

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 2551

(By Delegates Doyle, Guthrie, Ferro, Frazier,
Reynolds and Walters)



Passed March 12, 2011

In Effect Ninety Days From Passage

E N R O L L E D

H. B. 2551

(BY DELEGATES DOYLE, GUTHRIE, FERRO, FRAZIER,
REYNOLDS AND WALTERS)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to repeal §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia of 1931, as amended; to repeal §44-5-12, §44-5-13, §44-5-14 and §44-5-15 of said code; to repeal §44-6-2a of said code; to repeal §44-14-1, §44-14-2, §44-14-3 §44-14-4 and §44-14-5 of said code; to amend and reenact §38-1-13 of said code; to amend said code by adding thereto a new section, designated §44-4-22; to amend and reenact §44-5-1, §44-5-7 and §44-5-11 of said code; to amend and reenact §44-5A-2, §44-5A-3 and §44-5A-4 of said code; to amend said code by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; to amend and reenact §44-6-1 and §44-6-2 of said code; to amend said code by adding thereto a new section, designated §44-6-11; to amend and reenact §44-6C-1, §44-6C-2, and §44-6C-9 of said code; to amend and reenact §44-7-1 of said code; to amend said code by adding thereto a new section, designated §44-7-4; and to amend said code by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105,

§44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901, §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104 and §44D-11-1105, all relating generally to estates and trusts and their administration; providing that certain provisions of current law to have no effect after specified date; providing certain provisions of current law are not to apply to trusts and trustees after specified date; changing names of certain articles of existing code; providing for the creation, administration, revision and termination of trusts; providing for trustees, powers and duties of trustees and substitution of trustees; providing for distribution of trust assets; specifying powers and certain restrictions on powers of fiduciaries; amending the Uniform Prudent Investor Act; modernizing language of certain existing sections of code and deleting obsolete language; adopting West Virginia Uniform Trust Code; providing general provisions and definitions; providing for judicial proceedings; providing for representation of trusts;

providing for creation, validity, modification and termination of trusts; providing for creditor's claims; providing for spendthrift trusts, discretionary trusts and revocable trusts; providing for the office of trustee; providing duties and powers of trustees; providing for liability of trustees and rights of persons dealing with trustee; providing various miscellaneous provisions for trusts and trustees; specifying delayed effective date for West Virginia Uniform Trust Code; and providing rules for application of that date.

Be it enacted by the Legislature of West Virginia:

That §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia, 1931, as amended, be repealed; that §44-5-12, §44-5-13, §44-5-14 and §44-5-15 be repealed; that §44-6-2a be repealed; that §44-14-1, §44-14-2, §44-14-3, §44-14-4 and §44-14-5 be repealed; that §38-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-4-22; that §44-5-1, §44-5-7, §44-5-11 of said code be amended and reenacted; that §44-5A-2, §44-5A-3 and §44-5A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; that §44-6-1 and §44-6-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-6-11; that §44-6C-1, §44-6C-2, and §44-6C-9 of said code be amended and reenacted; that §44-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-7-4; and that said code be amended by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413,

§44D-4-414, §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901, §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104 and §44D-11-1105, all to read as follows:

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-13. Substitution of trustees under a trust deed securing a debt.

1 (a) When a trust deed to secure a debt or obligation does
2 not by its terms prescribe a method for substitution, the party
3 secured by the trust deed, or any surety indemnified by the
4 deed, or the assignee or personal representative of any
5 secured party or surety may, if there is a death, removal,
6 declination, resignation, refusal or inability of the original
7 trustee or trustees named in the instrument, substitute a
8 trustee or trustees in his or her, or its place by a writing duly
9 signed and acknowledged and recorded in the office of the
10 clerk of the county commission where the real estate covered
11 by the trust deed is situate.

12 (b) When a substitution is made under this section of a
13 trustee or trustees of a trust deed securing a debt or

14 obligation, the substitution is effected when the party
15 secured, or a surety indemnified by the deed, or the assignee
16 or personal representative of any such secured party or surety
17 has deposited true copies of the notice of the substitution in
18 the United States mail, first class postage prepaid, addressed
19 to the last known addresses of the grantor or grantors or any
20 other person owing the debt or obligation, and has presented
21 the original of the notice to the clerk of the county
22 commission in whose office the trust deed is recorded,
23 causing the notice to be recorded and indexed in a general
24 lien book or other appropriate book in which trust deeds or
25 assignments of trust deeds are recorded. There shall be
26 appended to the notice presented for recording a certificate
27 by the party making the substitution, certifying that copies of
28 the notice were mailed as required by this subsection, and
29 showing the date of the mailing.

30 (c) It is not necessary to give notice under this section to
31 a trustee who has removed from the state, declined to accept
32 the trust, refused to act as trustee, or has resigned, or to the
33 personal representative of one who has died.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 4. ACCOUNTING BY PERSONAL REPRESENTATIVES.

§44-4-22. Application only to personal representatives, guardians, curators or committees.

1 The provisions of this article apply only to personal
2 representatives, guardians, curators or committees, as the
3 case may be, and do not apply to or affect trustees who are
4 governed by the provisions of the West Virginia Uniform
5 Trust Code in chapter forty-four-d of this code.

ARTICLE 5. GENERAL PROVISIONS AS TO PERSONAL REPRESENTATIVES.

§44-5-1. List of fiduciaries.

1 (a) The clerk of the county commission of each county
2 shall keep a record, to be known as the “Record of
3 Fiduciaries,” in which he or she shall enter, in separate
4 columns, first, the name of every fiduciary authorized to act
5 as such by the county commission or clerk of the county
6 commission; secondly, the name of the decedent for whose
7 estate he or she is personal representative or curator; thirdly,
8 the names of the distributees of the estate, showing their
9 relation to the decedent; fourthly, the name of the living
10 person or persons for whom he or she is minor guardian,
11 curator, committee or trustee; fifthly, the penalty of his or her
12 bond; sixthly, the names of his or her sureties; seventhly, the
13 date of the order conferring his or her authority, and a
14 reference to the book and page where entered; eighthly, the
15 date of any order revoking his or her authority, and a
16 reference to the book and page where entered; ninthly, the
17 date of the return of every inventory and appraisalment of the
18 estate; tenthly, the date of the confirmation of each report of
19 settlement of the accounts of the fiduciary; and the clerk shall
20 index the record in the name of the decedent, estate, ward or
21 person represented by the fiduciary. Any clerk failing to
22 make entry, as to any fiduciary, within ten days after the
23 order conferring or revoking the authority, or the date of the
24 return of the inventory and/or appraisalment, or the date of the
25 confirmation of any report of settlement, shall, for every
26 failure, forfeit \$20.

27 (b) This section does not apply to a trustee.

§44-5-7. Authority of personal representatives to compound and compromise liabilities due to or from them.

1 It is lawful for any guardian, committee or trustee, to
 2 compound and compromise any liability due to or from him
 3 or her, unless the compounding and compromise is ratified
 4 and approved by a court of competent jurisdiction, all parties
 5 in interest being before the court by proper process. When
 6 the compounding and compromise has been ratified and
 7 approved, it is binding on all parties in interest before the
 8 court. It is lawful for any personal representative to
 9 compound and compromise any liability due to or from him
 10 or her, as long as the compounding and compromise is
 11 ratified and approved by the fiduciary commissioner to whom
 12 the estate or trust has been referred, or by a commissioner
 13 appointed by the circuit court when the estate of the decedent
 14 is being settled in a chancery suit, and is reported by the
 15 fiduciary commissioner to his or her court. When the report
 16 is confirmed, the compounding and compromise shall be
 17 binding on all parties to the proceedings.

**§44-5-11. Application only to personal representatives,
 curators, and minor guardians.**

1 The provisions of this article apply only to personal
 2 representatives, curators, and minor guardians, as the case
 3 may be, and do not apply to or affect guardians and
 4 conservators of adult protected persons who are governed by
 5 the provisions of the Guardian and Conservatorship Act in
 6 chapter forty-four-a of this code or trustees who are governed
 7 by the provisions of the West Virginia Uniform Trust Code
 8 in chapter forty-four-d of this code.

ARTICLE 5A. POWERS OF FIDUCIARIES.

**§44-5A-2. Incorporation by reference of enumerated powers by
 testator; restriction on exercise of powers.**

1 (a) After June 30, 2011, by an intention of the testator
 2 expressed in a will, any or all of the powers or any portion of

3 the powers enumerated in section three of this article, as they
4 exist at the time of the signing of the will by the testator may
5 be, by appropriate reference made thereto, incorporated in the
6 will, with the same effect as though the language were set
7 forth verbatim in the instrument. Incorporation of one or
8 more of the powers contained in section three of this article
9 by reference to that section is in addition to and not in
10 limitation of the common law or statutory powers of the
11 fiduciary.

12 (b) No power of authority conferred upon a fiduciary as
13 provided in this article may be exercised by the fiduciary in
14 a manner as, in the aggregate, to deprive the trust or the estate
15 involved of an otherwise available tax exemption, deduction
16 or credit, expressly including the marital deduction, or
17 operate to impose a tax upon a donor or testator or other
18 person as owner of any portion of the trust or estate involved.
19 "Tax" includes, but is not limited to, any federal, state, or
20 local income, gift, estate or inheritance tax.

21 (c) Nothing in this section prevents the incorporation of
22 the powers enumerated in section three of this article in any
23 other kind of instrument or agreement.

**§44-5A-3. Powers which may be incorporated by reference in
trust instrument.**

1 The following powers may be incorporated by reference
2 by a testator in the will as provided in section two of this
3 article and the following powers apply without the need for
4 incorporation by reference to trustees who are governed by
5 the provisions of the West Virginia Uniform Trust Code in
6 chapter forty-four-d of this code:

7 (a) *Retain original property.* -- To retain for the time the
8 fiduciary considers advisable any property, real or personal,

9 which the fiduciary may receive, even though the retention of
10 the property by reason of its character, amount, proportion to
11 the total estate or otherwise would not be appropriate for the
12 fiduciary apart from this provision.

13 (b) *Sell and exchange property.* -- To sell, exchange, give
14 options upon, partition or otherwise dispose of any property
15 or interest therein which the fiduciary may hold from time to
16 time, with or without order of court, at public or private sale
17 or otherwise, upon the terms and conditions, including credit,
18 and for the consideration the fiduciary considers advisable,
19 and to transfer and convey the property or interest therein
20 which is at the disposal of the fiduciary, in fee simple
21 absolute or otherwise, free of all trust; and the party dealing
22 with the fiduciary is not under a duty to follow the proceeds
23 or other consideration received by the fiduciary from the sale
24 or exchange.

25 (c) *Invest and reinvest.* -- To invest and reinvest, as the
26 fiduciary considers advisable, in stocks (common or
27 preferred), bonds, debentures, notes, mortgages or other
28 securities, in or outside the United States; in insurance
29 contracts on the life of any beneficiary or of any person in
30 whom a beneficiary has an insurable interest, or in annuity
31 contracts for any beneficiary, in any real or personal
32 property, in investment trusts; in participations in common
33 trust funds, and generally in property the fiduciary considers
34 advisable, even though the investment is not of the character
35 approved by applicable law but for this provision.

36 (d) *Invest without diversification.* -- To make investments
37 which cause a greater proportion of the total property held by
38 the fiduciary to be invested in investments of one type or of
39 one company than would be considered appropriate for the
40 fiduciary apart from this provision.

41 (e) *Continue business.* -- To the extent and upon terms
42 and conditions and for the periods as the fiduciary considers
43 necessary or advisable, to continue or participate in the
44 operation of any business or other enterprise, whatever its
45 form of organization, including, but not limited to, the power:

46 (1) To effect incorporation, dissolution, or other change
47 in the form of the organization of the business or enterprise;

48 (2) To dispose of any interest therein or acquire the
49 interest of others therein;

50 (3) To contribute thereto or invest therein additional
51 capital or to lend money thereto, in any case upon terms and
52 conditions the fiduciary approves from time to time;

53 (4) To determine whether the liabilities incurred in the
54 conduct of the business are to be chargeable solely to the part
55 of the estate or trust set aside for use in the business or to the
56 estate or trust as a whole; and

57 (5) In all cases in which the fiduciary is required to file
58 accounts in any court or in any other public office, it is not
59 necessary to itemize receipts and disbursements and
60 distributions of property but it is sufficient for the fiduciary
61 to show in the account a single figure or consolidation of
62 figures, and the fiduciary is permitted to account for money
63 and property received from the business and any payments
64 made to the business in lump sum without itemization.

65 (f) *Form corporation or other entity.* -- To form a
66 corporation or other entity and to transfer, assign, and convey
67 to the corporation or entity all or any part of the estate or of
68 any trust property in exchange for the stock, securities or
69 obligations of the corporation or entity, and to continue to
70 hold the stock and securities and obligations.

71 (g) *Operate farm.* -- To continue any farming operation
72 received by the fiduciary pursuant to the will or other
73 instrument and to do any and all things considered advisable
74 by the fiduciary in the management and maintenance of the
75 farm and the production and marketing of crops and dairy,
76 poultry, livestock, orchard and forest products including, but
77 not limited to, the following powers:

78 (1) To operate the farm with hired labor, tenants or
79 sharecroppers;

80 (2) To lease or rent the farm for cash or for a share of the
81 crops;

82 (3) To purchase or otherwise acquire farm machinery and
83 equipment and livestock;

84 (4) To construct, repair and improve farm buildings of all
85 kinds needed in the fiduciary's judgment, for the operation of
86 the farm;

87 (5) To make or obtain loans or advances at the prevailing
88 rate or rates of interest for farm purposes such as for
89 production, harvesting or marketing, or for the construction,
90 repair or improvement of farm buildings or for the purchase
91 of farm machinery or equipment or livestock;

92 (6) To employ approved soil conservation practices in
93 order to conserve, improve and maintain the fertility and
94 productivity of the soil;

95 (7) To protect, manage and improve the timber and forest
96 on the farm and sell the timber and forest products when it is
97 to the best interest of the estate;

98 (8) To ditch, dam and drain damp or wet fields and areas
99 of the farm when and where needed;

100 (9) To engage in the production of livestock, poultry or
101 dairy products, and to construct such fences and buildings
102 and plant pastures and crops necessary to carry on the
103 operations;

104 (10) To market the products of the farm; and

105 (11) In general, to employ good husbandry in the farming
106 operation.

107 (h) *Manage real property.* -- (1) To improve, manage,
108 protect and subdivide any real property;

109 (2) To dedicate or withdraw from dedication parks,
110 streets, highways or alleys;

111 (3) To terminate any subdivision or part thereof;

112 (4) To borrow money for the purposes authorized by this
113 subdivision for periods and upon terms and conditions as to
114 rates, maturities and renewals the fiduciary considers
115 advisable and to mortgage or otherwise encumber any
116 property or part thereof, whether in possession or reversion;

117 (5) To lease any property or part thereof to commence at
118 the present or in the future, upon terms and conditions,
119 including options to renew or purchase, and for such period
120 or periods the fiduciary considers advisable although the
121 period or periods may extend beyond the duration of the trust
122 or the administration of the estate involved;

123 (6) To make coal, gravel, sand, oil, gas and other mineral
124 leases, contracts, licenses, conveyances or grants of every
125 nature and kind which are lawful in the jurisdiction in which
126 the property lies;

127 (7) To manage and improve timber and forests on the
128 property, to sell the timber and forest products, and to make
129 grants, leases, and contracts with respect thereto;

130 (8) To modify, renew or extend leases;

131 (9) To employ agents to rent and collect rents;

132 (10) To create easements and release, convey or assign
133 any right, title or interest with respect to any easement on the
134 property or part of the property;

135 (11) To erect, repair or renovate any building or other
136 improvement on the property, and to remove or demolish any
137 building or other improvement, in whole or in part; and

138 (12) To deal with the property and every part of the
139 property in all other ways and for other purposes or
140 considerations as it would be lawful for any person owning
141 the same to deal with the property either in the same or in
142 different ways from those specified elsewhere in this
143 subdivision.

144 (i) *Pay taxes and expenses.* -- To pay taxes, assessments,
145 compensation of the fiduciary, and other expenses incurred
146 in the collection, care, administration, and protection of the
147 trust or estate.

148 (j) *Receive additional property.* -- To receive additional
149 property from any source and administer the additional
150 property as a portion of the appropriate trust or estate under
151 the management of the fiduciary but the fiduciary is not
152 required to receive the property without his or her consent.

