

ENROLLED

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

1 code by adding thereto a new chapter, designated §44D-1-101,
2 §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106,
3 §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111,
4 §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204,
5 §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305,
6 §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405,
7 §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410,
8 §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415,
9 §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503,
10 §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601,
11 §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702,
12 §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707,
13 §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803,
14 §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808,
15 §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813,
16 §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901,
17 §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004,
18 §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008,
19 §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012,
20 §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103,
21 §44D-11-1104 and §44D-11-1105, all relating generally to
22 estates and trusts and their administration; providing that
23 certain provisions of current law to have no effect after
24 specified date; providing certain provisions of current law

1 are not to apply to trusts and trustees after specified date;
2 changing names of certain articles of existing code; providing
3 for the creation, administration, revision and termination of
4 trusts; providing for trustees, powers and duties of trustees
5 and substitution of trustees; providing for distribution of
6 trust assets; specifying powers and certain restrictions on
7 powers of fiduciaries; amending the Uniform Prudent Investor
8 Act; modernizing language of certain existing sections of code
9 and deleting obsolete language; adopting West Virginia Uniform
10 Trust Code; providing general provisions and definitions;
11 providing for judicial proceedings; providing for
12 representation of trusts; providing for creation, validity,
13 modification and termination of trusts; providing for
14 creditor's claims; providing for spendthrift trusts,
15 discretionary trusts and revocable trusts; providing for the
16 office of trustee; providing duties and powers of trustees;
17 providing for liability of trustees and rights of persons
18 dealing with trustee; providing various miscellaneous
19 provisions for trusts and trustees; specifying delayed
20 effective date for West Virginia Uniform Trust Code; and
21 providing rules for application of that date.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of
24 West Virginia, 1931, as amended, be repealed; that §44-5-12,

1 §44-5-13, §44-5-14 and §44-5-15 be repealed; that §44-6-2a be
2 repealed; that §44-14-1, §44-14-2, §44-14-3, §44-14-4 and §44-14-5
3 be repealed; that §38-1-13 of said code be amended and reenacted;
4 that said code be amended by adding thereto a new section,
5 designated §44-4-22; that §44-5-1, §44-5-7, §44-5-11 of said code
6 be amended and reenacted; that §44-5A-2, §44-5A-3 and §44-5A-4 of
7 said code be amended and reenacted; that said code be amended by
8 adding thereto three new sections, designated §44-5A-5, §44-5A-6
9 and §44-5A-7; that §44-6-1 and §44-6-2 of said code be amended and
10 reenacted; that said code be amended by adding thereto a new
11 section, designated §44-6-11; that §44-6C-1, §44-6C-2, and §44-6C-9
12 of said code be amended and reenacted; that §44-7-1 of said code be
13 amended and reenacted; that said code be amended by adding thereto
14 a new section, designated §44-7-4; and that said code be amended by
15 adding thereto a new chapter, designated §44D-1-101, §44D-1-102,
16 §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107,
17 §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112,
18 §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301,
19 §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401,
20 §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405, §44D-4-406,
21 §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411,
22 §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415, §44D-4-416,
23 §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504,
24 §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601, §44D-6-602,

1 §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703,
2 §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708,
3 §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804,
4 §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809,
5 §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814,
6 §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901, §44D-10-1001,
7 §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005,
8 §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009,
9 §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013,
10 §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104 and
11 §44D-11-1105, all to read as follows:

12 **CHAPTER 38. LIENS.**

13 **ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

14 **§38-1-13. Substitution of trustees under a trust deed securing a**
15 **debt.**

16 (a) When a trust deed to secure a debt or obligation does not
17 by its terms prescribe a method for substitution, the party secured
18 by the trust deed, or any surety indemnified by the deed, or the
19 assignee or personal representative of any secured party or surety
20 may, if there is a death, removal, declination, resignation,
21 refusal or inability of the original trustee or trustees named in
22 the instrument, substitute a trustee or trustees in his or her, or
23 its place by a writing duly signed and acknowledged and recorded in
24 the office of the clerk of the county commission where the real

1 estate covered by the trust deed is situate.

2 (b) When a substitution is made under this section of a
3 trustee or trustees of a trust deed securing a debt or obligation,
4 the substitution is effected when the party secured, or a surety
5 indemnified by the deed, or the assignee or personal representative
6 of any such secured party or surety has deposited true copies of
7 the notice of the substitution in the United States mail, first
8 class postage prepaid, addressed to the last known addresses of the
9 grantor or grantors or any other person owing the debt or
10 obligation, and has presented the original of the notice to the
11 clerk of the county commission in whose office the trust deed is
12 recorded, causing the notice to be recorded and indexed in a
13 general lien book or other appropriate book in which trust deeds or
14 assignments of trust deeds are recorded. There shall be appended
15 to the notice presented for recording a certificate by the party
16 making the substitution, certifying that copies of the notice were
17 mailed as required by this subsection, and showing the date of the
18 mailing.

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

23 **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

24 **ARTICLE 4. ACCOUNTING BY PERSONAL REPRESENTATIVES.**

1 **§44-4-22. Application only to personal representatives, guardians,**
2 **curators or committees.**

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

8 **ARTICLE 5. GENERAL PROVISIONS AS TO PERSONAL REPRESENTATIVES.**

9 **§44-5-1. List of fiduciaries.**

10 (a) The clerk of the county commission of each county shall
11 keep a record, to be known as the "Record of Fiduciaries," in which
12 he or she shall enter, in separate columns, first, the name of
13 every fiduciary authorized to act as such by the county commission
14 or clerk of the county commission; secondly, the name of the
15 decedent for whose estate he or she is personal representative or
16 curator; thirdly, the names of the distributees of the estate,
17 showing their relation to the decedent; fourthly, the name of the
18 living person or persons for whom he or she is minor guardian,
19 curator, committee or trustee; fifthly, the penalty of his or her
20 bond; sixthly, the names of his or her sureties; seventhly, the
21 date of the order conferring his or her authority, and a reference
22 to the book and page where entered; eighthly, the date of any order
23 revoking his or her authority, and a reference to the book and page
24 where entered; ninthly, the date of the return of every inventory

1 and appraisement of the estate; tenthly, the date of the
2 confirmation of each report of settlement of the accounts of the
3 fiduciary; and the clerk shall index the record in the name of the
4 decedent, estate, ward or person represented by the fiduciary. Any
5 clerk failing to make entry, as to any fiduciary, within ten days
6 after the order conferring or revoking the authority, or the date
7 of the return of the inventory and/or appraisement, or the date of
8 the confirmation of any report of settlement, shall, for every
9 failure, forfeit \$20.

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

11 **§44-5-7. Authority of personal representatives to compound and**
12 **compromise liabilities due to or from them.**

13 It is lawful for any guardian, committee or trustee, to
14 compound and compromise any liability due to or from him or her,
15 unless the compounding and compromise is ratified and approved by
16 a court of competent jurisdiction, all parties in interest being
17 before the court by proper process. When the compounding and
18 compromise has been ratified and approved, it is binding on all
19 parties in interest before the court. It is lawful for any
20 personal representative to compound and compromise any liability
21 due to or from him or her, as long as the compounding and
22 compromise is ratified and approved by the fiduciary commissioner
23 to whom the estate or trust has been referred, or by a commissioner
24 appointed by the circuit court when the estate of the decedent is

1 being settled in a chancery suit, and is reported by the fiduciary
2 commissioner to his or her court. When the report is confirmed,
3 the compounding and compromise shall be binding on all parties to
4 the proceedings.

