Trust
14 Code.

15 B. If a right is acquired, extinguished or barred
16 upon the expiration of a prescribed period that has commenced
17 to run under any other statute before the effective date of the
18 Uniform Trust Code, that statute continues to apply to the
19 right even if it has been repealed or superseded.

20 Section 11-1105. REPEAL. -- Sections 45-7-101 through
21 45-7-401 and 46-2-1 through 46-2-19 NMSA 1978 (being Laws 1975,
22 Chapter 257, Sections 7-101, 7-105, 7-201, 7-202, 7-205, 7-206,
23 7-301 through 7-307 and 7-401; Laws 1951, Chapter 193, Sections
24 1 through 3; Laws 1995, Chapter 190, Section 2; Laws 1951,
25 Chapter 193, Section 5; Laws 1995, Chapter 190, Section 3; Laws

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1 1951, Chapter 193, Sections 7 through 11 and 15 through 22, as
2 amended) are repealed.

3 Section 11-1106. EFFECTIVE DATE. --The effective date of
4 the provisions of this act is July 1, 2003.