153 (k) *Deal with other trusts.* -- In dealing with one or more
154 fiduciaries:

155 (1) To sell property, real or personal, to, or to exchange
156 property with, the trustee of any trust which the decedent or
157 the settlor or his or her spouse or any child of his or her
158 creation, for estates and upon terms and conditions as to sale
159 price, terms of payment, and security as the fiduciary
160 considers advisable; and the fiduciary is under no duty to
161 follow the proceeds of any such sale; and

162 (2) To borrow money for periods and upon terms and
163 conditions as to rates, maturities, renewals and securities the
164 fiduciary considers advisable from any trust created by the
165 decedent, his or her spouse, or any child of his or her, for the
166 purpose of paying debts of the decedent, taxes, the costs of
167 the administration of the estate, and like charges against the
168 estate, or any part thereof, or discharging the liability of any
169 fiduciary thereof and to mortgage, pledge or otherwise
170 encumber a portion of the estate or any trust as may be
171 required to secure the loan or loans and to renew the loans.

172 (l) *Borrow money.* -- To borrow money for periods and
173 upon terms and conditions as to rates, maturities, renewals,
174 and security the fiduciary considers advisable, including the
175 power of a corporate fiduciary to borrow from its own
176 banking department, for the purpose of paying debts, taxes or
177 other charges against the estate or any trust, or any part
178 thereof, and to mortgage, pledge or otherwise encumber a
179 portion of the estate or any trust as may be required to secure
180 the loan or loans; and to renew existing loans either as maker
181 or endorser.

182 (m) *Make advances.* -- To advance money for the
183 protection of the trust or estate, and for all expenses, losses
184 and liabilities sustained in the administration of the trust or
185 estate or because of the holding or ownership of any trust or
186 estate assets, for which advances with any interest the
187 fiduciary has a lien on the assets of the trust or estate as
188 against a beneficiary.

189 (n) *Vote shares.* -- To vote shares of stock owned by the
190 estate or any trust at stockholders meetings in person or by
191 special, limited or general proxy, with or without power of
192 substitution.

193 (o) *Register in name of nominee.* -- To hold a security in
194 the name of a nominee or in other form without disclosure of
195 the fiduciary relationship so that title to the security may pass
196 by delivery, but the fiduciary is liable for any act of the
197 nominee in connection with the stock so held.

198 (p) *Exercise options, rights and privileges.* -- To exercise
199 all options, rights, and privileges to convert stocks, bonds,
200 debentures, notes, mortgages or other property into other
201 stocks, bonds, debentures, notes, mortgages or other
202 property; to subscribe for other or additional stocks, bonds,
203 debentures, notes, mortgages or other property; and to hold
204 the stocks, bonds, debentures, notes, mortgages or other
205 property so acquired as investments of the estate or trust so
206 long as the fiduciary considers advisable.

207 (q) *Participate in reorganizations.* -- To unite with other
208 owners of property similar to any which may be held at any
209 time in the decedent's estate or in any trusts in carrying out
210 any plan for the consolidation or merger, dissolution or
211 liquidation, foreclosure, lease or sale of the property,
212 incorporation or reincorporation, reorganization or
213 readjustment of the capital or financial structure of any
214 corporation, company or association the securities of which
215 may form any portion of an estate or trust; to become and
216 serve as a member of a stockholders or bondholders
217 protective committee; to deposit securities in accordance with
218 any plan agreed upon; to pay any assessments, expenses or
219 sums of money that may be required for the protection or
220 furtherance of the interest of the distributees of an estate or
221 beneficiaries of any trust with reference to the plan; and to

222 receive as investments of an estate or any trust any securities
223 issued as a result of the execution of the plan.

224 (r) *Reduce interest rates.* -- To reduce the interest rate
225 from time to time on any obligation, whether secured or
226 unsecured, constituting a part of an estate or trust.

227 (s) *Renew and extend obligations.* -- To continue any
228 obligation, whether secured or unsecured, upon and after
229 maturity with or without renewal or extension upon terms the
230 fiduciary considers advisable, without regard to the value of
231 the security, if any, at the time of the continuance.

232 (t) *Foreclose and bid in.* -- To foreclose, as an incident to
233 the collection of any bond, note or other obligation, any
234 mortgage, deed of trust or other lien securing the bond, note
235 or other obligation, and to bid in the property at the
236 foreclosure sale, or to acquire the property by deed from the
237 mortgagor or obligor without foreclosure; and to retain the
238 property so bid in or taken over without foreclosure.

239 (u) *Insure.* -- To carry insurance coverage, including
240 public liability, for hazards and in amounts, either in stock
241 companies or in mutual companies, as the fiduciary considers
242 advisable.

243 (v) *Collect.* -- To collect, receive and receipt for rents,
244 issues, profits, and income of an estate or trust.

245 (w) *Litigate, compromise or abandon.* -- To compromise,
246 adjust, arbitrate, sue on or defend, abandon or otherwise deal
247 with and settle claims in favor of or against the estate or trust
248 as the fiduciary considers advisable, and the fiduciary's
249 decision is conclusive between the fiduciary and the
250 beneficiaries of the estate or trust and the person against or
251 for whom the claim is asserted, in the absence of fraud by

252 those persons; and in the absence of fraud, bad faith or gross
253 negligence of the fiduciary, is conclusive between the
254 fiduciary and the beneficiaries of the estate or trust.

255 (x) *Employ and compensate agents, etc.* -- To employ and
256 compensate, out of income or principal or both and in
257 proportion as the fiduciary considers advisable, persons
258 considered by the fiduciary needful to advise or assist in the
259 proper settlement of the estate or administration of any trust,
260 including, but not limited to, agents, accountants, brokers,
261 attorneys-at-law, attorneys-in-fact, investment brokers, rental
262 agents, realtors, appraisers, and tax specialists; and to do so
263 without liability for any neglect, omission, misconduct or
264 default of the agent or representative as long as he or she was
265 selected and retained with due care on the part of the
266 fiduciary.

267 (y) *Acquire and hold property of two or more trusts*
268 *undivided.* -- To acquire, receive, hold and retain the
269 principal of several trusts created by a single instrument
270 undivided until division becomes necessary in order to make
271 distributions; to hold, manage, invest, reinvest, and account
272 for the several shares or parts of shares by appropriate entries
273 in the fiduciary's books of account, and to allocate to each
274 share or part of share its proportionate part of all receipts and
275 expenses: *Provided*, That the provisions of this subdivision
276 do not defer the vesting in possession of any share or part of
277 share of the estate or trust.

278 (z) *Establish and maintain reserves.* -- To set up proper
279 and reasonable reserves for taxes, assessments, insurance
280 premiums, depreciation, obsolescence, amortization,
281 depletion of mineral or timber properties, repairs,
282 improvements and general maintenance of buildings or other
283 property out of rents, profits or other income received; and to
284 set up reserves also for the equalization of payments to or for

285 beneficiaries: *Provided*, That the provisions of this
286 subdivision do not affect the ultimate interests of
287 beneficiaries in the reserves.

288 (aa) *Distribute in cash or kind.* -- To make distribution of
289 capital assets of the estate or trust in kind or in cash, or
290 partially in kind and partially in cash, in divided or undivided
291 interests, as the fiduciary finds to be most practicable and for
292 the best interests of the distributees; and to determine the
293 value of capital assets for the purpose of making distribution
294 thereof if and when there is more than one distributee thereof,
295 which determination is binding upon the distributees unless
296 clearly capricious, erroneous and inequitable: *Provided*,
297 That the fiduciary may not exercise any power under this
298 subdivision unless the fiduciary holds title to or an interest in
299 the property to be distributed and is required or authorized to
300 make distribution thereof.

301 (bb) *Pay to or for minors or incompetents.* -- To make
302 payments in money, or in property in lieu of money, to or for
303 a minor or incompetent in any one or more of the following
304 ways:

305 (1) Directly to the minor or incompetent;

306 (2) To apply directly in payment for the support,
307 maintenance, education, and medical, surgical, hospital or
308 other institutional care of the minor or incompetent;

309 (3) To the legal or natural guardian of the minor or
310 incompetent;

311 (4) To any other person, whether or not appointed
312 guardian of the person by any court, who does, in fact, have
313 the care and custody of the person of the minor or
314 incompetent.

315 The fiduciary is not under any duty to see to the
316 application of the payments so made, if the fiduciary
317 exercised due care in the selection of the person, including
318 the minor or incompetent, to whom the payments were made;
319 and the receipt of the person is full acquittance to the
320 fiduciary.

321 (cc) *Apportion and allocate receipts and expenses.* --
322 Where not otherwise provided by statute to determine:

323 (1) What is principal and what is income of any estate or
324 trust and to allocate or apportion receipts and expenses as
325 between principal and income in the exercise of the
326 fiduciary's discretion, and, by way of illustration and not
327 limitation of the fiduciary's discretion, to charge premiums
328 on securities purchased at a premium against principal or
329 income or partly against each;

330 (2) Whether to apply stock dividends and other noncash
331 dividends to income or principal or apportion them as the
332 fiduciary considers advisable; and

333 (3) What expenses, costs, taxes (other than estate,
334 inheritance, and succession taxes and other governmental
335 charges) shall be charged against principal or income or
336 apportioned between principal and income and in what
337 proportions.

338 (dd) *Make contracts and execute instruments.* -- To make
339 contracts and to execute instruments, under seal or otherwise,
340 as may be necessary in the exercise of the powers granted in
341 this section.

342 (ee) The foregoing powers are limited as follows for any
343 trust which is classified as a "private foundation" as that term
344 is defined by section 509 of the Internal Revenue Code of

345 1954 or corresponding provisions of any subsequent federal
346 tax laws (including each nonexempt charitable trust described
347 in section 4947(a)(1) of the code which is treated as a private
348 foundation) or nonexempt split-interest trust described in
349 section 4947(a)(2) of the Internal Revenue Code of 1954 or
350 corresponding provisions of any subsequent federal tax laws
351 (but only to the extent that section 508(e) of the code is
352 applicable to the nonexempt split-interest trust under section
353 4947(a)(2)):

354 (1) The fiduciary shall make distributions of amounts, for
355 each taxable year, at times and in a manner as not to become
356 subject to the tax imposed by section 4942 of the Internal
357 Revenue Code of 1954, or corresponding provisions of any
358 subsequent federal tax laws;

359 (2) No fiduciary may engage in any act of self-dealing as
360 defined in section 4941(d) of the Internal Revenue Code of
361 1954, or corresponding provisions of any subsequent federal
362 tax laws;

363 (3) No fiduciary may retain any excess business holdings
364 as defined in section 4943(c) of the Internal Revenue Code of
365 1954, or corresponding provisions of any subsequent federal
366 tax laws;

367 (4) No fiduciary may make any investments in a manner
368 as to subject the trust to tax under section 4944 of the Internal
369 Revenue Code of 1954, or corresponding provisions of any
370 subsequent federal tax laws;

371 (5) No fiduciary may make any taxable expenditures as
372 defined in section 4945(e) of the Internal Revenue Code of
373 1954, or corresponding provisions of any subsequent federal
374 tax laws.

§44-5A-4. Designation of testamentary trustee as beneficiary of insurance.

1 A policy of life insurance may contain a designation of a
2 beneficiary, a trustee or trustees named or to be named by
3 will, if the designation is made in accordance with the
4 provisions of the policy and the requirements of the insurer.
5 The proceeds of the insurance shall be paid to the trustee or
6 trustees to be held and disposed of under the terms of the will
7 as they exist at the death of the testator; but if no trustee or
8 trustees makes claim to the proceeds from the insurance
9 company within one year after the death of the insured, or if
10 satisfactory evidence is furnished the insurance company
11 within the one-year period showing that no trustee can
12 qualify to receive the proceeds, payment shall be made by the
13 insurance company to the executors, administrators or assigns
14 of the insured, unless otherwise provided by agreement with
15 the insurance company during the lifetime of the insured.
16 The proceeds of the insurance as collected by the trustee or
17 trustees are not subject to debts of the insured or to
18 inheritance tax to any greater extent than if the proceeds were
19 payable to any other named beneficiary other than the estate
20 of the insured, and are not considered as payable to the estate
21 of the insured for any purpose. The insurance proceeds so
22 held in trust may be commingled with any other assets which
23 may properly come into the trust as provided in the will.
24 Enactment of this section does not invalidate previous life
25 insurance policy designations naming trustees of trusts
26 established by will.

§44-5A-5. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.

1 (a) Where a will, trust or other governing instrument
2 authorizes or directs the fiduciary to satisfy wholly or partly
3 in kind a pecuniary bequest or a separate trust to be funded
4 by a pecuniary amount or formula unless the will, trust or
5 other governing instrument expressly provides otherwise, the
6 assets selected by the fiduciary for that purpose shall be
7 valued at their respective values on the date or dates of their
8 distribution, and if any pecuniary bequests or separate trusts
9 established under the will or trust by a pecuniary amount or
10 formula is not entirely funded or an amount necessary to fund
11 the bequest or trust completely is not irrevocably set aside
12 within fifteen months after the date of the testator's or
13 grantor's death, the fiduciary shall allocate to the bequest or
14 trust a prorata share of the income earned by the estate of the
15 testator or grantor or other fund from which the bequest or
16 trust is to be funded between the date of death of the testator
17 or grantor and the date or dates of the funding.

18 (b) Whenever a fiduciary under the provisions of a will,
19 trust or other governing instrument is required to satisfy a
20 pecuniary bequest or transfer in trust and is authorized to
21 satisfy the bequest or transfer by selection and distribution of
22 assets in kind, and the will, trust or other governing
23 instrument further provides that the assets to be so distributed
24 shall or may be valued by some standard other than their fair
25 market value on the date of distribution, the fiduciary, unless
26 the will, trust or other governing instrument otherwise
27 specifically directs, shall distribute assets, including cash,
28 fairly representative of appreciation or depreciation in the
29 value of all property available for distribution in satisfaction
30 of the pecuniary bequest or transfer. This section does not
31 apply to prevent a fiduciary from carrying into effect the
32 provisions of the will, trust or other governing instrument that
33 the fiduciary, in order to implement the bequest or transfer,
34 must distribute assets, including cash, having an aggregate
35 fair market value at the date or dates of distribution

36 amounting to no less than the amount of the pecuniary
37 bequest or transfer as finally determined for federal estate tax
38 purposes.

39 (c) (1) Any fiduciary having discretionary powers under
40 a will or other governing instrument with respect to the
41 selection of assets to be distributed in satisfaction of a
42 pecuniary bequest or transfer in trust is authorized to enter
43 into agreements with the Commissioner of Internal Revenue
44 of the United States of America and other taxing authorities
45 requiring the fiduciary to exercise the fiduciary's discretion
46 so that cash and other properties distributed in satisfaction of
47 the bequest or transfer in trust will be fairly representative of
48 the appreciation or depreciation in value of all property then
49 available for distribution in satisfaction of the bequest or
50 transfer in trust and any such agreement heretofore entered
51 into after April 1, 1964, is hereby validated. The fiduciary is
52 authorized to enter into any other agreement not in conflict
53 with the express terms of the will, trust or other governing
54 instrument that may be necessary or advisable in order to
55 secure for federal estate tax purposes the appropriate marital
56 deduction or other deduction or exemption available under
57 the Internal Revenue laws of the United States of America,
58 and to do and perform all acts incident to that purpose.

59 (2) Unless ordered by a court of competent jurisdiction,
60 the bank or trust company operating a common trust fund, as
61 provided in section six of this article, is not required to render
62 an accounting with regard to the fund, before any fiduciary
63 commissioner but it may, by application to the circuit court
64 of the county in which is located the principal place of
65 business of the bank or trust company, secure the approval of
66 an accounting in the condition the court may fix: *Provided*,
67 That nothing in this section relieves a fiduciary acquiring,
68 holding or disposing of an interest in any common trust fund

69 from making an accounting as required by law with respect
70 of the interest.

71 (d) The fiduciary of any trust created by will, trust or
72 other governing instrument may from time to time without
73 need of court approval to divide the trust or trusts for
74 purposes of the generation skipping transfer tax (“GST”) of
75 section 2601 of the Internal Revenue Code of 1986, as in
76 effect on January 1, 2010, or any similar or successor law of
77 like import, or for any other tax, administrative or other
78 purposes. In exercising this authority for inclusion ratio,
79 marital deduction election, reverse qualified terminal interest
80 property election or other GST or other tax purposes, the
81 power shall be exercised in a manner that complies with
82 applicable Internal Revenue Code Treasury Regulations or
83 other requirements for accomplishing the intended purposes.
84 If that division is made for purposes of separating assets with
85 respect to which the federal estate tax marital deduction
86 election is to be made from those as to which the election is
87 not to be made, the division shall be done on a fractional or
88 percentage basis and the assets of the trust or other fund to be
89 divided shall be valued for purposes of the division on the
90 date or dates of division.