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

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

14 **ARTICLE 5A. POWERS OF FIDUCIARIES.**

15 **§44-5A-2. Incorporation by reference of enumerated powers by**
16 **testator; restriction on exercise of powers.**

17 (a) After June 30, 2011, by an intention of the testator
18 expressed in a will, any or all of the powers or any portion of the
19 powers enumerated in section three of this article, as they exist
20 at the time of the signing of the will by the testator may be, by
21 appropriate reference made thereto, incorporated in the will, with
22 the same effect as though the language were set forth verbatim in
23 the instrument. Incorporation of one or more of the powers
24 contained in section three of this article by reference to that

1 section is in addition to and not in limitation of the common law
2 or statutory powers of the fiduciary.

3 (b) No power of authority conferred upon a fiduciary as
4 provided in this article may be exercised by the fiduciary in a
5 manner as, in the aggregate, to deprive the trust or the estate
6 involved of an otherwise available tax exemption, deduction or
7 credit, expressly including the marital deduction, or operate to
8 impose a tax upon a donor or testator or other person as owner of
9 any portion of the trust or estate involved. "Tax" includes, but
10 is not limited to, any federal, state, or local income, gift,
11 estate or inheritance tax.

12 (c) Nothing in this section prevents the incorporation of the
13 powers enumerated in section three of this article in any other
14 kind of instrument or agreement.

15 **§44-5A-3. Powers which may be incorporated by reference in trust**
16 **instrument.**

17 The following powers may be incorporated by reference by a
18 testator in the will as provided in section two of this article
19 and the following powers apply without the need for incorporation
20 by reference to trustees who are governed by the provisions of the
21 West Virginia Uniform Trust Code in chapter forty-four-d of this
22 code:

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

1 the fiduciary may receive, even though the retention of the
2 property by reason of its character, amount, proportion to the
3 total estate or otherwise would not be appropriate for the
4 fiduciary apart from this provision.

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

16 (c) *Invest and reinvest.* -- To invest and reinvest, as the
17 fiduciary considers advisable, in stocks (common or preferred),
18 bonds, debentures, notes, mortgages or other securities, in or
19 outside the United States; in insurance contracts on the life of
20 any beneficiary or of any person in whom a beneficiary has an
21 insurable interest, or in annuity contracts for any beneficiary, in
22 any real or personal property, in investment trusts; in
23 participations in common trust funds, and generally in property the
24 fiduciary considers advisable, even though the investment is not of

1 the character approved by applicable law but for this provision.

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

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

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

14 (2) To dispose of any interest therein or acquire the interest
15 of others therein;

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

19 (4) To determine whether the liabilities incurred in the
20 conduct of the business are to be chargeable solely to the part of
21 the estate or trust set aside for use in the business or to the
22 estate or trust as a whole; and

23 (5) In all cases in which the fiduciary is required to file
24 accounts in any court or in any other public office, it is not

1 necessary to itemize receipts and disbursements and distributions
2 of property but it is sufficient for the fiduciary to show in the
3 account a single figure or consolidation of figures, and the
4 fiduciary is permitted to account for money and property received
5 from the business and any payments made to the business in lump sum
6 without itemization.

7 (f) *Form corporation or other entity.* -- To form a corporation
8 or other entity and to transfer, assign, and convey to the
9 corporation or entity all or any part of the estate or of any trust
10 property in exchange for the stock, securities or obligations of
11 the corporation or entity, and to continue to hold the stock and
12 securities and obligations.

13 (g) *Operate farm.* -- To continue any farming operation
14 received by the fiduciary pursuant to the will or other instrument
15 and to do any and all things considered advisable by the fiduciary
16 in the management and maintenance of the farm and the production
17 and marketing of crops and dairy, poultry, livestock, orchard and
18 forest products including, but not limited to, the following
19 powers:

20 (1) To operate the farm with hired labor, tenants or
21 sharecroppers;

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

24 (3) To purchase or otherwise acquire farm machinery and

1 equipment and livestock;

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

5 (5) To make or obtain loans or advances at the prevailing rate
6 or rates of interest for farm purposes such as for production,
7 harvesting or marketing, or for the construction, repair or
8 improvement of farm buildings or for the purchase of farm machinery
9 or equipment or livestock;

10 (6) To employ approved soil conservation practices in order to
11 conserve, improve and maintain the fertility and productivity of
12 the soil;

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

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

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

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

22 (11) In general, to employ good husbandry in the farming
23 operation.

24 (h) *Manage real property.* -- (1) To improve, manage, protect

1 and subdivide any real property;

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

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

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

10 (5) To lease any property or part thereof to commence at the
11 present or in the future, upon terms and conditions, including
12 options to renew or purchase, and for such period or periods the
13 fiduciary considers advisable although the period or periods may
14 extend beyond the duration of the trust or the administration of
15 the estate involved;

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

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

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

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

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

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

7 (12) To deal with the property and every part of the property
8 in all other ways and for other purposes or considerations as it
9 would be lawful for any person owning the same to deal with the
10 property either in the same or in different ways from those
11 specified elsewhere in this subdivision.

12 (i) *Pay taxes and expenses.* -- To pay taxes, assessments,
13 compensation of the fiduciary, and other expenses incurred in the
14 collection, care, administration, and protection of the trust or
15 estate.

16 (j) *Receive additional property.* -- To receive additional
17 property from any source and administer the additional property as
18 a portion of the appropriate trust or estate under the management
19 of the fiduciary but the fiduciary is not required to receive the
20 property without his or her consent.

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

23 (1) To sell property, real or personal, to, or to exchange
24 property with, the trustee of any trust which the decedent or the

1 settlor or his or her spouse or any child of his or her has
2 created, for estates and upon terms and conditions as to sale
3 price, terms of payment, and security as the fiduciary considers
4 advisable; and the fiduciary is under no duty to follow the
5 proceeds of any such sale; and

6 (2) To borrow money for periods and upon terms and conditions
7 as to rates, maturities, renewals and securities the fiduciary
8 considers advisable from any trust created by the decedent, his or
9 her spouse, or any child of his or her, for the purpose of paying
10 debts of the decedent, taxes, the costs of the administration of
11 the estate, and like charges against the estate, or any part
12 thereof, or discharging the liability of any fiduciary thereof and
13 to mortgage, pledge or otherwise encumber a portion of the estate
14 or any trust as may be required to secure the loan or loans and to
15 renew the loans.

16 (1) *Borrow money.* -- To borrow money for periods and upon
17 terms and conditions as to rates, maturities, renewals, and
18 security the fiduciary considers advisable, including the power of
19 a corporate fiduciary to borrow from its own banking department,
20 for the purpose of paying debts, taxes or other charges against the
21 estate or any trust, or any part thereof, and to mortgage, pledge
22 or otherwise encumber a portion of the estate or any trust as may
23 be required to secure the loan or loans; and to renew existing
24 loans either as maker or endorser.

1 (m) *Make advances.* -- To advance money for the protection of
2 the trust or estate, and for all expenses, losses and liabilities
3 sustained in the administration of the trust or estate or because
4 of the holding or ownership of any trust or estate assets, for
5 which advances with any interest the fiduciary has a lien on the
6 assets of the trust or estate as against a beneficiary.

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

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

16 (p) *Exercise options, rights and privileges.* -- To exercise
17 all options, rights, and privileges to convert stocks, bonds,
18 debentures, notes, mortgages or other property into other stocks,
19 bonds, debentures, notes, mortgages or other property; to subscribe
20 for other or additional stocks, bonds, debentures, notes, mortgages
21 or other property; and to hold the stocks, bonds, debentures,
22 notes, mortgages or other property so acquired as investments of
23 the estate or trust so long as the fiduciary considers advisable.

24 (q) *Participate in reorganizations.* -- To unite with other

1 owners of property similar to any which may be held at any time in
2 the decedent's estate or in any trusts in carrying out any plan for
3 the consolidation or merger, dissolution or liquidation,
4 foreclosure, lease or sale of the property, incorporation or
5 reincorporation, reorganization or readjustment of the capital or
6 financial structure of any corporation, company or association the
7 securities of which may form any portion of an estate or trust; to
8 become and serve as a member of a stockholders or bondholders
9 protective committee; to deposit securities in accordance with any
10 plan agreed upon; to pay any assessments, expenses or sums of money
11 that may be required for the protection or furtherance of the
12 interest of the distributees of an estate or beneficiaries of any
13 trust with reference to the plan; and to receive as investments of
14 an estate or any trust any securities issued as a result of the
15 execution of the plan.

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

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

24 (t) *Foreclose and bid in.* -- To foreclose, as an incident to

1 the collection of any bond, note or other obligation, any mortgage,
2 deed of trust or other lien securing the bond, note or other
3 obligation, and to bid in the property at the foreclosure sale, or
4 to acquire the property by deed from the mortgagor or obligor
5 without foreclosure; and to retain the property so bid in or taken
6 over without foreclosure.

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

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

12 (w) *Litigate, compromise or abandon*. -- To compromise, adjust,
13 arbitrate, sue on or defend, abandon or otherwise deal with and
14 settle claims in favor of or against the estate or trust as the
15 fiduciary considers advisable, and the fiduciary's decision is
16 conclusive between the fiduciary and the beneficiaries of the
17 estate or trust and the person against or for whom the claim is
18 asserted, in the absence of fraud by those persons; and in the
19 absence of fraud, bad faith or gross negligence of the fiduciary,
20 is conclusive between the fiduciary and the beneficiaries of the
21 estate or trust.

22 (x) *Employ and compensate agents, etc.* -- To employ and
23 compensate, out of income or principal or both and in proportion as
24 the fiduciary considers advisable, persons considered by the

1 fiduciary needful to advise or assist in the proper settlement of
2 the estate or administration of any trust, including, but not
3 limited to, agents, accountants, brokers, attorneys-at-law,
4 attorneys-in-fact, investment brokers, rental agents, realtors,
5 appraisers, and tax specialists; and to do so without liability for
6 any neglect, omission, misconduct or default of the agent or
7 representative as long as he or she was selected and retained with
8 due care on the part of the fiduciary.

9 (y) *Acquire and hold property of two or more trusts undivided.*

10 -- To acquire, receive, hold and retain the principal of several
11 trusts created by a single instrument undivided until division
12 becomes necessary in order to make distributions; to hold, manage,
13 invest, reinvest, and account for the several shares or parts of
14 shares by appropriate entries in the fiduciary's books of account,
15 and to allocate to each share or part of share its proportionate
16 part of all receipts and expenses: *Provided*, That the provisions
17 of this subdivision do not defer the vesting in possession of any
18 share or part of share of the estate or trust.

19 (z) *Establish and maintain reserves.* -- To set up proper and
20 reasonable reserves for taxes, assessments, insurance premiums,
21 depreciation, obsolescence, amortization, depletion of mineral or
22 timber properties, repairs, improvements and general maintenance of
23 buildings or other property out of rents, profits or other income
24 received; and to set up reserves also for the equalization of

1 payments to or for beneficiaries: *Provided*, That the provisions of
2 this subdivision do not affect the ultimate interests of
3 beneficiaries in the reserves.

4 (aa) *Distribute in cash or kind.* -- To make distribution of
5 capital assets of the estate or trust in kind or in cash, or
6 partially in kind and partially in cash, in divided or undivided
7 interests, as the fiduciary finds to be most practicable and for
8 the best interests of the distributees; and to determine the value
9 of capital assets for the purpose of making distribution thereof if
10 and when there is more than one distributee thereof, which
11 determination is binding upon the distributees unless clearly
12 capricious, erroneous and inequitable: *Provided*, That the
13 fiduciary may not exercise any power under this subdivision unless
14 the fiduciary holds title to or an interest in the property to be
15 distributed and is required or authorized to make distribution
16 thereof.

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

20 (1) Directly to the minor or incompetent;

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

24 (3) To the legal or natural guardian of the minor or

1 incompetent;

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

5 The fiduciary is not under any duty to see to the application
6 of the payments so made, if the fiduciary exercised due care in the
7 selection of the person, including the minor or incompetent, to
8 whom the payments were made; and the receipt of the person is full
9 acquittance to the fiduciary.

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

12 (1) What is principal and what is income of any estate or
13 trust and to allocate or apportion receipts and expenses as between
14 principal and income in the exercise of the fiduciary's discretion,
15 and, by way of illustration and not limitation of the fiduciary's
16 discretion, to charge premiums on securities purchased at a premium
17 against principal or income or partly against each;

18 (2) Whether to apply stock dividends and other noncash
19 dividends to income or principal or apportion them as the fiduciary
20 considers advisable; and

21 (3) What expenses, costs, taxes (other than estate,
22 inheritance, and succession taxes and other governmental charges)
23 shall be charged against principal or income or apportioned between
24 principal and income and in what proportions.

1 (dd) *Make contracts and execute instruments.* -- To make
2 contracts and to execute instruments, under seal or otherwise, as
3 may be necessary in the exercise of the powers granted in this
4 section.

5 (ee) The foregoing powers are limited as follows for any trust
6 which is classified as a "private foundation" as that term is
7 defined by section 509 of the Internal Revenue Code of 1954 or
8 corresponding provisions of any subsequent federal tax laws
9 (including each nonexempt charitable trust described in section
10 4947(a)(1) of the code which is treated as a private foundation) or
11 nonexempt split-interest trust described in section 4947(a)(2) of
12 the Internal Revenue Code of 1954 or corresponding provisions of
13 any subsequent federal tax laws (but only to the extent that
14 section 508(e) of the code is applicable to the nonexempt
15 split-interest trust under section 4947(a)(2)):

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

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

24 (3) No fiduciary may retain any excess business holdings as

1 defined in section 4943(c) of the Internal Revenue Code of 1954, or
2 corresponding provisions of any subsequent federal tax laws;

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

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

10 **§44-5A-4. Designation of testamentary trustee as beneficiary of**
11 **insurance.**

12 A policy of life insurance may contain a designation of a
13 beneficiary, a trustee or trustees named or to be named by will, if
14 the designation is made in accordance with the provisions of the
15 policy and the requirements of the insurer. The proceeds of the
16 insurance shall be paid to the trustee or trustees to be held and
17 disposed of under the terms of the will as they exist at the death
18 of the testator; but if no trustee or trustees makes claim to the
19 proceeds from the insurance company within one year after the death
20 of the insured, or if satisfactory evidence is furnished the
21 insurance company within the one-year period showing that no
22 trustee can qualify to receive the proceeds, payment shall be made
23 by the insurance company to the executors, administrators or
24 assigns of the insured, unless otherwise provided by agreement with

1 the insurance company during the lifetime of the insured. The
2 proceeds of the insurance as collected by the trustee or trustees
3 are not subject to debts of the insured or to inheritance tax to
4 any greater extent than if the proceeds were payable to any other
5 named beneficiary other than the estate of the insured, and are not
6 considered as payable to the estate of the insured for any purpose.
7 The insurance proceeds so held in trust may be commingled with any
8 other assets which may properly come into the trust as provided in
9 the will. Enactment of this section does not invalidate previous
10 life insurance policy designations naming trustees of trusts
11 established by will.