**§44-5A-6. Restrictions on exercise of power for fiduciary’s
benefit.**

1 (a) A power conferred upon a person in his or her
2 capacity as fiduciary to make discretionary distributions of
3 principal or income to himself or herself or to make
4 discretionary allocations in his or her favor of receipts or
5 expenses between income and principal cannot be exercised
6 by him or her. If the power is conferred on two or more
7 fiduciaries, it may be exercised by the fiduciaries who are not
8 so disqualified. If there is no fiduciary qualified to exercise
9 the power, it may be exercised by a special fiduciary

10 appointed by the court authorized under article fourteen of
11 this chapter, and in accordance with the procedure described
12 therein, to appoint a successor or substitute trustee. Except
13 as provided in subsection (c) of this section this section
14 applies to all trusts now in existence and to all trusts which
15 are created later.

16 (b) Unless either: (1) Mandatory; (2) limited by an
17 ascertainable standard relating to the health, education,
18 support or maintenance of the fiduciary; or (3) exercisable by
19 the fiduciary only in conjunction with another person having
20 a substantial interest in the trust which is adverse to the
21 interest of the fiduciary, a power to make distributions of
22 principal or income is a discretionary power for purposes of
23 this section.

24 (c) This section does not apply to trusts that come into
25 existence or are amended after the effective date of this
26 section which show a clear intent that this section does not
27 apply.

§44-5A-7. Powers of fiduciaries regarding environmental laws.

1 (a) For purposes of this section:

2 (1) “Environmental law” means any federal, state or local
3 law, rule, regulation or ordinance relating to the regulation of
4 hazardous substances or hazardous wastes, air pollution,
5 water pollution and underground storage tanks;

6 (2) “Hazardous substance” means any substance defined
7 as hazardous in the Comprehensive Environmental Response,
8 Compensation and Liability Act (“CERCLA”) [42 U.S.C.
9 9601, et seq. (1980)] as amended and in effect on January 1,
10 2010, and regulations promulgated thereunder;

11 (3) “Hazardous waste” means a waste characterized or
12 listed as hazardous in the Resource, Conservation and
13 Recovery Act (“RCRA”) [42 U.S.C. 6901, et seq. as
14 amended] as in effect on January 1, 2010, and regulations
15 promulgated thereunder;

16 (4) “Fiduciary” means a fiduciary as defined by section
17 one-d, article four-d, chapter thirty-one of this code.

18 (b) In addition to powers, remedies and rights which may
19 be set forth in any will, trust agreement or other document
20 which is the source of authority, a trustee, executor,
21 administrator, guardian or one acting in any other fiduciary
22 capacity, whether an individual, corporation or other entity
23 (“fiduciary”) has the following powers, rights and remedies
24 whether or not set forth in the will, trust agreement or other
25 document which is the source of authority:

26 (1) To inspect property held by the fiduciary including
27 interests in sole proprietorships, partnerships or corporations
28 and any assets owned by any such business enterprise, for the
29 purpose of determining compliance with any environmental
30 law affecting the property and to take necessary or reasonable
31 action, including reporting to the appropriate regulatory
32 authority as may be otherwise required by law, with respect
33 to any actual or potential violation of any environmental law
34 affecting property held by the fiduciary;

35 (2) To take, on behalf of the estate or trust, any action
36 necessary to prevent, abate or otherwise remedy any actual or
37 threatened violation of any environmental law affecting
38 property held by the fiduciary, either before or after the
39 initiation of an enforcement action by any governmental
40 body;

41 (3) To refuse to accept property in trust or estate if the
42 fiduciary determines any property to be donated or conveyed
43 to the trust or estate is contaminated by any hazardous
44 substance or hazardous waste or is being used or has been
45 used for any activity directly or indirectly involving any
46 violation of an environmental law which is reasonably likely
47 to result in liability to the fiduciary: *Provided*, That the
48 refusal does not limit the liability of the trust or estate or its
49 income or principal, for any liability the trust or estate may
50 otherwise have in connection with any environmental law,
51 but only to limit the liability of the fiduciary. Property not
52 accepted into a trust or estate by the fiduciary may revert to
53 the grantor or its successors or pass by the laws of descent
54 and distribution, as may otherwise be provided by law;

55 (4) To settle or compromise at any time any and all
56 claims against the trust or estate which may be asserted by
57 any governmental body or private party involving the alleged
58 violation of any environmental law affecting property held in
59 trust or in an estate;

60 (5) To decline to serve as a fiduciary if the fiduciary
61 reasonably believes that there is or may be a conflict of
62 interest between it and its fiduciary capacity and in its
63 individual capacity because of potential claims or liabilities
64 which may be asserted against it on behalf of the trust or
65 estate because of the type or condition of assets held therein.

66 (c) The fiduciary is entitled to charge the cost of any
67 inspection, review, abatement, response, cleanup or remedial
68 action authorized herein against the income or principal of
69 the trust or estate.

70 (d) A fiduciary is not personally liable to any beneficiary
71 or other party for any decrease in value of assets in trust or in
72 an estate by reason of the fiduciary's compliance with any

73 environmental law, specifically including any reporting
74 requirement under the law.

75 (e) Neither the acceptance by the fiduciary of property
76 nor the failure by the fiduciary to inspect property creates any
77 inference as to whether or not there is or may be any liability
78 under any environmental law with respect to the property.

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-1. Fiduciaries to put money out at interest.

1 (a) Executors, administrators, guardians, curators,
2 committees or trustees may, by direction of the circuit court
3 of the county, where they were appointed or qualified, put out
4 at interest all moneys in their hands which they are or may be
5 lawfully required to retain, whether it belongs to minors,
6 legatees or other person or persons, upon security, and for the
7 length of time, as the court will allow, and if the security so
8 taken, bona fide and without fraud, proves insufficient, it is
9 the loss of the beneficiaries entitled thereto; and it is the duty
10 of the executors, administrators, guardians, curators,
11 committees or trustees, in cases where the estates in their
12 hands may be materially benefited thereby, to make
13 application to the circuit court for direction, and in case they
14 neglect so to do they are accountable for the interest that
15 might have been made thereby; but if no person who may be
16 willing to take the money at interest, giving the security, can
17 be found by the executors, administrators, guardians,
18 curators, committees or trustees, then the executors,
19 administrators, guardians, curators, committees or trustees, in
20 those cases, are accountable for the principal money only,
21 until it can be put out at interest as aforesaid; but in any case
22 where executors, administrators, guardians, curators,
23 committees or trustees use the money of the estates which

24 come to their hands, they are accountable not only for the
25 principal, but also for the interest thereon.

26 (b) This section does not apply to a trust or a trustee.

§44-6-2. In what securities fiduciaries may invest trust funds.

1 Any executor, administrator, guardian, curator,
2 committee, trustee or other fiduciary whose duty it may be to
3 loan or invest money entrusted to him or her as such, may,
4 without any order of any court, invest the same or any part
5 thereof in any of the following securities, and without
6 liability for any loss resulting from investments therein:
7 *Provided*, That except as otherwise provided in article six-c
8 of this chapter, the fiduciary shall exercise the judgment and
9 care under the circumstances then prevailing which persons
10 of prudence, discretion and intelligence exercise in the
11 management of their own affairs, not in regard to speculation,
12 but in regard to the permanent disposition of their funds,
13 considering the probable income as well as the probable
14 safety of their capital:

15 (a) In bonds or interest-bearing notes or obligations of the
16 United States, or those for which the faith of the United
17 States is distinctly pledged to provide for the payment of the
18 principal and interest thereof, including, but not by way of
19 limitation, bonds or debentures issued under the "Farm Credit
20 Act Amendments of 1986" (12 U. S. C. §2001 et. seq.), as
21 amended, debentures issued by the Federal National
22 Mortgage Association, securities issued by the Federal Home
23 Loan Bank System; and in bonds, interest-bearing notes and
24 obligations issued, guaranteed or assumed by the
25 "International Bank for Reconstruction and Development" or
26 by the "Inter-American Development Bank" or by the "Asian
27 Development Bank" or by the "African Development Bank";

28 (b) In bonds or interest-bearing notes or obligations of
29 this state;

30 (c) In bonds of any state of the United States which has
31 not within ten years previous to the making of the investment
32 defaulted in the payment of any part of either principal or
33 interest on any of its bonds issued by authority of the
34 Legislature of the state;

35 (d) In the bonds or interest-bearing notes or obligations
36 of any county, district, school district or independent school
37 district, municipality or any other political division of this
38 state that have been issued pursuant to the authority of any
39 law of this state, since May 9, 1917;

40 (e) In bonds and negotiable notes secured by first
41 mortgage or first trust deed upon improved real estate where
42 the amount secured by the mortgage or trust deed does not at
43 the time of making the same exceed eighty percent of the
44 assessed value, or sixty-six and two-thirds percent of the
45 appraised value as determined by wholly disinterested and
46 independent appraisers, whichever value is the higher, of the
47 real estate covered by the mortgage or trust deed, and when
48 the mortgage or trust deed is accompanied by a satisfactory
49 abstract of title, certificate of title or title insurance policy,
50 showing good title in the mortgagor when making the
51 mortgage or trust deed, and by a fire insurance policy in an
52 old line company with loss, if any, payable to the mortgagee
53 or trustee as his or her interest may appear: *Provided*, That
54 the rate of interest upon the above enumerated securities in
55 this subdivision, in which the investments may be made, may
56 not be less than three and one-half percent per annum nor
57 greater than the maximum rate of interest which the bonds or
58 negotiable notes may bear under applicable law: *Provided*,
59 *however*, That the provisions herein establishing a minimum

60 rate of interest do not apply to investments in force as of the
61 effective date of this section;

62 (f) In savings accounts and time deposits of bank or trust
63 companies to the extent that the deposits are insured by the
64 Federal Deposit Insurance Corporation, or by any other
65 similar federal instrumentality that may be hereafter created,
66 if there is an instrumentality in existence and available for the
67 purpose, or by bonds of solvent surety companies: *Provided,*
68 That the rate of interest upon the savings accounts or time
69 deposits may not be less than the rate paid other depositors in
70 the bank or trust company;

71 (g) In shares of state building and loan associations, or
72 federal savings and loan associations, to the extent that the
73 shares are insured by the Federal Savings and Loan Insurance
74 Corporation, or by any other similar federal instrumentality
75 that may be hereafter created: *Provided,* That there is an
76 instrumentality in existence and available for the purpose, or
77 by bonds of solvent surety companies: *Provided, however,*
78 That the dividend rate upon the shares may not be less than
79 the rate paid to other shareholders in the associations; and

80 (h) In other securities of corporations organized and
81 existing under the laws of the United States, or of the District
82 of Columbia or any state of the United States, including, but
83 not by way of limitation, bonds, debentures, notes, equipment
84 trust obligations or other evidences of indebtedness and
85 shares of common and preferred stocks of the corporations
86 and securities of any open end or closed end management
87 type investment company or investment trust registered under
88 the "Federal Investment Company Act" of 1940, as from time
89 to time amended, which persons of prudence, discretion and
90 intelligence acquire or retain for their own account, as long
91 as:

92 (1) An investment may not be made pursuant to the
93 provisions of this subdivision which, at the time the
94 investment is made, will cause the aggregate market value
95 thereof to exceed fifty percent of the aggregate market value
96 at that time of all of the property of the fund held by the
97 fiduciary. Notwithstanding the aforesaid percentage
98 limitation the cash proceeds of the sale of securities received
99 or purchased by a fiduciary and made eligible by this
100 subdivision may be reinvested in any securities of the type
101 described in this subdivision;

102 (2) Bonds, debentures, notes, equipment trust obligations
103 or other evidence of indebtedness of the corporations may not
104 be purchased under authority of this subdivision unless the
105 obligations, if other than issues of a common carrier subject
106 to the provisions of section twenty-a of the “Interstate
107 Commerce Act”, as amended, are obligations issued,
108 guaranteed or assumed by corporations which have any
109 securities currently registered with the Securities and
110 Exchange Commission; and

111 (3) Common or preferred stocks, other than bank and
112 insurance company stocks, may not be purchased under
113 authority of this subdivision unless currently fully listed and
114 registered upon an exchange registered with the Securities
115 and Exchange Commission as a national securities exchange.
116 A sale or other liquidation of any investment may not be
117 required solely because of any change in the relative market
118 value of those investments made eligible by this subdivision
119 and those made eligible by the preceding subdivisions of this
120 section. In determining the aggregate market value of the
121 property of a fund and the percentage of a fund to be invested
122 under the provisions of this subdivision, a fiduciary may rely
123 upon published market quotations as to those investments for
124 which the quotations are available, and upon such valuations

125 of other investments as in the fiduciary's best judgment seem
126 fair and reasonable according to available information.

127 Trust funds received by executors, administrators,
128 guardians, curators, committees, trustees and other fiduciaries
129 may be kept invested in the securities originally received by
130 them, or if the trust funds originally received were stock or
131 securities of a bank, in shares of stock or other securities (and
132 securities received as distributions in respect thereof) of a
133 holding company subject to the federal Bank Holding
134 Company Act of 1956, as amended, received upon
135 conversion of, or in exchange for, shares of stock or other
136 securities of the bank; unless otherwise ordered by a court
137 having jurisdiction of the matter, as hereinafter provided, or
138 unless the instrument under which the trust was created
139 directs that a change of investment be made, and any such
140 fiduciary is not liable for any loss that may occur by
141 depreciation of the securities.

142 This section does not apply where the instrument creating
143 the trust, or the last will and testament of any testator or any
144 court having jurisdiction of the matter, specially directs in
145 what securities the trust funds shall be invested, and every the
146 court has power specially to direct by order or orders, from
147 time to time, additional securities in which trust funds may be
148 invested, and any investment thereof made in accordance
149 with the special direction is legal, and no executor,
150 administrator, guardian, curator, committee, trustee or other
151 fiduciary may be held for any loss resulting in any such case.

152 This section does not apply to trusts or trustees.

**§44-6-11. Application only to executors, administrators,
guardians, curators or committees.**

1 The provisions of this article apply only to executors,
2 administrators, guardians, curators or committees, as the case
3 may be, and do not apply to or affect trustees who are
4 governed by the provisions of the West Virginia Uniform
5 Prudent Investor Act in article six-c of this chapter and the
6 West Virginia Uniform Trust Code in chapter forty-four-d of
7 this code.

ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.

§44-6C-1. Prudent investor rule.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, a trustee who invests and manages trust assets owes
3 a duty to the beneficiaries of the trust to comply with the
4 prudent investor rule set forth in this article.

5 (b) The prudent investor rule, a default rule, may be
6 expanded, restricted, eliminated or otherwise altered by the
7 provisions of a trust instrument. A trustee is not liable to a
8 beneficiary to the extent that the trustee acted in reasonable
9 reliance on the provisions of the trust instrument.

§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

1 (a) A trustee shall invest and manage trust assets as a
2 prudent investor would, by considering the purposes, terms,
3 distribution requirements and other circumstances of the
4 trust. In satisfying this standard, the trustee shall exercise
5 reasonable care, skill and caution.

6 (b) A trustee's investment and management decisions
7 respecting individual assets must be evaluated not in isolation
8 but in the context of the trust portfolio as a whole and as a

9 part of an overall investment strategy having risk and return
10 objectives reasonably suited to the trust.

11 (c) Among circumstances that a trustee shall consider in
12 investing and managing trust assets are such of the following
13 as are relevant to the trust or its beneficiaries:

14 (1) General economic conditions;

15 (2) The possible effect of inflation or deflation;

16 (3) The expected tax consequences of investment
17 decisions or strategies;

18 (4) The role that each investment or course of action
19 plays within the overall trust portfolio, which may include
20 financial assets, interests in closely held enterprises, tangible
21 and intangible personal property and real property;

22 (5) The expected total return from income and the
23 appreciation of capital;

24 (6) Other resources of the beneficiaries;

25 (7) Needs for liquidity, regularity of income and
26 preservation or appreciation of capital; and

27 (8) An asset's special relationship or special value, if any,
28 to the purposes of the trust or to one or more of the
29 beneficiaries.

30 (d) A trustee shall make a reasonable effort to verify facts
31 relevant to the investment and management of trust assets.