12 **§44-5A-5. Distribution of assets in satisfaction of pecuniary**
13 **bequests; authority of fiduciaries to enter into**
14 **certain agreements; validating certain agreements;**
15 **providing for discretionary division of trusts for**
16 **tax, administrative or other purposes.**

17 (a) Where a will, trust or other governing instrument
18 authorizes or directs the fiduciary to satisfy wholly or partly in
19 kind a pecuniary bequest or a separate trust to be funded by a
20 pecuniary amount or formula unless the will, trust or other
21 governing instrument expressly provides otherwise, the assets
22 selected by the fiduciary for that purpose shall be valued at their
23 respective values on the date or dates of their distribution, and
24 if any pecuniary bequests or separate trusts established under the

1 will or trust by a pecuniary amount or formula is not entirely
2 funded or an amount necessary to fund the bequest or trust
3 completely is not irrevocably set aside within fifteen months after
4 the date of the testator's or grantor's death, the fiduciary shall
5 allocate to the bequest or trust a prorata share of the income
6 earned by the estate of the testator or grantor or other fund from
7 which the bequest or trust is to be funded between the date of
8 death of the testator or grantor and the date or dates of the
9 funding.

10 (b) Whenever a fiduciary under the provisions of a will, trust
11 or other governing instrument is required to satisfy a pecuniary
12 bequest or transfer in trust and is authorized to satisfy the
13 bequest or transfer by selection and distribution of assets in
14 kind, and the will, trust or other governing instrument further
15 provides that the assets to be so distributed shall or may be
16 valued by some standard other than their fair market value on the
17 date of distribution, the fiduciary, unless the will, trust or
18 other governing instrument otherwise specifically directs, shall
19 distribute assets, including cash, fairly representative of
20 appreciation or depreciation in the value of all property available
21 for distribution in satisfaction of the pecuniary bequest or
22 transfer. This section does not apply to prevent a fiduciary from
23 carrying into effect the provisions of the will, trust or other
24 governing instrument that the fiduciary, in order to implement the

1 bequest or transfer, must distribute assets, including cash, having
2 an aggregate fair market value at the date or dates of distribution
3 amounting to no less than the amount of the pecuniary bequest or
4 transfer as finally determined for federal estate tax purposes.

5 (c) (1) Any fiduciary having discretionary powers under a will
6 or other governing instrument with respect to the selection of
7 assets to be distributed in satisfaction of a pecuniary bequest or
8 transfer in trust is authorized to enter into agreements with the
9 Commissioner of Internal Revenue of the United States of America
10 and other taxing authorities requiring the fiduciary to exercise
11 the fiduciary's discretion so that cash and other properties
12 distributed in satisfaction of the bequest or transfer in trust
13 will be fairly representative of the appreciation or depreciation
14 in value of all property then available for distribution in
15 satisfaction of the bequest or transfer in trust and any such
16 agreement heretofore entered into after April 1, 1964, is hereby
17 validated. The fiduciary is authorized to enter into any other
18 agreement not in conflict with the express terms of the will, trust
19 or other governing instrument that may be necessary or advisable in
20 order to secure for federal estate tax purposes the appropriate
21 marital deduction or other deduction or exemption available under
22 the Internal Revenue laws of the United States of America, and to
23 do and perform all acts incident to that purpose.

1 (2) Unless ordered by a court of competent jurisdiction, the
2 bank or trust company operating a common trust fund, as provided in
3 section six of this article, is not required to render an
4 accounting with regard to the fund, before any fiduciary
5 commissioner but it may, by application to the circuit court of the
6 county in which is located the principal place of business of the
7 bank or trust company, secure the approval of an accounting in the
8 condition the court may fix: *Provided*, That nothing in this
9 section relieves a fiduciary acquiring, holding or disposing of an
10 interest in any common trust fund from making an accounting as
11 required by law with respect of the interest.

12 (d) The fiduciary of any trust created by will, trust or other
13 governing instrument may from time to time without need of court
14 approval to divide the trust or trusts for purposes of the
15 generation skipping transfer tax ("GST") of section 2601 of the
16 Internal Revenue Code of 1986, as in effect on January 1, 2010, or
17 any similar or successor law of like import, or for any other tax,
18 administrative or other purposes. In exercising this authority for
19 inclusion ratio, marital deduction election, reverse qualified
20 terminal interest property election or other GST or other tax
21 purposes, the power shall be exercised in a manner that complies
22 with applicable Internal Revenue Code Treasury Regulations or other
23 requirements for accomplishing the intended purposes. If that
24 division is made for purposes of separating assets with respect to

1 which the federal estate tax marital deduction election is to be
2 made from those as to which the election is not to be made, the
3 division shall be done on a fractional or percentage basis and the
4 assets of the trust or other fund to be divided shall be valued for
5 purposes of the division on the date or dates of division.

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

8 (a) A power conferred upon a person in his or her capacity as
9 fiduciary to make discretionary distributions of principal or
10 income to himself or herself or to make discretionary allocations
11 in his or her favor of receipts or expenses between income and
12 principal cannot be exercised by him or her. If the power is
13 conferred on two or more fiduciaries, it may be exercised by the
14 fiduciaries who are not so disqualified. If there is no fiduciary
15 qualified to exercise the power, it may be exercised by a special
16 fiduciary appointed by the court authorized under article fourteen
17 of this chapter, and in accordance with the procedure described
18 therein, to appoint a successor or substitute trustee. Except as
19 provided in subsection (c) of this section this section applies to
20 all trusts now in existence and to all trusts which are created
21 later.

22 (b) Unless either: (1) Mandatory; (2) limited by an
23 ascertainable standard relating to the health, education, support
24 or maintenance of the fiduciary; or (3) exercisable by the

1 fiduciary only in conjunction with another person having a
2 substantial interest in the trust which is adverse to the interest
3 of the fiduciary, a power to make distributions of principal or
4 income is a discretionary power for purposes of this section.

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

8 **§44-5A-7. Powers of fiduciaries regarding environmental laws.**

9 (a) For purposes of this section:

10 (1) "Environmental law" means any federal, state or local law,
11 rule, regulation or ordinance relating to the regulation of
12 hazardous substances or hazardous wastes, air pollution, water
13 pollution and underground storage tanks;

14 (2) "Hazardous substance" means any substance defined as
15 hazardous in the Comprehensive Environmental Response, Compensation
16 and Liability Act ("CERCLA") [42 U.S.C. 9601, et seq. (1980)] as
17 amended and in effect on January 1, 2010, and regulations
18 promulgated thereunder;

19 (3) "Hazardous waste" means a waste characterized or listed as
20 hazardous in the Resource, Conservation and Recovery Act ("RCRA")
21 [42 U.S.C. 6901, et seq. as amended] as in effect on January 1,
22 2010, and regulations promulgated thereunder;

23 (4) "Fiduciary" means a fiduciary as defined by section one-d,
24 article four-d, chapter thirty-one of this code.