32 (e) A trustee may invest in any kind of property or type
33 of investment consistent with the standards of this article.

34 (f) A trustee who has special skills or expertise, or is
35 named trustee in reliance upon the trustee's representation
36 that the trustee has special skills or expertise, has a duty to
37 use those special skills or expertise.

38 (g)(1) Unless otherwise directed by the terms of the trust
39 instrument, the duties of a trustee of an irrevocable life
40 insurance trust with respect to acquiring or retaining a
41 contract of insurance upon the life of the grantor, or the lives
42 of the grantor and the grantor's spouse, do not include a
43 duty:

44 (A) To determine whether the contract is or remains a
45 proper investment;

46 (B) To exercise policy options available under the
47 contract in the event the policy lapses or is terminated due to
48 failure to pay premiums; or

49 (C) To diversify the contract.

50 (2) A trustee is not liable to the beneficiaries of the trust
51 or to any other party for any loss arising from the absence
52 of those duties upon the trustee.

§44-6C-9. Delegation of investment and management functions.

1 (a) A trustee may delegate investment and management
2 functions that a prudent trustee of comparable skills could
3 properly delegate under the circumstances. The trustee shall
4 exercise reasonable care, skill and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust; and

8 (3) Periodically reviewing the agent's actions in order to
9 monitor the agent's performance and compliance with the
10 terms of the delegation.

11 (b) In performing a delegated function, an agent owes a
12 duty to the trust to exercise reasonable care to comply with
13 the terms of the delegation.

14 (c) A trustee who complies with the requirements of
15 subsection (a) of this section is not liable to the beneficiaries
16 or to the trust for the decisions or actions of the agent to
17 whom the function was delegated.

18 (d) By accepting the delegation of a trust function from
19 the trustee of a trust that is subject to the law of this state, an
20 agent submits to the jurisdiction of the courts of this state

21 (e) The delegating trustee is not responsible for the
22 decisions, actions or inactions of the trustee to whom those
23 duties and powers have been delegated if the delegating
24 trustee has exercised reasonable care, skill and caution in
25 establishing the scope and specific terms of the delegation
26 and in reviewing periodically the performance of the trustee
27 to whom the duties and powers have been delegated and the
28 trustee's compliance with the scope and specific terms of the
29 delegation.

**ARTICLE 7. RESIGNATION OF PERSONAL
REPRESENTATIVES AND
PROCEDURE UPON RESIGNATION.**

**§44-7-1. Fiduciary desiring to resign to file petition; summons
thereon.**

1 A personal representative or curator desiring to resign his
2 or her trust, may file his or her petition for that purpose in the

3 county commission of the county in which he or she was
4 appointed, stating the names of all persons, so far as known
5 by him or her, interested in the estate in his or her hands or
6 under his or her control, and to which his or her duties as
7 fiduciary relate, and if any of them are under disability, or
8 nonresidents of the state; or if there are persons interested in
9 the estate whose names are unknown, all of these facts, and
10 the names of the guardians and committees of the persons
11 under disability, if there are guardians or committees, shall be
12 stated in the petition. Upon the filing of the petition the clerk
13 of the court shall issue a summons against all the persons so
14 named and the guardians and the committees of those under
15 disability, if they have any, and against “the unknown parties
16 in interest,” if any there are, mentioned in the petition, to
17 appear before the court on a day to be named in the
18 summons, which day may be not less than thirty days from
19 the filing of the petition, and answer the petition, and state to
20 the court the reasons, if any they have, why the petition
21 should not be granted. If any of the persons interested reside
22 in another county in this state, the summons as to them shall
23 be directed and sent by mail by the clerk to the sheriff of that
24 county to be served and returned by him or her; and as to the
25 persons named in the petition who reside out of this state, or
26 who cannot by the use of due diligence be found, and as to
27 the unknown parties, an order of publication shall be awarded
28 against them, which shall be published or posted and
29 published, as in cases of appointment and qualification of
30 personal representatives.

**§44-7-4. Application only to personal representatives, curators
or minor guardians.**

1 The provisions of this article apply only to personal
2 representatives, curators and minor guardians, as the case
3 may be, and do not apply to or affect guardians and
4 conservators of an adult protected person who are governed

5 by the provisions of the Guardian and Conservatorship Act
 6 in chapter forty-four-a of this code or trustees who are
 7 governed by the provisions of the West Virginia Uniform
 8 Trust Code in chapter forty-four-d of this code.

CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-101. Short title.

1 This chapter may be cited as the “West Virginia Uniform
 2 Trust Code.”

§44D-1-102. Scope.

1 This chapter applies to express trusts, charitable or
 2 noncharitable, and trusts created pursuant to a statute,
 3 judgment, or decree that requires the trust to be administered
 4 in the manner of an express trust.

§44D-1-103. Definitions.

1 In this chapter:

2 (a) “Action,” with respect to an act of a trustee, includes
 3 a failure to act.

4 (b) “Ascertainable standard” means a standard relating to
 5 an individual’s health, education, support or maintenance
 6 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1)
 7 of the Internal Revenue Code.

8 (c) “Beneficiary” means a person that:

9 (1) Has a present or future beneficial interest in a trust,
10 vested or contingent;

11 (2) In a capacity other than that of trustee, holds a power
12 of appointment over trust property; or

13 (3) A charitable organization that is expressly designated
14 in the terms of the trust instrument to receive distributions.

15 (d) “Charitable trust” means a trust, or portion of a trust,
16 created for a charitable purpose described in subsection (a),
17 section four hundred five, article four of this chapter.

18 (e) “Conservator” means a person appointed by the court
19 to administer the estate and financial affairs of a protected
20 person.

21 (f) “Court” means a court of this state having proper
22 jurisdiction under section two hundred three, article two of
23 this chapter, and venue under section two hundred four of
24 that article.

25 (g) “Current beneficiary” means a beneficiary that, on the
26 date the beneficiary’s qualification is determined, is a
27 distributee or permissible distributee of trust income or
28 principal.

29 (h) “Environmental law” means a federal, state or local
30 law, rule, regulation or ordinance relating to protection of the
31 environment.

32 (i) “Grantor” means a person, including a testator, who
33 creates, or contributes property to a trust. If more than one
34 person creates or contributes property to a trust, each person
35 is a grantor of the portion of the trust property attributable to

36 that person's contribution except to the extent another person
37 has the power to revoke or withdraw that portion.

38 (j) "Guardian" means a person appointed by the court
39 who is responsible for the personal affairs of a protected
40 person or a parent to make decisions regarding the support,
41 care, education, health and welfare of a minor. The term does
42 not include a guardian ad litem.

43 (k) "Interested person" means heirs, devisees, children,
44 spouses, creditors, beneficiaries and any others having a
45 property right in or claim against a trust or the property in a
46 trust. It also includes persons having priority for appointment
47 as personal representative and other fiduciaries representing
48 interested persons. The meaning as it relates to particular
49 persons may vary from time to time and must be determined
50 according to the particular purposes of, and matter involved
51 in, any proceeding.

52 (l) "Interests of the beneficiaries" means the beneficial
53 interests provided in the terms of the trust.

54 (m) "Internal Revenue Code" or "Internal Revenue Code
55 of 1986" means the Internal Revenue Code of 1986 codified
56 in 26 U.S.C. 1 et seq., as amended and in effect on January 1,
57 2011.

58 (n) "Jurisdiction" with respect to a geographic area,
59 includes a state or country.

60 (o) "Person" means an individual, corporation, business
61 trust, estate, trust, partnership, limited liability company,
62 association, joint venture, unincorporated nonprofit
63 association, charitable organization, government,
64 governmental subdivision, agency or instrumentality, public
65 corporation or any other legal or commercial entity.

66 (p) “Power of withdrawal” means a presently exercisable
67 general power of appointment other than a power:

68 (1) Exercisable by a trustee and limited by an
69 ascertainable standard; or

70 (2) Exercisable by another person only upon consent of
71 the trustee or a person holding an adverse interest.

72 (q) “Property” means anything that may be the subject of
73 ownership, whether real or personal, legal or equitable or any
74 interest therein.

75 (r) “Qualified beneficiary” means a beneficiary who, on
76 the date the beneficiary’s qualification is determined:

77 (1) Is a distributee or permissible distributee of trust
78 income or principal;

79 (2) Would be a distributee or permissible distributee of
80 trust income or principal if the interests of the distributees
81 described in subparagraph (A) terminated on that date
82 without causing the trust to terminate; or

83 (3) Would be a distributes or permissible distributes of
84 trust income or principal if the trust terminated on that date.

85 (s) “Revocable,” as applied to a trust, means revocable by
86 the grantor without the consent of the trustee or a person
87 holding an adverse interest.

88 (t) “Spendthrift provision” means a term of a trust which
89 restrains both voluntary and involuntary transfer of a
90 beneficiary’s interest.

91 (u) “State” means a state of the United States, the District
92 of Columbia, Puerto Rico, the United States Virgin Islands or
93 any territory or insular possession subject to the jurisdiction
94 of the United States. The term includes an Indian tribe or
95 band recognized by federal law or formally acknowledged by
96 a state.

97 (v) “Terms of a trust” means the manifestation of the
98 grantor’s intent regarding a trust’s provisions as expressed in
99 the trust instrument or as may be established by other
100 evidence that would be admissible in a judicial proceeding.

101 (w) “Trust instrument” means a writing, including a will,
102 executed by the grantor that contains terms of the trust,
103 including any amendments thereto.

104 (x) “Trustee” includes an original, additional, successor
105 trustee, and a cotrustee.

106 (y) “Writing” or “written instrument” does not include an
107 electronic record or electronic signature as provided in
108 chapter 39A of this code.

§44D-1-104. Knowledge.

1 (a) Subject to subsection (b) of this section, a person has
2 knowledge of a fact if the person:

3 (1) Has actual knowledge of it;

4 (2) Has received a notice or notification of it; or

5 (3) From all the facts and circumstances known to the
6 person at the time in question, has reason to know it.

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

§44D-1-105. Default and mandatory rules.

1 (a) Except as otherwise provided in the terms of the trust
2 instrument, this chapter governs the duties and powers of a
3 trustee, relations among trustees, and the rights and interests
4 of a beneficiary.

5 (b) The terms of a trust prevail over any provision of this
6 chapter except:

7 (1) The requirements for creating a trust;

8 (2) The duty of a trustee to act in good faith and in
9 accordance with the terms and purposes of the trust;

10 (3) The requirement that a trust and its terms have a
11 purpose that is lawful, not contrary to public policy, and
12 possible to achieve;

13 (4) The power of the court to modify or terminate a trust
14 under section four hundred ten through four hundred sixteen,
15 article four of this chapter;

16 (5) The effect of a spendthrift provision and the rights of
17 certain creditors and assignees to reach a trust as provided in
18 article five of this chapter;

19 (6) The power of the court under section seven hundred
20 two, article seven of this chapter to require, dispense with, or
21 modify or terminate a bond;

22 (7) The power of the court under subsection (b), section
23 seven hundred eight, article seven of this chapter, to adjust a
24 trustee's compensation specified in the terms of the trust
25 instrument which is unreasonably low or high;

26 (8) The effect of an exculpatory term under section one
27 thousand eight, article ten of this chapter;

28 (9) The rights under sections one thousand ten through
29 one thousand thirteen, article ten of this chapter, of a person
30 other than a trustee or beneficiary;

31 (10) Periods of limitation for commencing a judicial
32 proceeding;

33 (11) The power of the court to take action and exercise
34 jurisdiction as may be necessary in the interests of justice;
35 and

36 (12) The subject-matter jurisdiction of the court and
37 venue for commencing a proceeding as provided in sections
38 two hundred three and two hundred four, article two of this
39 chapter.

§44D-1-106. Common law of trusts; principles of equity.

1 The common law of trusts and principles of equity
2 supplement this chapter, except to the extent modified by this
3 chapter or another statute of this state.

§44D-1-107. Governing law.

1 The meaning and effect of the terms of a trust are
2 determined by:

3 (1) The law of the jurisdiction designated in the terms of
4 the trust instrument, including terms which may provide for
5 change of jurisdiction from time to time, unless the
6 designation of that jurisdiction's law is contrary to a strong
7 public policy of the jurisdiction having the most significant
8 relationship to the matter at issue; or

9 (2) In the absence of a controlling designation in the
10 terms of the trust instrument, the law of the jurisdiction in
11 which the grantor is domiciled when the trust becomes
12 irrevocable.

§44D-1-108. Principal place of administration.

1 (a) Without precluding other means for establishing a
2 sufficient connection with the designated jurisdiction, terms
3 of a trust designating the principal place of administration are
4 valid and controlling if:

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

7 (2) All or part of the administration occurs in the
8 designated jurisdiction.

9 (b) Without precluding the right of the court to order,
10 approve, or disapprove a transfer, the trustee, may transfer
11 the trust's principal place of administration to another state or
12 to a jurisdiction outside of the United States that is
13 appropriate to the trust's purposes, its administration and the
14 interests of the beneficiaries.

15 (c) When the proposed transfer of a trust's principal place
16 of administration is to another state or to a jurisdiction
17 outside of the United States, the trustee shall notify the
18 current beneficiaries of a proposed transfer of a trust's
19 principal place of administration not less than sixty days
20 before initiating the transfer. A corporate trustee that
21 maintains a place of business in West Virginia where one or
22 more trust officers are available on a regular basis for
23 personal contact with trust customers and beneficiaries has
24 not transferred its principal place of administration merely
25 because all or a significant portion of the administration of
26 the trust is performed outside West Virginia. The notice of
27 proposed transfer must include:

28 (1) The name of the jurisdiction to which the principal
29 place of administration is to be transferred;

30 (2) The address and telephone number at the new location
31 at which the trustee can be contacted;

32 (3) An explanation of the reasons for the proposed
33 transfer;

34 (4) The date on which the proposed transfer is anticipated
35 to occur; and

36 (5) The date, not less than sixty days after the giving of
37 the notice, by which the current beneficiary must notify the
38 trustee of an objection to the proposed transfer.

39 (d) The authority of a trustee under this section to transfer
40 a trust's principal place of administration to another state or
41 to a jurisdiction outside the United States terminates if a
42 current beneficiary notifies the trustee of an objection to the
43 proposed transfer on or before the date specified in the
44 notice.

45 (e) In connection with a transfer of the trust's principal
46 place of administration, the trustee may transfer some or all
47 of the trust property to a successor trustee designated in the
48 terms of the trust instrument or appointed pursuant to section
49 seven hundred four, article seven of this chapter.

§44D-1-109. Methods and waiver of notice.

1 (a) Notice to a person under this chapter or the sending of
2 a document to a person under this chapter must be
3 accomplished in a manner reasonably suitable under the
4 circumstances and likely to result in receipt of the notice or
5 document. Permissible methods of notice or for sending a
6 document include first-class mail, personal delivery, delivery
7 to the person's last known place of residence or place of
8 business, or a properly directed electronic message.

9 (b) Notice otherwise required under this chapter or a
10 document otherwise required to be sent under this chapter
11 need not be provided to a person whose identity or location
12 is unknown to and not reasonably ascertainable by the
13 trustee.

14 (c) Notice under this chapter or the sending of a
15 document under this chapter may be waived by the person to
16 be notified or sent the document.

17 (d) Notice of a judicial proceeding shall be given as
18 provided in the applicable rules of civil procedure.

§44D-1-110. Others treated as qualified beneficiaries.

1 (a) Whenever notice to qualified or current beneficiaries
2 of a trust is required under this chapter, the trustee shall also
3 give notice to any other beneficiary who has sent the trustee
4 a request for notice.

5 (b) A charitable organization expressly designated to
6 receive distributions under the terms of a charitable trust has
7 the rights of a qualified beneficiary under this chapter.

8 (c) A person appointed to enforce a trust created for the
9 care of an animal or another noncharitable purpose as
10 provided in section four hundred eight or four hundred nine,
11 article four of this chapter has the rights of a qualified
12 beneficiary under this chapter.

§44D-1-111. Nonjudicial settlement agreements.

1 (a) For purposes of this section “interested persons”
2 means persons whose consent would be required in order to
3 achieve a binding settlement were the settlement to be
4 approved by the court.