1 (b) In addition to powers, remedies and rights which may be
2 set forth in any will, trust agreement or other document which is
3 the source of authority, a trustee, executor, administrator,
4 guardian or one acting in any other fiduciary capacity, whether an
5 individual, corporation or other entity ("fiduciary") has the
6 following powers, rights and remedies whether or not set forth in
7 the will, trust agreement or other document which is the source of
8 authority:

9 (1) To inspect property held by the fiduciary including
10 interests in sole proprietorships, partnerships or corporations and
11 any assets owned by any such business enterprise, for the purpose
12 of determining compliance with any environmental law affecting the
13 property and to take necessary or reasonable action, including
14 reporting to the appropriate regulatory authority as may be
15 otherwise required by law, with respect to any actual or potential
16 violation of any environmental law affecting property held by the
17 fiduciary;

18 (2) To take, on behalf of the estate or trust, any action
19 necessary to prevent, abate or otherwise remedy any actual or
20 threatened violation of any environmental law affecting property
21 held by the fiduciary, either before or after the initiation of an
22 enforcement action by any governmental body;

23 (3) To refuse to accept property in trust or estate if the
24 fiduciary determines any property to be donated or conveyed to the

1 trust or estate is contaminated by any hazardous substance or
2 hazardous waste or is being used or has been used for any activity
3 directly or indirectly involving any violation of an environmental
4 law which is reasonably likely to result in liability to the
5 fiduciary: *Provided*, That the refusal does not limit the liability
6 of the trust or estate or its income or principal, for any
7 liability the trust or estate may otherwise have in connection with
8 any environmental law, but only to limit the liability of the
9 fiduciary. Property not accepted into a trust or estate by the
10 fiduciary may revert to the grantor or its successors or pass by
11 the laws of descent and distribution, as may otherwise be provided
12 by law;

13 (4) To settle or compromise at any time any and all claims
14 against the trust or estate which may be asserted by any
15 governmental body or private party involving the alleged violation
16 of any environmental law affecting property held in trust or in an
17 estate;

18 (5) To decline to serve as a fiduciary if the fiduciary
19 reasonably believes that there is or may be a conflict of interest
20 between it and its fiduciary capacity and in its individual
21 capacity because of potential claims or liabilities which may be
22 asserted against it on behalf of the trust or estate because of the
23 type or condition of assets held therein.

1 (c) The fiduciary is entitled to charge the cost of any
2 inspection, review, abatement, response, cleanup or remedial action
3 authorized herein against the income or principal of the trust or
4 estate.

5 (d) A fiduciary is not personally liable to any beneficiary or
6 other party for any decrease in value of assets in trust or in an
7 estate by reason of the fiduciary's compliance with any
8 environmental law, specifically including any reporting requirement
9 under the law.

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

14 **ARTICLE 6. INVESTMENTS BY FIDUCIARIES.**

15 **§44-6-1. Fiduciaries to put money out at interest.**

16 (a) Executors, administrators, guardians, curators, committees
17 or trustees may, by direction of the circuit court of the county,
18 where they were appointed or qualified, put out at interest all
19 moneys in their hands which they are or may be lawfully required to
20 retain, whether it belongs to minors, legatees or other person or
21 persons, upon security, and for the length of time, as the court
22 will allow, and if the security so taken, bona fide and without
23 fraud, proves insufficient, it is the loss of the beneficiaries
24 entitled thereto; and it is the duty of the executors,

1 administrators, guardians, curators, committees or trustees, in
2 cases where the estates in their hands may be materially benefited
3 thereby, to make application to the circuit court for direction,
4 and in case they neglect so to do they are accountable for the
5 interest that might have been made thereby; but if no person who
6 may be willing to take the money at interest, giving the security,
7 can be found by the executors, administrators, guardians, curators,
8 committees or trustees, then the executors, administrators,
9 guardians, curators, committees or trustees, in those cases, are
10 accountable for the principal money only, until it can be put out
11 at interest as aforesaid; but in any case where executors,
12 administrators, guardians, curators, committees or trustees use the
13 money of the estates which come to their hands, they are
14 accountable not only for the principal, but also for the interest
15 thereon.

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

17 **§44-6-2. In what securities fiduciaries may invest trust funds.**

18 Any executor, administrator, guardian, curator, committee,
19 trustee or other fiduciary whose duty it may be to loan or invest
20 money entrusted to him or her as such, may, without any order of
21 any court, invest the same or any part thereof in any of the
22 following securities, and without liability for any loss resulting
23 from investments therein: *Provided*, That except as otherwise
24 provided in article six-c of this chapter, the fiduciary shall

1 exercise the judgment and care under the circumstances then
2 prevailing which persons of prudence, discretion and intelligence
3 exercise in the management of their own affairs, not in regard to
4 speculation, but in regard to the permanent disposition of their
5 funds, considering the probable income as well as the probable
6 safety of their capital:

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

19 (b) In bonds or interest-bearing notes or obligations of this
20 state;

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

1 (d) In the bonds or interest-bearing notes or obligations of
2 any county, district, school district or independent school
3 district, municipality or any other political division of this
4 state that have been issued pursuant to the authority of any law of
5 this state, since May 9, 1917;

6 (e) In bonds and negotiable notes secured by first mortgage or
7 first trust deed upon improved real estate where the amount secured
8 by the mortgage or trust deed does not at the time of making the
9 same exceed eighty percent of the assessed value, or sixty-six and
10 two-thirds percent of the appraised value as determined by wholly
11 disinterested and independent appraisers, whichever value is the
12 higher, of the real estate covered by the mortgage or trust deed,
13 and when the mortgage or trust deed is accompanied by a
14 satisfactory abstract of title, certificate of title or title
15 insurance policy, showing good title in the mortgagor when making
16 the mortgage or trust deed, and by a fire insurance policy in an
17 old line company with loss, if any, payable to the mortgagee or
18 trustee as his or her interest may appear: *Provided*, That the rate
19 of interest upon the above enumerated securities in this
20 subdivision, in which the investments may be made, may not be less
21 than three and one-half percent per annum nor greater than the
22 maximum rate of interest which the bonds or negotiable notes may
23 bear under applicable law: *Provided, however*, That the provisions

1 herein establishing a minimum rate of interest do not apply to
2 investments in force as of the effective date of this section;

3 (f) In savings accounts and time deposits of bank or trust
4 companies to the extent that the deposits are insured by the
5 Federal Deposit Insurance Corporation, or by any other similar
6 federal instrumentality that may be hereafter created, if there is
7 an instrumentality in existence and available for the purpose, or
8 by bonds of solvent surety companies: *Provided*, That the rate of
9 interest upon the savings accounts or time deposits may not be less
10 than the rate paid other depositors in the bank or trust company;

11 (g) In shares of state building and loan associations, or
12 federal savings and loan associations, to the extent that the
13 shares are insured by the Federal Savings and Loan Insurance
14 Corporation, or by any other similar federal instrumentality that
15 may be hereafter created: *Provided*, That there is an
16 instrumentality in existence and available for the purpose, or by
17 bonds of solvent surety companies: *Provided, however*, That the
18 dividend rate upon the shares may not be less than the rate paid to
19 other shareholders in the associations; and

20 (h) In other securities of corporations organized and existing
21 under the laws of the United States, or of the District of Columbia
22 or any state of the United States, including, but not by way of
23 limitation, bonds, debentures, notes, equipment trust obligations
24 or other evidences of indebtedness and shares of common and

1 preferred stocks of the corporations and securities of any open end
2 or closed end management type investment company or investment
3 trust registered under the "Federal Investment Company Act" of
4 1940, as from time to time amended, which persons of prudence,
5 discretion and intelligence acquire or retain for their own
6 account, as long as:

7 (1) An investment may not be made pursuant to the provisions
8 of this subdivision which, at the time the investment is made, will
9 cause the aggregate market value thereof to exceed fifty percent of
10 the aggregate market value at that time of all of the property of
11 the fund held by the fiduciary. Notwithstanding the aforesaid
12 percentage limitation the cash proceeds of the sale of securities
13 received or purchased by a fiduciary and made eligible by this
14 subdivision may be reinvested in any securities of the type
15 described in this subdivision;

16 (2) Bonds, debentures, notes, equipment trust obligations or
17 other evidence of indebtedness of the corporations may not be
18 purchased under authority of this subdivision unless the
19 obligations, if other than issues of a common carrier subject to
20 the provisions of section twenty-a of the "Interstate Commerce
21 Act", as amended, are obligations issued, guaranteed or assumed by
22 corporations which have any securities currently registered with
23 the Securities and Exchange Commission; and

1 (3) Common or preferred stocks, other than bank and insurance
2 company stocks, may not be purchased under authority of this
3 subdivision unless currently fully listed and registered upon an
4 exchange registered with the Securities and Exchange Commission as
5 a national securities exchange. A sale or other liquidation of any
6 investment may not be required solely because of any change in the
7 relative market value of those investments made eligible by this
8 subdivision and those made eligible by the preceding subdivisions
9 of this section. In determining the aggregate market value of the
10 property of a fund and the percentage of a fund to be invested
11 under the provisions of this subdivision, a fiduciary may rely upon
12 published market quotations as to those investments for which the
13 quotations are available, and upon such valuations of other
14 investments as in the fiduciary's best judgment seem fair and
15 reasonable according to available information.

16 Trust funds received by executors, administrators, guardians,
17 curators, committees, trustees and other fiduciaries may be kept
18 invested in the securities originally received by them, or if the
19 trust funds originally received were stock or securities of a bank,
20 in shares of stock or other securities (and securities received as
21 distributions in respect thereof) of a holding company subject to
22 the federal Bank Holding Company Act of 1956, as amended, received
23 upon conversion of, or in exchange for, shares of stock or other
24 securities of the bank; unless otherwise ordered by a court having

1 jurisdiction of the matter, as hereinafter provided, or unless the
2 instrument under which the trust was created directs that a change
3 of investment be made, and any such fiduciary is not liable for any
4 loss that may occur by depreciation of the securities.

5 This section does not apply where the instrument creating the
6 trust, or the last will and testament of any testator or any court
7 having jurisdiction of the matter, specially directs in what
8 securities the trust funds shall be invested, and every the court
9 has power specially to direct by order or orders, from time to
10 time, additional securities in which trust funds may be invested,
11 and any investment thereof made in accordance with the special
12 direction is legal, and no executor, administrator, guardian,
13 curator, committee, trustee or other fiduciary may be held for any
14 loss resulting in any such case.

15 This section does not apply to trusts or trustees.

16 **§44-6-11. Application only to executors, administrators,**
17 **guardians, curators or committees.**

18 The provisions of this article apply only to executors,
19 administrators, guardians, curators or committees, as the case may
20 be, and do not apply to or affect trustees who are governed by the
21 provisions of the West Virginia Uniform Prudent Investor Act in
22 article six-c of this chapter and the West Virginia Uniform Trust
23 Code in chapter forty-four-d of this code.

24 **ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.**

1 **§44-6C-1. Prudent investor rule.**

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

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

11 **§44-6C-2. Standard of care; portfolio strategy; risk and return**
12 **objectives.**

13 (a) A trustee shall invest and manage trust assets as a
14 prudent investor would, by considering the purposes, terms,
15 distribution requirements and other circumstances of the trust. In
16 satisfying this standard, the trustee shall exercise reasonable
17 care, skill and caution.

18 (b) A trustee's investment and management decisions respecting
19 individual assets must be evaluated not in isolation but in the
20 context of the trust portfolio as a whole and as a part of an
21 overall investment strategy having risk and return objectives
22 reasonably suited to the trust.

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

4 (1) General economic conditions;

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

6 (3) The expected tax consequences of investment decisions or
7 strategies;

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

12 (5) The expected total return from income and the appreciation
13 of capital;

14 (6) Other resources of the beneficiaries;

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

17 (8) An asset's special relationship or special value, if any,
18 to the purposes of the trust or to one or more of the
19 beneficiaries.

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

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

24 (f) A trustee who has special skills or expertise, or is named
25 trustee in reliance upon the trustee's representation that the

1 trustee has special skills or expertise, has a duty to use those
2 special skills or expertise.

3 (g) (1) Unless otherwise directed by the terms of the trust
4 instrument, the duties of a trustee of an irrevocable life
5 insurance trust with respect to acquiring or retaining a contract
6 of insurance upon the life of the grantor, or the lives of the
7 grantor and the grantor's spouse, do not include a duty:

8 (A) To determine whether the contract is or remains a proper
9 investment;

10 (B) To exercise policy options available under the contract in
11 the event the policy lapses or is terminated due to failure to pay
12 premiums; or

13 (C) To diversify the contract.

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

17 **§44-6C-9. Delegation of investment and management functions.**

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

22 (1) Selecting an agent;

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

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

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

7 (c) A trustee who complies with the requirements of subsection
8 (a) of this section is not liable to the beneficiaries or to the
9 trust for the decisions or actions of the agent to whom the
10 function was delegated.

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

14 (e) The delegating trustee is not responsible for the
15 decisions, actions or inactions of the trustee to whom those duties
16 and powers have been delegated if the delegating trustee has
17 exercised reasonable care, skill and caution in establishing the
18 scope and specific terms of the delegation and in reviewing
19 periodically the performance of the trustee to whom the duties and
20 powers have been delegated and the trustee's compliance with the
21 scope and specific terms of the delegation.

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

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

3 A personal representative or curator desiring to resign his
4 or her trust, may file his or her petition for that purpose in the
5 county commission of the county in which he or she was appointed,
6 stating the names of all persons, so far as known by him or her,
7 interested in the estate in his or her hands or under his or her
8 control, and to which his or her duties as fiduciary relate, and if
9 any of them are under disability, or nonresidents of the state; or
10 if there are persons interested in the estate whose names are
11 unknown, all of these facts, and the names of the guardians and
12 committees of the persons under disability, if there are guardians
13 or committees, shall be stated in the petition. Upon the filing of
14 the petition the clerk of the court shall issue a summons against
15 all the persons so named and the guardians and the committees of
16 those under disability, if they have any, and against "the unknown
17 parties in interest," if any there are, mentioned in the petition,
18 to appear before the court on a day to be named in the summons,
19 which day may be not less than thirty days from the filing of the
20 petition, and answer the petition, and state to the court the
21 reasons, if any they have, why the petition should not be granted.
22 If any of the persons interested reside in another county in this
23 state, the summons as to them shall be directed and sent by mail by
24 the clerk to the sheriff of that county to be served and returned

1 by him or her; and as to the persons named in the petition who
2 reside out of this state, or who cannot by the use of due diligence
3 be found, and as to the unknown parties, an order of publication
4 shall be awarded against them, which shall be published or posted
5 and published, as in cases of appointment and qualification of
6 personal representatives.