5 (b) Except as otherwise provided in subsection (c) of this
6 section, interested persons may enter into a binding
7 nonjudicial settlement agreement with respect to any matter
8 involving a trust, including, but not limited to:

9 (1) The interpretation or construction of the terms of the
10 trust;

11 (2) The approval of a trustee’s report or accounting or
12 waiver of the preparation of a trustee’s report or accounting;

13 (3) Direction to a trustee to refrain from performing a
14 particular act or the grant to a trustee of any necessary or
15 desirable power;

16 (4) The resignation or appointment of a trustee and the
17 determination of a trustee's compensation;

18 (5) Transfer of a trust's principal place of administration;

19 (6) Liability or release from liability of a trustee for an
20 action relating to the trust;

21 (7) Questions relating to the property or an interest in
22 property held as part of a trust;

23 (8) An investment decision, policy, plan or program of
24 the trustee;

25 (9) The grant to a trustee of any necessary or desirable
26 power;

27 (10) The exercise or nonexercise of any power by a
28 trustee;

29 (11) An action or proposed action by or against a trust or
30 trustee;

31 (12) The modification or termination of a trust; and

32 (13) Any other matter concerning the administration of a
33 trust.

34 (c) A nonjudicial settlement agreement is valid only to
35 the extent it does not violate a material purpose of the trust
36 and includes terms and conditions that could be properly

37 approved by the court under this chapter or other applicable
38 law.

39 (d) Any interested person may request the court to
40 approve a nonjudicial settlement agreement, to determine
41 whether the representation as provided in article three of this
42 chapter was adequate, and to determine whether the
43 agreement contains terms and conditions the court could have
44 properly approved.

§44D-1-112. Rules of construction.

1 The rules of construction that apply in this state to the
2 interpretation of and disposition of property by will also
3 apply as appropriate to the interpretation of the terms of a
4 trust and the disposition of the trust property.

ARTICLE 2. JUDICIAL PROCEEDINGS.

§44D-2-201. Role of court in administration of trust.

1 (a) The court may intervene in the administration of a
2 trust to the extent its jurisdiction is invoked by an interested
3 person or as provided by law.

4 (b) A trust is not subject to continuing judicial
5 supervision unless ordered by the court.

6 (c) A judicial proceeding involving a trust may relate to
7 any matter involving the trust's administration, including a
8 request for instructions and an action to declare rights.

§44D-2-202. Jurisdiction over trustee and beneficiary.

1 (a) By accepting the trusteeship of a trust having its
2 principal place of administration in this state or by moving

3 the principal place of administration to this state, the trustee
4 submits personally to the jurisdiction of the courts of this
5 state regarding any matter involving the trust.

6 (b) With respect to their interests in the trust, the
7 beneficiaries of a trust having its principal place of
8 administration in this state are subject to the jurisdiction of
9 the courts of this state regarding any matter involving the
10 trust. By accepting a distribution from such a trust, the
11 recipient submits personally to the jurisdiction of the courts
12 of this state regarding any matter involving the trust.

13 (c) This section does not preclude other methods of
14 obtaining jurisdiction over a trustee, beneficiary or other
15 person receiving property from the trust.

§44D-2-203. Subject-matter jurisdiction.

1 The court has exclusive jurisdiction of proceedings in this
2 state brought by a trustee or beneficiary concerning the
3 administration of a trust.

§44D-2-204. Venue.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, venue for a judicial proceeding involving a trust is in
3 the county of this state in which the trust's principal place of
4 administration is or will be located unless the proceeding is
5 to recover land, determine title to the land or subject it to a
6 debt, determine the county where the land or any part may
7 be, or, if the trust is created by will and the estate is not yet
8 closed, in the county in which the decedent's estate is being
9 administered.

10 (b) If a trust has no trustee, venue for a judicial
11 proceeding for the appointment of a trustee is in a county of

12 this state in which a beneficiary resides, in a county in which
 13 any trust property is located, or if the trust is created by will,
 14 in the county in which the decedent's estate was or is being
 15 administered.

ARTICLE 3. REPRESENTATION.

§44D-3-301. Representation; basic effect.

1 (a) Notice to a person who may represent and bind
 2 another person under this chapter has the same effect as if
 3 notice were given directly to the other person.

4 (b) The consent of a person who may represent and bind
 5 another person under this chapter is binding on the person
 6 represented unless the person represented objects to the
 7 representation by notifying the trustee or the representative
 8 before the consent would otherwise have become effective.

9 (c) Except as otherwise provided in section four hundred
 10 eleven, article four of this chapter, and section six hundred
 11 two, article six of this chapter, a person who under this article
 12 may represent a grantor who lacks capacity may receive
 13 notice and give a binding consent on the grantor's behalf.

14 (d) A grantor may not represent and bind a beneficiary
 15 under this article with respect to the termination or
 16 modification of a trust under subsection (a), section four
 17 hundred eleven, article four of this chapter.

§44D-3-302. Representation by holder of general testamentary power of appointment.

1 To the extent there is no conflict of interest between the
 2 holder of a general testamentary power of appointment and
 3 the persons represented with respect to the particular question

4 or dispute, the holder may represent and bind persons whose
5 interests, as permissible appointees, takers in default, or
6 otherwise, are subject to the power.

§44D-3-303. Representation by fiduciaries and parents.

1 To the extent there is no conflict of interest between the
2 representative and the person represented or among those
3 being represented with respect to a particular question or
4 dispute:

5 (1) A conservator or guardian of the protected person
6 may represent and bind the estate that the fiduciary controls;

7 (2) An agent having authority to act with respect to the
8 particular question or dispute may represent and bind the
9 principal;

10 (3) A trustee may represent and bind the beneficiaries of
11 the trust;

12 (4) A personal representative of a decedent's estate may
13 represent and bind persons interested in the estate;

14 (5) A parent may represent and bind the parent's minor
15 or unborn child if a conservator or guardian for the child has
16 not been appointed; and

17 (6) If a minor or unborn person is not otherwise
18 represented under this section, a grandparent or more remote
19 ancestor may represent and bind that minor or unborn person.

**§44D-3-304. Representation by person having substantially
identical interest.**

1 Unless otherwise represented, a minor, incapacitated or
2 unborn individual, or a person whose identity or location is
3 unknown and not reasonably ascertainable, may be
4 represented by and bound by another person having a
5 substantially identical interest with respect to the particular
6 question or dispute, but only to the extent there is no conflict
7 of interest with respect to the particular question or dispute
8 between the representative and the person represented.

§44D-3-305. Appointment of representative.

1 (a) If the court determines in a judicial proceeding that an
2 interest is not represented under this chapter, or that the
3 otherwise available representation might be inadequate, the
4 court may appoint a representative to receive notice, give
5 consent, and otherwise represent, bind, and act on behalf of
6 a minor, incapacitated or unborn individual, or a person
7 whose identity or location is unknown. A representative may
8 be appointed to represent several persons or interests.

9 (b) A representative may act on behalf of the individual
10 represented with respect to any matter arising under this
11 chapter, whether or not a judicial proceeding concerning the
12 trust is pending.

13 (c) In making decisions, a representative may consider
14 general benefit accruing to the living members of the
15 individual's family.

**ARTICLE 4. CREATION, VALIDITY, MODIFICATION
AND TERMINATION OF TRUST.**

§44D-4-401. Methods of creating trust.

1 (a) A trust may be created by:

2 (1) Transfer of property to another person as trustee
3 during the grantor's lifetime by the grantor or by will or by
4 other disposition taking effect upon the grantor's death;

5 (2) Declaration by the owner of property that the owner
6 holds identifiable property as trustee;

7 (3) Exercise of a power of appointment in favor of a
8 trustee; or

9 (4) An order of the court.

10 (b) During the grantor's lifetime, a trust may also be
11 created by the grantor's agent acting in accordance with
12 authority granted under a durable power of attorney which
13 expressly authorizes the agent to create a trust on the
14 grantor's behalf or which expressly authorizes the agent to
15 fund an existing trust of the grantor on the grantor's behalf.

§44D-4-402. Requirement for creation.

1 (a) Except as created by an order of the court, a trust is
2 created only if:

3 (1) The grantor has capacity to create a trust;

4 (2) The grantor indicates an intention, in writing, to
5 create the trust;

6 (3) The trust has a definite beneficiary or is:

7 (A) A charitable trust;

8 (B) A trust for the care of an animal, as provided in
9 section four hundred eight of this article; or

10 (C) A trust for a noncharitable purpose, as provided in
11 section four hundred nine, article four of this chapter;

12 (4) The trustee has duties to perform; and

13 (5) The same person is not the sole trustee and sole
14 beneficiary.

15 (b) A beneficiary is definite if the beneficiary can be
16 ascertained now or in the future, subject to any applicable
17 rule against perpetuities.

18 (c) A power in a trustee to select a beneficiary from an
19 indefinite class is valid. If the power is not exercised within
20 a reasonable time, the power fails and the property subject to
21 the power passes to the persons who would have taken the
22 property had the power not been conferred.

23 (d) Notwithstanding the foregoing:

24 (1) In accordance with the provisions of section eight,
25 article three of chapter forty-one of this code, a trust is valid
26 regardless of the existence, value or character of the corpus
27 of the trust.

28 (2) The grantor need not have capacity to create a trust if
29 the trust is created in writing during the grantor's lifetime by
30 the grantor's agent acting in accordance with authority
31 granted under a durable power of attorney which expressly
32 authorizes the agent to create a trust on the grantor's behalf.

33 (e) A trust is not invalid or terminated, and title to trust
34 assets is not merged, because the trustee or trustees are the
35 same person or persons as the beneficiaries of the trust.

§44D-4-403. Trusts created in other jurisdictions.

1 A trust not created by will is validly created if its creation
2 complies with the law of the jurisdiction in which the trust
3 instrument was executed, or the law of the jurisdiction in
4 which, at the time of creation:

5 (1) The grantor was domiciled, had a place of abode, or
6 was a national;

7 (2) A trustee was domiciled or had a place of business; or

8 (3) Any trust property was located.

§44D-4-404. Trust purposes.

1 A trust may be created only to the extent its purposes are
2 lawful, not contrary to public policy and possible to achieve.
3 A trust and its terms must be for the benefit of its
4 beneficiaries.

§44D-4-405. Charitable purposes; enforcement.

1 (a) A charitable trust may be created for the relief of
2 poverty, the advancement of education or religion, the
3 promotion of health, governmental or municipal purposes or
4 other purposes the achievement of which is beneficial to the
5 community.

6 (b) If the terms of a charitable trust do not indicate a
7 particular charitable purpose or beneficiary, upon petition by
8 the trustee or a person having a special interest in the trust,
9 the court may select one or more charitable purposes or
10 beneficiaries. The selection must be consistent with the
11 grantor's intention to the extent it can be ascertained.

12 (c) The grantor of a charitable trust, trustee or a person
 13 having a special interest in the trust, may maintain a
 14 proceeding to enforce the trust.

15 (d) This section is not intended to override the provisions
 16 of section four, article one, chapter thirty-five of this code,
 17 concerning conveyances, devises, dedications, gifts or
 18 bequests to religious organizations and to the extent there is
 19 a conflict with that section, this section controls.

**§44D-4-406. Creation of trust induced by fraud, duress or
 undue influence.**

1 A trust is void to the extent its creation was induced by
 2 fraud, duress or undue influence. As used in this section,
 3 “fraud,” “duress” and “undue influence” have the same
 4 meanings for trust validity purposes as they have for
 5 purposes of determining the validity of a will.

§44D-4-407. Oral trusts unenforceable.

1 Oral trusts are unenforceable in this state.

§44D-4-408. Trust for care of animal.

1 (a) A trust may be created to provide for the care of an
 2 animal alive during the grantor’s lifetime. The trust
 3 terminates upon the death of the animal or, if the trust was
 4 created to provide for the care of more than one animal alive
 5 during the grantor’s lifetime, upon the death of the last
 6 surviving animal.

7 (b) A trust authorized by this section may be enforced by
 8 a person appointed in the terms of the trust instrument or, if
 9 no person is so appointed, by a person appointed by the court.
 10 A person having an interest in the welfare of the animal may

11 request the court to appoint a person to enforce the trust or to
12 remove a person appointed.

13 (c) Property of a trust authorized by this section may be
14 applied only to its intended use, except to the extent the court
15 determines that the value of the trust property exceeds the
16 amount required for the intended use. Except as otherwise
17 provided in the terms of the trust instrument, property not
18 required for the intended use must be distributed to the
19 grantor, if then living, otherwise to the grantor's successors
20 in interest.

**§44D-4-409. Noncharitable trust without ascertainable
beneficiary.**

1 Except as otherwise provided in section four hundred
2 eight of this article, or by the provisions of article five-a,
3 chapter thirty-five of this code, or by another statute, the
4 following rules apply:

5 (1) A trust may be created for a noncharitable purpose
6 without a definite or definitely ascertainable beneficiary or
7 for a noncharitable but otherwise valid purpose to be selected
8 by the trustee. The trust may not be enforced for more than
9 the period set forth in section one, article one-a, chapter
10 thirty-six of this code.

11 (2) A trust authorized by this section may be enforced by
12 a person appointed in the terms of the trust instrument or, if
13 no person is so appointed, by a person appointed by the court.

14 (3) Property of a trust authorized by this section may be
15 applied only to its intended use, except to the extent the court
16 determines that the value of the trust property exceeds the
17 amount required for the intended use. Except as otherwise
18 provided in the terms of the trust instrument, property not

19 required for the intended use must be distributed to the
 20 grantor, if then living, otherwise to the grantor's successors
 21 in interest.

**§44D-4-410. Modification or termination of trust; proceedings
 for approval or disapproval.**

1 (a) In addition to the methods of termination prescribed
 2 by sections four hundred eleven through four hundred
 3 fourteen, article four of this chapter, a trust terminates to the
 4 extent the trust is revoked or expires pursuant to its terms, no
 5 purpose of the trust remains to be achieved, or the purposes
 6 of the trust have become unlawful, contrary to public policy,
 7 or impossible to achieve.

8 (b) A proceeding to approve or disapprove a proposed
 9 modification or termination under sections four hundred
 10 eleven through four hundred sixteen of this article, or trust
 11 combination or division under section four hundred
 12 seventeen of this article, may be commenced by a trustee or
 13 beneficiary, and a proceeding to approve or disapprove a
 14 proposed modification or termination under section four
 15 hundred eleven of this article may be commenced by the
 16 grantor. The grantor of a charitable trust may maintain a
 17 proceeding to modify the trust under section four hundred
 18 thirteen of this article.

**§44D-4-411. Modification or termination of noncharitable
 irrevocable trust by consent.**

1 (a) If, upon petition, the court finds that the grantor and
 2 all beneficiaries consent to the modification or termination of
 3 a noncharitable irrevocable trust, the court shall approve the
 4 modification or termination even if the modification or
 5 termination is inconsistent with a material purpose of the
 6 trust. A grantor's power to consent to a trust's modification

7 or termination may be exercised by an agent under a power
8 of attorney only to the extent expressly authorized by the
9 power of attorney or the terms of the trust instrument; by the
10 grantor's conservator with the approval of the court
11 supervising the conservatorship if an agent is not so
12 authorized; or by the grantor's guardian with the approval of
13 the court supervising the guardianship if an agent is not so
14 authorized and a conservator has not been appointed.

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

22 (c) A spendthrift provision in the terms of the trust
23 instrument is presumed to constitute a material purpose of the
24 trust.

25 (d) Upon termination of a trust under subsection (a) or (b)
26 of this section, the trustee shall distribute the trust property as
27 agreed by the beneficiaries.

28 (e) If all of the beneficiaries do not consent to a proposed
29 modification or termination of the trust under subsection (a)
30 or (b) of this section, the modification or termination
31 including any distributions of the trust property, may be
32 approved by the court if the court is satisfied that:

33 (1) If all of the beneficiaries had consented, the trust
34 could have been modified or terminated under this section;
35 and

36 (2) The interests of a beneficiary who does not consent
 37 will be adequately protected.

§44D-4-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

1 (a) The court may modify the administrative or
 2 dispositive terms of a trust or terminate the trust if, because
 3 of circumstances not anticipated by the grantor, modification
 4 or termination will further the purposes of the trust. To the
 5 extent practicable, the modification must be made in
 6 accordance with the grantor's probable intention.

7 (b) The court may modify the administrative terms of a
 8 trust if continuation of the trust on its existing terms would be
 9 impracticable or wasteful or impair the trust's administration.

10 (c) Upon termination of a trust under this section, the
 11 trustee shall distribute the trust property in a manner
 12 consistent with the purposes of the trust.

§44D-4-413. Cy pres.

1 (a) Except as otherwise provided in subsection (b) of this
 2 section, if a particular charitable purpose becomes unlawful,
 3 impracticable, impossible to achieve, or wasteful:

4 (1) The charitable trust does not fail, in whole or in part;

5 (2) The charitable trust property does not revert to the
 6 grantor or the grantor's successors in interest; and

7 (3) Upon petition by a trustee or a person having a special
 8 interest in the trust, the court shall apply cy pres to fulfill as

9 nearly as possible the grantor's charitable intention, whether
10 it be general or specific.

11 (b) A provision in the terms of a charitable trust that
12 would result in distribution of the trust property to a
13 noncharitable beneficiary prevails over the power of the court
14 under subsection (a) of this section to apply cy pres to modify
15 or terminate the trust only if, when the provision takes effect:

16 (1) The charitable trust property is to revert to the grantor
17 and the grantor is still living; or

18 (2) Fewer than twenty-one years have elapsed since the
19 date of the trust's creation.

§44D-4-414. Modification or termination of uneconomic trust.

1 (a) After notice to the qualified beneficiaries, the trustee
2 of a trust consisting of a noncharitable trust property having
3 a total value less than \$100,000 may terminate the trust,
4 without the necessity of court approval, if the trustee
5 concludes that the value of the trust property is insufficient to
6 justify the cost of administration.

7 (b) The court may modify or terminate a trust or remove
8 the trustee and appoint a different trustee if it determines that
9 the value of the trust property is insufficient to justify the cost
10 of administration.

11 (c) Upon termination of a trust under this section, the
12 trustee shall distribute the trust property in a manner
13 consistent with the purposes of the trust.

14 (d) This section does not apply to an easement for
15 conservation or preservation.

§44D-4-415. Reformation to correct mistakes.

1 The court may reform the terms of a trust, even if
2 unambiguous, to conform the terms to the grantor's intention
3 if it is proved by preponderance of the evidence that both the
4 grantor's intent and the terms of the trust instrument were
5 affected by a mistake of fact or law, whether in expression or
6 inducement.

§44D-4-416. Modification to achieve grantor's tax objectives.

1 To achieve the grantor's tax objectives, the court may
2 modify the terms of a trust in a manner that is not contrary to
3 the grantor's probable intention. The court may provide that
4 the modification has retroactive effect.

§44D-4-417. Combination and division of trusts.

1 After notice to the qualified beneficiaries, a trustee may
2 combine two or more trusts into a single trust or divide a trust
3 into 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.

**ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND
DISCRETIONARY TRUSTS.****§44D-5-501. Rights of beneficiary's creditor or assignee.**

1 To the extent a beneficiary's interest is not subject to a
2 spendthrift provision, the court may authorize a creditor or
3 assignee of the beneficiary to reach the beneficiary's interest
4 in a trust by execution or other process against the present or
5 future distributions to or for the benefit of the beneficiary.
6 The court may limit the award to relief as appropriate under
7 the circumstances.

8 **§44D-5-502. Spendthrift provision.**

9 (a) A spendthrift provision contained in a trust instrument
10 is valid if it contains language substantially to the effect that
11 it restrains both voluntary and involuntary transfers of a
12 beneficiary's interest.

13 (b) A term of a trust instrument providing that the interest
14 of a beneficiary is held subject to a "spendthrift trust," or
15 words of similar import, is sufficient to restrain both
16 voluntary and involuntary transfer of the beneficiary's
17 interest.

18 (c) A beneficiary may not transfer an interest in a trust in
19 violation of a valid spendthrift provision, and, except as
20 otherwise provided in this article, a creditor or assignee of the
21 beneficiary may not reach the interest or a distribution by the
22 trustee before its receipt by the beneficiary.

§44D-5-503. Exceptions to spendthrift provision.

1 (a) In this section, "child" includes any person for whom
2 an order or judgment for child support has been entered in
3 this or another state.

4 (b) A spendthrift provision is unenforceable against:

5 (1) A beneficiary's child, who has a judgment or court
6 order against the beneficiary for child support;

7 (2) A judgment creditor who has provided services for
8 the protection of a beneficiary's interest in the trust; and

9 (3) A claim of this state or the United States to the extent
10 a statute of this state or federal law so provides.

11 (c) A claimant against whom a spendthrift provision
12 cannot be enforced may obtain from a court an order
13 attaching present or future distributions to or for the benefit
14 of the beneficiary. The court may limit the award to such
15 relief as is appropriate under the circumstances.

§44D-5-504. Discretionary trusts; effect of standard.

1 (a) In this section, “child” includes any person for whom
2 an order or judgment for child support has been entered in
3 this or another state.

4 (b) Except as otherwise provided in subsection (c) of this
5 section, whether or not a trust instrument contains a
6 spendthrift provision, a creditor of a beneficiary may not
7 compel a distribution that is subject to the trustee’s
8 discretion, even if:

9 (1) The discretion is expressed in the form of a standard
10 of distribution; or

11 (2) The trustee has abused the discretion.

12 (c) To the extent a trustee has not complied with a
13 standard of distribution or has abused a discretion:

14 (1) A distribution may be ordered by the court to satisfy
15 a judgment or court order against the beneficiary for child
16 support of the beneficiary’s child; and

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

23 (d) This section does not limit the right of a beneficiary
24 to maintain a judicial proceeding against a trustee for an
25 abuse of discretion or failure to comply with a standard for
26 distribution.

27 (e) A creditor may not reach the interest of a beneficiary
28 who is also a trustee or cotrustee or otherwise compel a
29 distribution, if the trustee's discretion to make distributions
30 for the trustee's own benefit is limited by an ascertainable
31 standard.

§44D-5-505. Creditor's claim against grantor.

1 (a) Whether or not the terms of a trust instrument contain
2 a spendthrift provision, the following rules apply:

3 (1) During the lifetime of the grantor, the property of a
4 revocable trust is subject to claims of the grantor's creditors.

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

12 (3) After the death of a grantor, and subject to the
13 grantor's right to direct the source from which liabilities will
14 be paid, the property of a trust that was revocable at the
15 grantor's death is subject to claims of, to the extent the
16 grantor's probate estate is inadequate to satisfy them:

17 (A) The costs and expenses of administration of the
18 grantor's estate;

- 19 (B) Reasonable funeral expenses;
- 20 (C) Debts and taxes with preference under federal law;
- 21 (D) Unpaid child support which is due and owing at the
22 time of the decedent's death;
- 23 (E) Debts and taxes with preference under other laws of
24 the State of West Virginia;
- 25 (F) Reasonable and necessary medical and hospital
26 expenses of the last illness of the decedent, including
27 compensation for persons attending the decedent during his
28 or her last illness; and
- 29 (G) All other claims.
- 30 (b) For purposes of this section:
- 31 (1) During the period the power may be exercised, the
32 holder of a power of withdrawal is treated in the same
33 manner as the grantor of a revocable trust to the extent of the
34 property subject to the power; and
- 35 (2) Upon the lapse, release or waiver of the power, the
36 holder is treated as the grantor of the trust only to the extent
37 the value of the property affected by the lapse, release or
38 waiver exceeds the greater of the amount specified in Section
39 2041(b)(2), Section 2503(b) or Section 2514(e) of the
40 Internal Revenue Code.

§44D-5-506. Overdue distribution.

- 1 (a) In this section, "mandatory distribution" means a
2 distribution of income or principal which the trustee is
3 required to make to a beneficiary under the terms of the trust

4 instrument, including a distribution upon termination of the
5 trust. The term does not include a distribution subject to the
6 exercise of the trustee's discretion even if:

7 (1) The discretion is expressed in the form of a standard
8 of distribution; or

9 (2) The terms of the trust instrument authorizing a
10 distribution couple language of discretion with language of
11 direction.

12 (b) Whether or not a trust contains a spendthrift
13 provision, a creditor or assignee of a beneficiary may reach
14 a mandatory distribution of income or principal, including a
15 distribution upon termination of the trust, if the trustee has
16 not made the distribution to the beneficiary within a
17 reasonable time after the designated distribution date.

§44D-5-507. Personal obligations of trustee.

1 Trust property is not subject to personal obligations of the
2 trustee, even if the trustee becomes insolvent or bankrupt.

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-601. Capacity of grantor of revocable trust.

1 The capacity required to create, amend, revoke or add
2 property to a revocable trust, or to direct the actions of the
3 trustee of a revocable trust, is the same as that required to
4 make a will.

§44D-6-602. Revocation or amendment of revocable trust.

1 (a) Unless the terms of a trust expressly provide that the
2 trust is irrevocable, the grantor may revoke or amend the

3 trust. This subsection does not apply to a trust created under
4 an instrument executed before the effective date of this
5 chapter.

6 (b) Unless the terms of a trust provide otherwise, if a
7 revocable trust is created or funded by more than one grantor:

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

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

16 (3) Upon the revocation or amendment of the trust by
17 fewer than all of the grantors, the trustee shall promptly
18 notify the other grantors of the revocation or amendment.

19 (c) The grantor may revoke or amend a revocable trust:

20 (1) By substantially complying with a method provided
21 in the terms of the trust instrument; or

22 (2) If the terms of the trust instrument do not provide a
23 method, by any other method manifesting clear and
24 convincing evidence of the grantor's intent.

25 (d) Upon revocation of a revocable trust, the trustee shall
26 deliver the trust property as the grantor directs.

27 (e) A grantor's powers with respect to revocation,
28 amendment, or distribution of trust property may be
29 exercised by an agent under a power of attorney only to the

30 extent expressly authorized by the terms of the trust
31 instrument or the power.

32 (f) A conservator of the grantor or, if no conservator has
33 been appointed, a guardian of the grantor may exercise a
34 grantor's powers with respect to revocation, amendment or
35 distribution of trust property only with the approval of the
36 court supervising the conservatorship or guardianship.

37 (g) A trustee who does not know that a trust has been
38 revoked or amended is not liable to the grantor or grantor's
39 successors in interest for distributions made and other actions
40 taken on the assumption that the trust had not been amended
41 or revoked.

42 (h) No trust which is otherwise irrevocable because the
43 trust instrument expressly provides or states that the trust is
44 irrevocable is or becomes revocable by the grantor because
45 the grantor is the sole beneficiary of the trust.

§44D-6-603. Grantor's powers; powers of withdrawal.

1 (a) While a trust is revocable and the grantor has capacity
2 to revoke the trust, rights of the beneficiaries are subject to
3 the control of, and the duties of the trustee are owed
4 exclusively to, the grantor.

5 (b) During the period the power may be exercised, the
6 holder of a power of withdrawal has the rights of a grantor of
7 a revocable trust under this section to the extent of the
8 property subject to the power.

**§44D-6-604. Limitation on action contesting validity of
revocable trust; distribution of trust property.**

1 (a) (1) An interested person may commence a judicial
2 proceeding to contest the validity of a trust that was
3 revocable at the grantor's death within the earlier of:

4 (A) Two years after the grantor's death; or

5 (B) Six months after the trustee has sent the beneficiary
6 a copy of the trust instrument and a notice informing the
7 beneficiary of the trust's existence, of the trustee's name and
8 address, and of the time allowed for commencing a
9 proceeding.

10 (2) Notwithstanding subdivision (1) of this subsection:

11 (A) If the beneficiary is under the age of eighteen years
12 or is a convict or mentally incapacitated person, the
13 beneficiary has one year after he or she becomes of age or the
14 disability ceases to commence a judicial proceeding; and

15 (B) If the beneficiary resided out of the state at the time
16 the beneficiary received the trust instrument and notice, the
17 beneficiary has one year after receipt thereof to commence
18 the judicial proceeding.

19 (b) Upon the death of the grantor of a trust that was
20 revocable at the grantor's death, the trustee may proceed to
21 distribute the trust property in accordance with the terms of
22 the trust instrument. The trustee is not subject to liability for
23 doing so unless:

24 (1) The trustee knows of a pending judicial proceeding
25 contesting the validity of the trust; or

26 (2) A potential contestant has notified the trustee of a
27 possible judicial proceeding to contest the trust and a judicial

28 proceeding is commenced within sixty days after the
29 contestant sent the notification.

30 (c) A beneficiary of a trust that was revocable at the
31 grantor's death that is determined to have been invalid is
32 liable to return any distribution received.

ARTICLE 7. OFFICE OF THE TRUSTEE.

§44D-7-701. Accepting or declining trusteeship.

1 (a) Except as otherwise provided in subsection (c) of this
2 section, a person designated as trustee accepts the trusteeship:

3 (1) By substantially complying with a method of
4 acceptance provided in the terms of the trust instrument; or

5 (2) If the terms of the trust instrument do not provide a
6 method or the method provided in the terms is not expressly
7 made exclusive, by accepting delivery of the trust property,
8 exercising powers or performing duties as trustee, or
9 otherwise indicating acceptance of the trusteeship including
10 by signing a written instrument so stating.

11 (b) A person designated as trustee who has not yet
12 accepted the trusteeship may reject the trusteeship. A person
13 designated as trustee who does not accept the trusteeship
14 within a reasonable time after knowing of the designation is
15 deemed to have rejected the trusteeship.

16 (c) A person designated as trustee, without accepting the
17 trusteeship, may:

18 (1) Act to preserve the trust property if, within a
19 reasonable time after acting, the person sends a rejection of

20 the trusteeship to the grantor or, if the grantor is dead or lacks
21 capacity, to a qualified beneficiary; and

22 (2) Inspect or investigate trust property to determine
23 potential liability under environmental or other law or for any
24 other proper purpose.

§44D-7-702. Trustee's bond.

1 (a) A trustee shall give bond to secure performance of the
2 trustee's duties only if a bond is required by the terms of the
3 trust instrument or if the court having jurisdiction of the trust
4 finds that a bond is needed to protect the interests of the
5 beneficiaries and the court has not dispensed with the
6 requirement of a bond.

7 (b) The court may specify the amount of a bond, its
8 liabilities and whether sureties are necessary. The court may
9 modify or terminate a bond at any time upon petition by the
10 grantor, if living, a qualified beneficiary, or cotrustee.

11 (c) In accordance with the provisions of section eighteen,
12 article four, chapter thirty-one-a of this code, a regulated
13 financial-service institution authorized to exercise trust
14 powers in this state need not give bond, even if required by
15 the terms of the trust instrument.

§44D-7-703. Cotrustees.

1 (a) Unless otherwise provided in the terms of the trust
2 instrument, cotrustees who are unable to reach a unanimous
3 decision may act by majority decision. Unless otherwise
4 provided by the trust instrument, when a dispute arises
5 among trustees as to the exercise or nonexercise of any of
6 their powers and there is no agreement by a majority of them,
7 the court in its discretion upon petition filed by any of the

8 trustees, the grantor, if living, a qualified beneficiary, or any
9 interested person, may direct the exercise or nonexercise of
10 the power as it considers necessary for the best interest of the
11 trust.

12 (b) If a vacancy occurs in a cotrusteeship, the remaining
13 cotrustees may act for the trust, unless otherwise provided in
14 the terms of the trust instrument.

15 (c) A cotrustee must participate in the performance of a
16 trustee's function unless the cotrustee is unavailable to
17 perform the function because of absence, illness,
18 disqualification under other law, or other temporary
19 incapacity or the cotrustee has properly delegated the
20 performance of the function to another trustee.

21 (d) If a cotrustee is unavailable to perform duties because
22 of absence, illness, disqualification under other law, or other
23 temporary incapacity, and prompt action is necessary to
24 achieve the purposes of the trust or to avoid injury to the trust
25 property, the remaining cotrustee or a majority of the
26 remaining cotrustees may act for the trust.

27 (e) A trustee may delegate to a cotrustee the performance
28 of a function other than a function that the terms of the trust
29 expressly require to be performed by the trustees jointly.
30 Unless a delegation was irrevocable, a trustee may revoke a
31 delegation of a function previously made.

32 (f) Except as otherwise provided in subsection (g) of this
33 section, a trustee who does not join in an action of another
34 trustee is not liable for the action.

35 (g) Each trustee shall exercise reasonable care to:

36 (1) Prevent a cotrustee from committing a serious breach
37 of trust; and

38 (2) Compel a cotrustee to redress a serious breach of
39 trust.

40 (h) A dissenting trustee who joins in an action at the
41 direction of the majority of the trustees and who notifies any
42 cotrustee of the dissent at or before the time of the action is
43 not liable for the action unless the action is a serious breach
44 of trust.

§44D-7-704. Vacancy in trusteeship; appointment of successor.

1 (a) A vacancy in a trusteeship occurs if:

2 (1) A person designated as trustee rejects the trusteeship;

3 (2) A person designated as trustee cannot be identified or
4 does not exist;

5 (3) A trustee resigns;

6 (4) A trustee is disqualified or removed;

7 (5) A trustee dies; or

8 (6) A guardian or conservator is appointed for an
9 individual serving as trustee.