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

9 The provisions of this article apply only to personal
10 representatives, curators and minor guardians, as the case may be,
11 and do not apply to or affect guardians and conservators of an
12 adult protected person who are governed by the provisions of the
13 Guardian and Conservatorship Act in chapter forty-four-a of this
14 code or trustees who are governed by the provisions of the West
15 Virginia Uniform Trust Code in chapter forty-four-d of this code.

16 **CHAPTER 44D. UNIFORM TRUST CODE.**

17 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

18 **§44D-1-101. Short title.**

19 This chapter may be cited as the "West Virginia Uniform Trust
20 Code."

21 **§44D-1-102. Scope.**

22 This chapter applies to express trusts, charitable or
23 noncharitable, and trusts created pursuant to a statute, judgment,

1 or decree that requires the trust to be administered in the manner
2 of an express trust.

3 **§44D-1-103. Definitions.**

4 In this chapter:

5 (a) "Action," with respect to an act of a trustee, includes a
6 failure to act.

7 (b) "Ascertainable standard" means a standard relating to an
8 individual's health, education, support or maintenance within the
9 meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal
10 Revenue Code.

11 (c) "Beneficiary" means a person that:

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

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

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

18 (d) "Charitable trust" means a trust, or portion of a trust,
19 created for a charitable purpose described in subsection (a),
20 section four hundred five, article four of this chapter.

21 (e) "Conservator" means a person appointed by the court to
22 administer the estate and financial affairs of a protected person.

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

1 (g) "Current beneficiary" means a beneficiary that, on the
2 date the beneficiary's qualification is determined, is a
3 distributee or permissible distributee of trust income or
4 principal.

5 (h) "Environmental law" means a federal, state or local law,
6 rule, regulation or ordinance relating to protection of the
7 environment.

8 (i) "Grantor" means a person, including a testator, who
9 creates, or contributes property to a trust. If more than one
10 person creates or contributes property to a trust, each person is
11 a grantor of the portion of the trust property attributable to that
12 person's contribution except to the extent another person has the
13 power to revoke or withdraw that portion.

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

19 (k) "Interested person" means heirs, devisees, children,
20 spouses, creditors, beneficiaries and any others having a property
21 right in or claim against a trust or the property in a trust. It
22 also includes persons having priority for appointment as personal
23 representative and other fiduciaries representing interested
24 persons. The meaning as it relates to particular persons may vary

1 from time to time and must be determined according to the
2 particular purposes of, and matter involved in, any proceeding.

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

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

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

10 (o) "Person" means an individual, corporation, business trust,
11 estate, trust, partnership, limited liability company, association,
12 joint venture, unincorporated nonprofit association, charitable
13 organization, government, governmental subdivision, agency or
14 instrumentality, public corporation or any other legal or
15 commercial entity.

16 (p) "Power of withdrawal" means a presently exercisable
17 general power of appointment other than a power:

18 (1) Exercisable by a trustee and limited by an ascertainable
19 standard; or

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

22 (q) "Property" means anything that may be the subject of
23 ownership, whether real or personal, legal or equitable or any
24 interest therein.

1 (r) "Qualified beneficiary" means a beneficiary who, on the
2 date the beneficiary's qualification is determined:

3 (1) Is a distributee or permissible distributee of trust
4 income or principal;

5 (2) Would be a distributee or permissible distributee of trust
6 income or principal if the interests of the distributees described
7 in subparagraph (A) terminated on that date without causing the
8 trust to terminate; or

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

11 (s) "Revocable," as applied to a trust, means revocable by the
12 grantor without the consent of the trustee or a person holding an
13 adverse interest.

14 (t) "Spendthrift provision" means a term of a trust which
15 restrains both voluntary and involuntary transfer of a
16 beneficiary's interest.

17 (u) "State" means a state of the United States, the District
18 of Columbia, Puerto Rico, the United States Virgin Islands or any
19 territory or insular possession subject to the jurisdiction of the
20 United States. The term includes an Indian tribe or band
21 recognized by federal law or formally acknowledged by a state.

22 (v) "Terms of a trust" means the manifestation of the
23 grantor's intent regarding a trust's provisions as expressed in the
24 trust instrument or as may be established by other evidence that
25 would be admissible in a judicial proceeding.

1 (w) "Trust instrument" means a writing, including a will,
2 executed by the grantor that contains terms of the trust, including
3 any amendments thereto.

4 (x) "Trustee" includes an original, additional, successor
5 trustee, and a cotrustee.

6 (y) "Writing" or "written instrument" does not include an
7 electronic record or electronic signature as provided in chapter
8 39A of this code.

9 **§44D-1-104. Knowledge.**

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

12 (1) Has actual knowledge of it;

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

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

16 (b) An organization that conducts activities through employees
17 has notice or knowledge of a fact involving a trust only from the
18 time the information was received by an employee having
19 responsibility to act for the trust, or would have been brought to
20 the employee's attention if the organization had exercised
21 reasonable diligence. An organization exercises reasonable
22 diligence if it maintains reasonable routines for communicating
23 significant information to the employee having responsibility to
24 act for the trust and there is reasonable compliance with the
25 routines. Reasonable diligence does not require an employee of the

1 organization to communicate information unless the communication is
2 part of the individual's regular duties or the individual knows a
3 matter involving the trust would be materially affected by the
4 information.

5 **§44D-1-105. Default and mandatory rules.**

6 (a) Except as otherwise provided in the terms of the trust
7 instrument, this chapter governs the duties and powers of a
8 trustee, relations among trustees, and the rights and interests of
9 a beneficiary.

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

12 (1) The requirements for creating a trust;

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

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

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

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

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

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

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

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

13 (10) Periods of limitation for commencing a judicial
14 proceeding;

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

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

20 **§44D-1-106. Common law of trusts; principles of equity.**

21 The common law of trusts and principles of equity supplement
22 this chapter, except to the extent modified by this chapter or
23 another statute of this state.

24 **§44D-1-107. Governing law.**

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

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

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

12 **§44D-1-108. Principal place of administration.**

13 (a) Without precluding other means for establishing a
14 sufficient connection with the designated jurisdiction, terms of a
15 trust designating the principal place of administration are valid
16 and controlling if:

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

19 (2) All or part of the administration occurs in the designated
20 jurisdiction.

21 (b) Without precluding the right of the court to order,
22 approve, or disapprove a transfer, the trustee, may transfer the
23 trust's principal place of administration to another state or to a
24 jurisdiction outside of the United States that is appropriate to

1 the trust's purposes, its administration and the interests of the
2 beneficiaries.

3 (c) When the proposed transfer of a trust's principal place of
4 administration is to another state or to a jurisdiction outside of
5 the United States, the trustee shall notify the current
6 beneficiaries of a proposed transfer of a trust's principal place
7 of administration not less than sixty days before initiating the
8 transfer. A corporate trustee that maintains a place of business
9 in West Virginia where one or more trust officers are available on
10 a regular basis for personal contact with trust customers and
11 beneficiaries has not transferred its principal place of
12 administration merely because all or a significant portion of the
13 administration of the trust is performed outside West Virginia.
14 The notice of proposed transfer must include:

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

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

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

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

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

1 (d) The authority of a trustee under this section to transfer
2 a trust's principal place of administration to another state or to
3 a jurisdiction outside the United States terminates if a current
4 beneficiary notifies the trustee of an objection to the proposed
5 transfer on or before the date specified in the notice.

6 (e) In connection with a transfer of the trust's principal
7 place of administration, the trustee may transfer some or all of
8 the trust property to a successor trustee designated in the terms
9 of the trust instrument or appointed pursuant to section seven
10 hundred four, article seven of this chapter.

11 **§44D-1-109. Methods and waiver of notice.**

12 (a) Notice to a person under this chapter or the sending of a
13 document to a person under this chapter must be accomplished in a
14 manner reasonably suitable under the circumstances and likely to
15 result in receipt of the notice or document. Permissible methods
16 of notice or for sending a document include first-class mail,
17 personal delivery, delivery to the person's last known place of
18 residence or place of business, or a properly directed electronic
19 message.

20 (b) Notice otherwise required under this chapter or a document
21 otherwise required to be sent under this chapter need not be
22 provided to a person whose identity or location is unknown to and
23 not reasonably ascertainable by the trustee.

1 (c) Notice under this chapter or the sending of a document
2 under this chapter may be waived by the person to be notified or
3 sent the document.

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

6 **§44D-1-110. Others treated as qualified beneficiaries.**

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

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

14 (c) A person appointed to enforce a trust created for the care
15 of an animal or another noncharitable purpose as provided in
16 section four hundred eight or four hundred nine, article four of
17 this chapter has the rights of a qualified beneficiary under this
18 chapter.

19 **§44D-1-111. Nonjudicial settlement agreements.**

20 (a) For purposes of this section "interested persons" means
21 persons whose consent would be required in order to achieve a
22 binding settlement were the settlement to be approved by the court.

23 (b) Except as otherwise provided in subsection (c) of this
24 section, interested persons may enter into a binding nonjudicial

1 settlement agreement with respect to any matter involving a trust,
2 including, but not limited to:

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

5 (2) The approval of a trustee's report or accounting or waiver
6 of the preparation of a trustee's report or accounting;

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

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

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

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

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

17 (8) An investment decision, policy, plan or program of the
18 trustee;

19 (9) The grant to a trustee of any necessary or desirable
20 power;

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

22 (11) An action or proposed action by or against a trust or
23 trustee;

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

1 (13) Any other matter concerning the administration of a
2 trust.

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

7 (d) Any interested person may request the court to approve a
8 nonjudicial settlement agreement, to determine whether the
9 representation as provided in article three of this chapter was
10 adequate, and to determine whether the agreement contains terms and
11 conditions the court could have properly approved.

12 **§44D-1-112. Rules of construction.**

13 The rules of construction that apply in this state to the
14 interpretation of and disposition of property by will also apply as
15 appropriate to the interpretation of the terms of a trust and the
16 disposition of the trust property.

17 **ARTICLE 2. JUDICIAL PROCEEDINGS.**

18 **§44D-2-201. Role of court in administration of trust.**

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

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

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

4 **§44D-2-202. Jurisdiction over trustee and beneficiary.**

5 (a) By accepting the trusteeship of a trust having its
6 principal place of administration in this state or by moving the
7 principal place of administration to this state, the trustee
8 submits personally to the jurisdiction of the courts of this state
9 regarding any matter involving the trust.

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

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

20 **§44D-2-203. Subject-matter jurisdiction.**

21 The court has exclusive jurisdiction of proceedings in this
22 state brought by a trustee or beneficiary concerning the
23 administration of a trust.

24 **§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 to
5 recover land, determine title to the land or subject it to a debt,
6 determine the county where the land or any part may be, or, if the
7 trust is created by will and the estate is not yet closed, in the
8 county in which the decedent's estate is being administered.

9 (b) If a trust has no trustee, venue for a judicial proceeding
10 for the appointment of a trustee is in a county of this state in
11 which a beneficiary resides, in a county in which any trust
12 property is located, or if the trust is created by will, in the
13 county in which the decedent's estate was or is being administered.

14 **ARTICLE 3. REPRESENTATION.**

15 **§44D-3-301. Representation; basic effect.**

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

19 (b) The consent of a person who may represent and bind another
20 person under this chapter is binding on the person represented
21 unless the person represented objects to the representation by
22 notifying the trustee or the representative before the consent
23 would otherwise have become effective.

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

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

10 **§44D-3-302. Representation by holder of general testamentary**
11 **power of appointment.**

12 To the extent there is no conflict of interest between the
13 holder of a general testamentary power of appointment and the
14 persons represented with respect to the particular question or
15 dispute, the holder may represent and bind persons whose interests,
16 as permissible appointees, takers in default, or otherwise, are
17 subject to the power.

18 **§44D-3-303. Representation by fiduciaries and parents.**

19 To the extent there is no conflict of interest between the
20 representative and the person represented or among those being
21 represented with respect to a particular question or dispute:

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

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

4 (3) A trustee may represent and bind the beneficiaries of the
5 trust;

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

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

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

14 **§44D-3-304. Representation by person having substantially**
15 **identical interest.**

16 Unless otherwise represented, a minor, incapacitated or unborn
17 individual, or a person whose identity or location is unknown and
18 not reasonably ascertainable, may be represented by and bound by
19 another person having a substantially identical interest with
20 respect to the particular question or dispute, but only to the
21 extent there is no conflict of interest with respect to the
22 particular question or dispute between the representative and the
23 person represented.

24 **§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 court
4 may appoint a representative to receive notice, give consent, and
5 otherwise represent, bind, and act on behalf of a minor,
6 incapacitated or unborn individual, or a person whose identity or
7 location is unknown. A representative may be appointed to
8 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 chapter,
11 whether or not a judicial proceeding concerning the trust is
12 pending.

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

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

17 **§44D-4-401. Methods of creating trust.**

18 (a) A trust may be created by:

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

22 (2) Declaration by the owner of property that the owner holds
23 identifiable property as trustee;

1 (3) Exercise of a power of appointment in favor of a trustee;
2 or

3 (4) An order of the court.

4 (b) During the grantor's lifetime, a trust may also be created
5 by the grantor's agent acting in accordance with authority granted
6 under a durable power of attorney which expressly authorizes the
7 agent to create a trust on the grantor's behalf or which expressly
8 authorizes the agent to fund an existing trust of the grantor on
9 the grantor's behalf.

10 **§44D-4-402. Requirement for creation.**

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

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

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

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

17 (A) A charitable trust;

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

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

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

23 (5) The same person is not the sole trustee and sole
24 beneficiary.

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

4 (c) A power in a trustee to select a beneficiary from an
5 indefinite class is valid. If the power is not exercised within a
6 reasonable time, the power fails and the property subject to the
7 power passes to the persons who would have taken the property had
8 the power not been conferred.

9 (d) Notwithstanding the foregoing:

10 (1) In accordance with the provisions of section eight,
11 article three of chapter forty-one of this code, a trust is valid
12 regardless of the existence, value or character of the corpus of
13 the trust.

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

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

22 **§44D-4-403. Trusts created in other jurisdictions.**

23 A trust not created by will is validly created if its creation
24 complies with the law of the jurisdiction in which the trust

1 instrument was executed, or the law of the jurisdiction in which,
2 at the time of creation:

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

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

6 (3) Any trust property was located.

7 **§44D-4-404. Trust purposes.**

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

11 **§44D-4-405. Charitable purposes; enforcement.**

12 (a) A charitable trust may be created for the relief of
13 poverty, the advancement