10 (b) If one or more cotrustees remain in office, a vacancy
11 in a trusteeship need not be filled, unless otherwise provided
12 in the terms of the trust instrument. A vacancy in a
13 trusteeship must be filled if the trust has no remaining trustee.

14 (c) Unless otherwise provided in the terms of the trust
15 instrument, a vacancy in a trusteeship of a noncharitable trust
16 that is required to be filled must be filled in the following
17 order of priority:

18 (1) By a person designated in the terms of the trust
19 instrument to act as successor trustee;

20 (2) By a person appointed by unanimous written
21 agreement of the qualified beneficiaries; or

22 (3) By a person appointed by the court having jurisdiction
23 of the trust.

24 (d) Unless otherwise provided, a vacancy in a trusteeship
25 of a charitable trust that is required to be filled shall be filled
26 in the following order of priority:

27 (1) By a person designated in the terms of the trust to act
28 as successor trustee;

29 (2) By a person selected by the charitable organizations
30 expressly designated to receive distributions under the terms
31 of the trust instrument if the Attorney General of West
32 Virginia either concurs in writing to the selection or fails to
33 make a written objection to the selection within ninety days
34 after receiving by certified or registered mail a notice of the
35 selection by the charitable organizations; or

36 (3) By a person appointed by the court having jurisdiction
37 over the trust.

38 (e) Whether or not a vacancy in a trusteeship exists or is
39 required to be filled, the court may upon petition of the
40 grantor, a qualified beneficiary, or a cotrustee appoint an
41 additional trustee or special fiduciary whenever the court

42 considers the appointment necessary for the administration of
43 the trust.

§44D-7-705. Resignation of trustee.

1 (a) Unless otherwise provided in the terms of the trust
2 instrument, a trustee may resign without court approval by
3 giving at least thirty days' notice in writing to the grantor, if
4 living, all of the qualified beneficiaries, and all cotrustees, if
5 any.

6 (b) A trustee may resign with the approval of the court
7 having jurisdiction of the trust upon the filing of a petition for
8 such purpose which joins as respondents the grantor, if
9 living, all of the qualified beneficiaries, and all cotrustees, if
10 any. In approving a resignation, the court may issue orders
11 and impose conditions reasonably necessary for the
12 protection of the trust property.

13 (c) Unless otherwise provided by order of the court, any
14 liability of a resigning trustee or of any sureties on the
15 trustee's bond for acts or omissions of the trustee is not
16 discharged or affected by the trustee's resignation.

§44D-7-706. Removal of trustee.

1 (a) The grantor, a cotrustee or a beneficiary may upon
2 petition request the court to remove a trustee, or a trustee may
3 be removed by the court on its own initiative. In the case of
4 a charitable trust, the Attorney General of West Virginia shall
5 also have standing to petition the court to remove a trustee.

6 (b) The court may remove a trustee if the court finds by
7 a preponderance of the evidence that:

8 (1) The trustee has committed a serious breach of trust;

9 (2) Lack of cooperation among cotrustees substantially
10 impairs the administration of the trust;

11 (3) Because of unfitness, unwillingness or persistent
12 failure of the trustee to administer the trust effectively,
13 removal of the trustee best serves the interests of the
14 beneficiaries; or

15 (4) There has been a substantial change of circumstances
16 or removal is requested by all of the qualified beneficiaries,
17 removal of the trustee best serves the interests of all of the
18 beneficiaries, removal is not inconsistent with a material
19 purpose of the trust, and a suitable cotrustee or successor
20 trustee is available.

21 (c) Pending a final decision on a request to remove a
22 trustee, or in lieu of or in addition to removing a trustee, the
23 court may order appropriate relief under subsection (b),
24 section one thousand one, article ten of this chapter as may be
25 necessary to protect the trust property or the interests of the
26 beneficiaries.

§44D-7-707. Delivery of property by former trustee.

1 (a) Unless a cotrustee remains in office or the court
2 otherwise orders, and until the trust property is delivered to
3 a successor trustee or other person entitled to it, a trustee who
4 has resigned or been removed has the duties of a trustee and
5 the powers necessary to protect the trust property.

6 (b) A trustee who has resigned or been removed shall
7 proceed expeditiously to deliver the trust property within the
8 trustee's possession to the cotrustee, successor trustee or
9 other person entitled to it.

10 (c) Title to all trust property shall be owned and vested in
11 any successor trustee, upon acceptance of the trusteeship,
12 without any conveyance, transfer or assignment by the prior
13 trustee.

§44D-7-708. Compensation of trustee.

1 (a) If the terms of the trust instrument do not specify the
2 trustee's compensation, a trustee is entitled to compensation
3 that is reasonable under the circumstances.

4 (b) If the terms of the trust instrument specify the
5 trustee's compensation, the trustee is entitled to be
6 compensated as specified, but the court may upon petition of
7 the grantor, qualified beneficiary, the trustee or cotrustee, if
8 any, may allow more or less compensation if:

9 (1) The duties of the trustee are substantially different
10 from those contemplated when the trust was created; or

11 (2) The compensation specified by the terms of the trust
12 instrument would be unreasonably low or high.

§44D-7-709. Reimbursement of expenses.

1 (a) A trustee is entitled to be reimbursed out of the trust
2 property, with interest as appropriate, for:

3 (1) Expenses that were properly incurred in the
4 administration of the trust; and

5 (2) To the extent necessary to prevent unjust enrichment
6 of the trust, expenses that were not properly incurred in the
7 administration of the trust.

8 (b) An advance by the trustee of money for the protection
9 of the trust gives rise to a lien against trust property to secure
10 reimbursement with reasonable interest.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§44D-8-801. Duty to administer trust.

1 Upon acceptance of a trusteeship, the trustee shall
2 administer the trust and invest the trust assets in good faith,
3 in accordance with its terms and purposes and the interests of
4 the beneficiaries, and in accordance with this chapter. In
5 administering, managing and investing trust assets, the
6 trustee shall comply with the provisions of the Uniform
7 Prudent Investor Act in article six-c, chapter forty-four of this
8 code, and the Uniform Principal and Income Act in chapter
9 forty-four-b of this code.

§44D-8-802. Duty of loyalty.

1 (a) A trustee shall administer the trust solely in the
2 interests of the beneficiaries.

3 (b) Subject to the rights of persons dealing with or
4 assisting the trustee as provided in section one thousand
5 twelve, article ten of this chapter, a sale, encumbrance or
6 other transaction involving the investment or management of
7 trust property entered into by the trustee for the trustee's own
8 personal account or which is otherwise affected by a conflict
9 between the trustee's fiduciary and personal interests is
10 voidable by a beneficiary affected by the transaction unless:

11 (1) The transaction was authorized by the terms of the
12 trust instrument;

13 (2) The transaction was approved by the court having
14 jurisdiction over the trust;

15 (3) The beneficiary did not commence a judicial
16 proceeding within the time allowed by section one thousand
17 five, article ten of this chapter;

18 (4) The beneficiary consented to the trustee's conduct,
19 ratified the transaction or released the trustee in compliance
20 with section one thousand nine, article ten of this chapter; or

21 (5) The transaction involves a contract entered into or
22 claim acquired by the trustee before the person became or
23 contemplated becoming trustee.

24 (c) A sale, encumbrance or other transaction involving
25 the investment or management of trust property is presumed
26 to be affected by a conflict between personal and fiduciary
27 interests if it is entered into by the trustee with:

28 (1) The trustee's spouse;

29 (2) The trustee's descendants, siblings, parents or their
30 spouses;

31 (3) An agent or attorney of the trustee; or

32 (4) A corporation or other person or enterprise in which
33 the trustee, or a person that owns a significant interest in the
34 trustee, has an interest that might affect the trustee's best
35 judgment.

36 (d) A transaction between a trustee and a beneficiary that
37 does not concern trust property but that occurs during the
38 existence of the trust or while the trustee retains significant
39 influence over the beneficiary and from which the trustee

40 obtains an advantage beyond the normal commercial
41 advantage from such transaction is voidable by the
42 beneficiary unless the trustee establishes that the transaction
43 was fair to the beneficiary.

44 (e) A transaction not concerning trust property in which
45 the trustee engages in the trustee's individual capacity
46 involves a conflict between personal and fiduciary interests
47 if the transaction concerns an opportunity properly belonging
48 to the trust.

49 (f) An investment by a trustee in securities of an
50 investment company or investment trust, mutual fund or
51 other investment or financial product to which the trustee, or
52 its affiliate, provides services in a capacity other than as
53 trustee is not presumed to be affected by a conflict between
54 personal and fiduciary interests if the investment otherwise
55 complies with the Uniform Prudent Investor Act in article
56 six-c, chapter forty-four of this code. In addition to its
57 compensation for acting as trustee, the trustee may be
58 compensated by the investment company, investment trust,
59 mutual fund or other investment or financial product, or by
60 the affiliated entity sponsoring, selling or providing the
61 service, and the compensation may be in addition to the
62 compensation the trustee is receiving as a trustee if the trustee
63 notifies the persons entitled to receive a copy of the trustee's
64 annual report as provided hereunder of the rate and method
65 by which that compensation was determined and of any
66 subsequent changes to the rate or method of compensation.

67 (g) In voting shares of stock or in exercising powers of
68 control over similar interests in other forms of enterprise, the
69 trustee shall act in the best interests of the beneficiaries. If
70 the trust is the sole owner of a corporation or other form of
71 enterprise, the trustee shall elect or appoint directors or other

72 managers who will manage the corporation or enterprise in
73 the best interests of the beneficiaries.

74 (h) This section does not preclude the following
75 transactions, if fair to the beneficiaries:

76 (1) An agreement between a trustee and a beneficiary
77 relating to the appointment or compensation of the trustee;

78 (2) Payment of reasonable compensation to the trustee;

79 (3) A transaction between a trust and another trust,
80 decedent's estate or conservatorship of which the trustee is a
81 fiduciary or in which a beneficiary has an interest;

82 (4) A deposit of trust money in a regulated financial
83 service institution operated by the trustee; or

84 (5) An advance by the trustee of money for the protection
85 of the trust.

86 (i) The court having jurisdiction over the trust may
87 appoint a special fiduciary to make a decision with respect to
88 any proposed transaction that might violate this section if
89 entered into by the trustee.

§44D-8-803. Impartiality.

1 If a trust has two or more beneficiaries, the trustee shall
2 act impartially in investing, managing and distributing the
3 trust property, giving due regard to the beneficiaries'
4 respective interests.

§44D-8-804. Prudent administration.

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

§44D-8-805. Costs of administration.

1 In administering a trust, the trustee may incur only costs
2 that are reasonable in relation to the trust property, the
3 purposes of the trust and the skills of the trustee.

§44D-8-806. Trustee's skills.

1 A trustee who has special skills or expertise, or is named
2 trustee in reliance upon the trustee's representation that the
3 trustee has special skills or expertise, shall use those special
4 skills or expertise.

§44D-8-807. Delegation by trustee.

1 (a) A trustee may delegate duties and powers that a
2 prudent trustee of comparable skills could properly delegate
3 under the circumstances. The trustee shall exercise
4 reasonable care, skill, and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust
8 instrument; and

9 (3) Periodically reviewing the agent's actions in order to
10 monitor the agent's performance and compliance with the
11 terms of the delegation.

12 (b) In performing a delegated function, an agent owes a
13 duty to the trust to exercise reasonable care to comply with
14 the terms of the delegation.

15 (c) A trustee who complies with subsection (a) of this
16 section is not liable to the beneficiaries or to the trust for an
17 action of the agent to whom the function was delegated.

18 (d) By accepting a delegation of powers or duties from
19 the trustee of a trust that is subject to the law of this state, an
20 agent submits to the jurisdiction of the courts of this state.

21 (e) The delegating trustee is not responsible for the
22 decisions, actions or inactions of the trustee to whom those
23 duties and powers have been delegated if the delegating
24 trustee has exercised reasonable care, skill and caution in
25 establishing the scope and specific terms of the delegation
26 and in reviewing periodically the performance of the trustee
27 to whom the duties and powers have been delegated and the
28 trustee's compliance with the scope and specific terms of the
29 delegation.

§44D-8-808. Powers to direct.

1 (a) While a trust is revocable, the trustee may follow a
2 direction of the grantor that is contrary to the terms of the
3 trust instrument.

4 (b) If the terms of a trust instrument confer upon a person
5 other than the grantor of a revocable trust power to direct
6 certain actions of the trustee, the trustee shall act in
7 accordance with an exercise of the power unless the
8 attempted exercise is manifestly contrary to the terms of the
9 trust instrument or the trustee knows the attempted exercise
10 would constitute a serious breach of a fiduciary duty that the

11 person holding the power owes to the beneficiaries of the
12 trust.

13 (c) The terms of a trust instrument may confer upon a
14 trustee or other person a power to direct the modification or
15 termination of the trust.

16 (d) A person, other than a beneficiary, who holds a power
17 to direct is presumptively a fiduciary who, as such, is
18 required to act in good faith with regard to the purposes of
19 the trust and the interests of the beneficiaries. The holder of
20 a power to direct is liable for any loss that results from the
21 holder's breach of a fiduciary duty.

§44D-8-809. Control and protection of trust property.

1 A trustee shall take reasonable steps to take control of
2 and protect the trust property.

§44D-8-810. Recordkeeping and identification of trust property.

1 (a) A trustee shall keep adequate records of the
2 administration of the trust.

3 (b) A trustee shall keep trust property separate from the
4 trustee's own property.

5 (c) Except as otherwise provided in subsection (d) of this
6 section, a trustee shall cause the trust property to be
7 designated so that the interest of the trust, to the extent
8 feasible, appears in records maintained by a party other than
9 a trustee or beneficiary.

10 (d) If the trustee maintains records clearly indicating the
11 respective interests, a trustee may invest as a whole the
12 property of two or more separate trusts.

§44D-8-811. Enforcement and defense of claims.

1 A trustee shall take reasonable steps to enforce claims of
2 the trust and to defend claims against the trust.

§44D-8-812. Collecting trust property.

1 A trustee shall take reasonable steps to compel a former
2 trustee or other person to deliver trust property to the trustee,
3 and to redress a breach of trust known to the trustee to have
4 been committed by a former trustee.

§44D-8-813. Duty to inform and report.

1 (a) A trustee shall keep the current beneficiaries of the
2 trust reasonably informed about the administration of the
3 trust and of the material facts necessary for them to protect
4 their interests. Unless unreasonable under the circumstances,
5 a trustee shall within a reasonable time respond to a
6 beneficiary's request for information related to the
7 administration of the trust.

8 (b) A trustee:

9 (1) Upon request of a beneficiary, shall within a
10 reasonable time furnish to the beneficiary a copy of the trust
11 instrument;

12 (2) Within sixty days after accepting a trusteeship, shall
13 notify the qualified beneficiaries of the acceptance and of the
14 trustee's name, address and telephone number;

15 (3) Within sixty days after the date the trustee acquires
16 knowledge of the creation of an irrevocable trust, or the date
17 the trustee acquires knowledge that a formerly revocable trust
18 has become irrevocable, whether by the death of the grantor

19 or otherwise, shall notify the qualified beneficiaries of the
20 trust's existence, of the identity of the grantor or grantors, of
21 the right to request a copy of the trust instrument, and of the
22 right to a trustee's report as provided in subsection (c) of this
23 section; and

24 (4) Shall notify the qualified beneficiaries within a
25 reasonable time in advance of any change in the method or
26 rate of the trustee's compensation.

27 (c) A trustee shall send to the distributees or permissible
28 distributees of trust income or principal, and to other
29 qualified or nonqualified beneficiaries who request it, at least
30 annually and at the termination of the trust, a report of the
31 trust property, liabilities, receipts, and disbursements,
32 including the source and amount of the trustee's
33 compensation, a listing of the trust assets and, if feasible,
34 their respective market values. Upon a vacancy in a
35 trusteeship, unless a cotrustee remains in office, a report shall
36 be sent to the qualified beneficiaries by the former trustee. A
37 personal representative, conservator or guardian is
38 responsible for sending the qualified beneficiaries a report on
39 behalf of a deceased or incapacitated trustee.

40 (d) A beneficiary may waive the right to a trustee's report
41 or other information otherwise required to be furnished under
42 this section. A beneficiary, with respect to future reports and
43 other information, may withdraw a waiver previously given.

44 (e) Subdivisions (2) and (3), subsection (b) of this section
45 do not apply to a trustee who accepts a trusteeship before the
46 effective date of this chapter, to an irrevocable trust created
47 before the effective date of this chapter, or to a revocable
48 trust that becomes irrevocable before the effective date of this
49 chapter.

§44D-8-814. Discretionary powers; tax savings.

1 (a) Notwithstanding the breadth of discretion granted to
2 a trustee in the terms of the trust instrument, including the use
3 of such terms as “absolute,” “sole” or “uncontrolled,” the
4 trustee shall exercise a discretionary power in good faith and
5 in accordance with the general and specific terms and
6 purposes of the trust and the interests of the beneficiaries.

7 (b) Subject to subsection (d) of this section, and unless
8 the terms of the trust instrument expressly indicate that a rule
9 in this subsection does not apply:

10 (1) A person other than a grantor who is a beneficiary and
11 trustee of a trust that confers on the trustee a power to make
12 discretionary distributions to or for the trustee’s personal
13 benefit may exercise the power only in accordance with an
14 ascertainable standard; and

15 (2) A trustee may not exercise a power to make
16 discretionary distributions to satisfy a legal obligation of
17 support that the trustee personally owes another person.

18 (c) A power whose exercise is limited or prohibited by
19 subsection (b) of this section may be exercised by a majority
20 of the remaining trustees whose exercise of the power is not
21 so limited or prohibited. If the power of all trustees is so
22 limited or prohibited, the court having jurisdiction may
23 appoint a special fiduciary with authority to exercise the
24 power.

25 (d) Subsection (b) of this section does not apply to:

26 (1) A power held by the grantor’s spouse who is the
27 trustee of a trust for which a marital deduction, as defined in

28 Section 2056(b)(5) or Section 2523(e) of the Internal
29 Revenue Code;

30 (2) Any trust during any period that the trust may be
31 revoked or amended by its grantor; or

32 (3) A trust if contributions to the trust qualify for the
33 annual exclusion under Section 2503(c) of the Internal
34 Revenue Code.

§44D-8-815. General powers of trustee.

1 (a) A trustee, without authorization by the court having
2 jurisdiction, may exercise:

3 (1) Powers conferred by the terms of the trust instrument;
4 or

5 (2) Except as limited by the terms of the trust instrument:

6 (A) All powers over the trust property which an
7 unmarried competent owner has over individually owned
8 property;

9 (B) Any other powers appropriate to achieve the proper
10 investment, management and distribution of the trust
11 property; and

12 (C) Any other powers conferred by this code.

13 (b) The exercise of a power is subject to the fiduciary
14 duties prescribed by this article.

§44D-8-816. Specific powers of trustee.

1 Without limiting the authority conferred by section eight
2 hundred fifteen of this article, a trustee has the powers
3 enumerated in the provisions of section three, article five-a,
4 chapter forty-four of this code.

§44D-8-817. Distribution upon termination.

1 (a) Upon termination or partial termination of a trust, the
2 trustee may send to the beneficiaries a proposal for
3 distribution. The right of any beneficiary to object to the
4 proposed distribution terminates if the beneficiary does not
5 notify the trustee of an objection within sixty days after the
6 proposal was sent but only if the proposal informed the
7 beneficiary of the right to object and of the time allowed for
8 objection.

9 (b) Upon the occurrence of an event terminating or
10 partially terminating a trust, the trustee shall proceed
11 expeditiously to distribute the trust property to the persons
12 entitled to it, subject to the right of the trustee to retain a
13 reasonable reserve for the payment of debts, expenses and
14 taxes.

15 (c) A release by a beneficiary of a trustee from liability
16 for breach of trust is invalid to the extent:

17 (1) It was induced by improper conduct of the trustee; or

18 (2) The beneficiary, at the time of the release, did not
19 know of the beneficiary's rights or of the material facts
20 relating to the breach.

ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT.

§44D-9-901. Uniform Prudent Investor Act.

1 The Uniform Prudent Investor Act is contained in article
2 six-c, chapter forty-four of this code.

**ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF
PERSONS DEALING WITH TRUSTEE.**

§44D-10-1001. Remedies for breach of trust.

1 (a) A violation by a trustee of a duty the trustee owes to
2 a beneficiary is a breach of trust.

3 (b) To remedy a breach of trust that has occurred or may
4 occur, the court may:

5 (1) Compel the trustee to perform the trustee's duties;

6 (2) Enjoin the trustee from committing a breach of trust;

7 (3) Compel the trustee to redress a breach of trust by
8 paying money, restoring property or other means;

9 (4) Order a trustee to account;

10 (5) Appoint a special fiduciary to take possession of the
11 trust property and administer the trust in accordance with the
12 limitations and directions as ordered by the court;

13 (6) Suspend the trustee;

14 (7) Remove the trustee as provided in section seven
15 hundred six, article seven of this chapter;

16 (8) Reduce or deny compensation to the trustee;

17 (9) Subject to section one thousand twelve of this article,
18 void an act of the trustee, impose a lien or a constructive trust

19 on trust property or trace trust property wrongfully disposed
20 of and recover the property or its proceeds; or

21 (10) Order any other appropriate relief.

§44D-10-1002. Damages for breach of trust.

1 (a) A trustee who commits a breach of trust is liable to
2 the beneficiaries affected for the greater of:

3 (1) The amount required to restore the value of the trust
4 property and trust distributions to what they would have been
5 had the breach not occurred; or

6 (2) The profit the trustee made by reason of the breach.

7 (b) Except as otherwise provided in this subsection, if
8 more than one trustee is liable to the beneficiaries for a
9 breach of trust, a trustee is entitled to contribution from the
10 other trustee or trustees. A trustee is not entitled to
11 contribution if the trustee was substantially more at fault than
12 another trustee or if the trustee committed the breach of trust
13 in bad faith or with reckless indifference to the purposes of
14 the trust or the interests of the beneficiaries. A trustee who
15 received a benefit from the breach of trust is not entitled to
16 contribution from another trustee to the extent of the benefit
17 received.

§44D-10-1003. Damages in absence of breach.

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

§44D-10-1004. Attorney's fees and costs.

1 In a judicial proceeding involving the administration of
2 a trust, the court, as justice and equity may require, may
3 award costs and expenses, including reasonable attorney's
4 fees, to any party, to be paid by another party or from the
5 trust that is the subject of the controversy.

§44D-10-1005. Limitation of action against trustee.

1 (a) A beneficiary may not commence a proceeding
2 against a trustee for breach of trust more than one year after
3 the date the beneficiary or a representative of the beneficiary
4 was sent a report that adequately disclosed the existence of a
5 potential claim for breach of trust and informed the
6 beneficiary of the time allowed for commencing a
7 proceeding.

8 (b) A report adequately discloses the existence of a
9 potential claim for breach of trust if it provides sufficient
10 information so that the beneficiary or representative of the
11 beneficiary knows of the potential claim or should know of
12 the existence of the potential claim.

13 (c) If subsection (a) of this section does not apply, a
14 judicial proceeding by a beneficiary against a trustee for
15 breach of trust must be commenced within five years after the
16 first to occur of:

17 (1) The removal, resignation or death of the trustee;

18 (2) The termination of the beneficiary's interest in the
19 trust;

20 (3) The termination of the trust; or

21 (4) The time when the beneficiary knew or should have
22 known of the breach of trust.

§44D-10-1006. Reliance on trust instrument.

1 A trustee who acts in reasonable reliance on the terms of
2 the trust instrument as expressed in the trust instrument is not
3 liable to a beneficiary for a breach of trust to the extent the
4 breach resulted from the reliance.

§44D-10-1007. Event affecting administration or distribution.

1 If the happening of an event, including, but not limited to,
2 marriage, divorce, performance of educational requirements,
3 attaining a specific age or death, affects the administration or
4 distribution of a trust, a trustee who has exercised reasonable
5 care to ascertain the happening of the event is not liable for
6 a loss resulting from the trustee's lack of knowledge.

§44D-10-1008. Exculpation of trustee.

1 (a) A term of a trust instrument relieving a trustee of
2 liability for breach of trust is unenforceable to the extent that
3 it:

4 (1) Relieves the trustee of liability for breach of trust
5 committed in bad faith or with reckless indifference to the
6 purposes of the trust or the interests of the beneficiaries; or

7 (2) Was inserted as the result of an abuse by the trustee
8 of a fiduciary or confidential relationship to the grantor.

9 (b) An exculpatory term drafted or caused to be drafted
10 by the trustee is invalid as an abuse of a fiduciary or
11 confidential relationship unless:

12 (1) The trustee proves that the exculpatory term is fair
13 under the circumstances and that its existence and contents
14 were adequately communicated to the grantor; or

15 (2) The grantor was represented by an attorney not
16 employed by the trustee with respect to the trust and the
17 attorney provided independent legal advice.

§44D-10-1009. Beneficiary's consent, release or ratification.

1 (a) A trustee is not liable to a beneficiary for breach of
2 trust if the beneficiary, while having capacity, consented to
3 the conduct constituting the breach, released the trustee from
4 liability for the breach, or ratified the transaction constituting
5 the breach, unless:

6 (1) The consent, release or ratification of the beneficiary
7 was induced by improper conduct of the trustee; or

8 (2) At the time of the consent, release or ratification, the
9 beneficiary did not know of the beneficiary's rights or of the
10 material facts relating to the breach.

11 (b) A beneficiary is also bound to the extent an approval
12 is given by a person authorized to represent the beneficiary
13 as provided in article three of this chapter.

§44D-10-1010. Limitation on personal liability of trustee.

1 (a) Except as otherwise provided in the contract, a trustee
2 is not personally liable on a contract properly entered into in
3 the trustee's fiduciary capacity in the course of administering
4 the trust if the trustee in the contract disclosed the fiduciary
5 capacity.

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

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

§44D-10-1011. Interest as general partner.

1 (a) Except as otherwise provided in subsection (c) of this
2 section or unless personal liability is imposed in the contract,
3 a trustee who holds an interest as a general partner in a
4 general or limited partnership is not personally liable on a
5 contract entered into by the partnership after the trust's
6 acquisition of the interest if the fiduciary capacity was
7 disclosed in the contract. The requirement of disclosure in the
8 contract is satisfied if the trustee signs the contract, or signs
9 another writing which is contemporaneously delivered to the
10 other parties to the contract, in a manner that clearly
11 evidences that the trustee executed the contract in a fiduciary
12 capacity.

13 (b) Except as otherwise provided in subsection (c) of this
14 section, a trustee who holds an interest as a general partner is
15 not personally liable for torts committed by the partnership or
16 for obligations arising from ownership or control of the
17 interest unless the trustee is personally at fault.

18 (c) The immunity provided by this section does not apply
19 if an interest in the partnership is held by the trustee in a
20 capacity other than that of trustee or is held by the trustee's
21 spouse or one or more of the trustee's descendants, siblings
22 or parents or the spouse of any of them.

23 (d) If the trustee of a revocable trust holds an interest as
24 a general partner, the grantor is personally liable for contracts
25 and other obligations of the partnership as if the grantor were
26 a general partner.

§44D-10-1012. Protection of person dealing with trustee.

1 (a) A person other than a beneficiary who in good faith
2 assists a trustee, or who in good faith and for value deals with
3 a trustee, without knowledge that the trustee is exceeding or
4 improperly exercising the trustee's powers is protected from
5 liability as if the trustee properly exercised the power.

6 (b) A person other than a beneficiary who in good faith
7 deals with a trustee is not required to inquire into the extent
8 of the trustee's powers or the propriety of their exercise.

9 (c) A person who in good faith delivers assets to a trustee
10 need not ensure their proper application.

11 (d) A person other than a beneficiary who in good faith
12 assists a former trustee, or who in good faith and for value
13 deals with a former trustee, without knowledge that the
14 trusteeship has terminated is protected from liability as if the
15 former trustee were still a trustee.

16 (e) Comparable protective provisions of other laws
17 relating to commercial transactions or transfer of securities
18 by fiduciaries prevail over the protection provided by this
19 section.

§44D-10-1013. Certification of trust.

1 (a) Instead of furnishing a copy of the trust instrument to
2 a person other than a beneficiary, the trustee may furnish to

3 the person a certification of trust containing the following
4 information:

5 (1) That the trust exists and the date the trust instrument
6 was executed;

7 (2) The identity of the grantor;

8 (3) The identity and address of the currently acting
9 trustee;

10 (4) The powers of the trustee;

11 (5) The revocability or irrevocability of the trust and the
12 identity of any person holding a power to revoke the trust;

13 (6) The authority of cotrustees to sign or otherwise
14 authenticate and whether all or less than all are required in
15 order to exercise powers of the trustee;

16 (7) The trust's taxpayer identification number; and

17 (8) The manner of taking title to trust property.

18 (b) A certification of trust may be signed or otherwise
19 authenticated by any trustee.

20 (c) A certification of trust must state that the trust has not
21 been revoked, modified or amended in any manner that
22 would cause the representations contained in the certification
23 of trust to be incorrect.

24 (d) A certification of trust need not contain the
25 dispositive terms of a trust.

26 (e) A recipient of a certification of trust may require the
27 trustee to furnish copies of those excerpts from the original
28 trust instrument and later amendments which designate the
29 trustee and confer upon the trustee the power to act in the
30 pending transaction.

31 (f) A person who acts in reliance upon a certification of
32 trust without knowledge that the representations contained in
33 the certification are incorrect is not liable to any person for so
34 acting and may assume without inquiry the existence of the
35 facts contained in the certification. Knowledge of the terms
36 of the trust instrument may not be inferred solely from the
37 fact that a copy of all or part of the trust instrument is held by
38 the person relying upon the certification.

39 (g) A person who in good faith enters into a transaction
40 in reliance upon a certification of trust may enforce the
41 transaction against the trust property as if the representations
42 contained in the certification were correct.

43 (h) A person making a demand for the trust instrument in
44 addition to a certification of trust or excerpts is liable for
45 damages if the court having jurisdiction over the trust
46 determines that the person did not act in good faith in
47 demanding the trust instrument.

48 (i) This section does not limit the right of a person to
49 obtain a copy of the trust instrument in a judicial proceeding
50 concerning the trust.

51 (j) Nothing in this section expands, limits or otherwise
52 affects the provisions contained in section four-a, article one,
53 chapter thirty-six of this code pertaining to memoranda of
54 trust.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

§44D-11-1101. Uniformity of application and construction.

1 In applying and construing this chapter, consideration
2 shall be given to the need to promote uniformity of the law
3 with respect to its subject matter among states that enact it.

§44D-11-1102. Electronic records and signatures.

1 The provisions of this chapter governing the legal effect,
2 validity or enforceability of electronic records or electronic
3 signatures, and of contracts formed or performed with the use
4 of the records or signatures, conform to the requirements of
5 Section 102 of the Electronic Signatures in Global and
6 National Commerce Act (15 U.S.C. § 7002) and supersede,
7 modify, and limit the requirements of the Electronic
8 Signatures in Global and National Commerce Act.

§44D-11-1103. Severability clause.

1 If any provision of this chapter or its application to any
2 person or circumstances is held invalid, the invalidity does
3 not affect other provisions or applications of this chapter
4 which can be given effect without the invalid provision or
5 application, and to this end the provisions of this chapter are
6 severable.

§44D-11-1104. Effective date.

1 This chapter takes effect on July 1, 2011.

§44D-11-1105. Application to existing relationships.

1 (a) Except as otherwise provided in this chapter:

2 (1) This chapter applies to all trusts created before, on, or
3 after July 1, 2011;

4 (2) This chapter applies to all judicial proceedings
5 concerning trusts commenced on or after July 1, 2011;

6 (3) This chapter applies to judicial proceedings
7 concerning trusts commenced before July 1, 2011, unless the
8 court finds that application of a particular provision of this
9 chapter would substantially interfere with the effective
10 conduct of the judicial proceedings or prejudice the rights of
11 the parties, in which case the particular provision of this
12 chapter does not apply and the superseded law applies;

13 (4) Any rule of construction or presumption provided in
14 this chapter applies to trust instruments executed before July
15 1, 2011, unless there is a clear indication of a contrary intent
16 in the terms of the trust instrument; and

17 (5) An act done before July 1, 2011 is not affected by this
18 chapter.

19 (b) If a right is acquired or vested before July 1, 2011, or
20 if a right is extinguished or barred upon the expiration of a
21 prescribed period that has commenced to run under any other
22 statute before July 1, 2011, that right or statute continues to
23 apply even if the statute has been repealed or superseded.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor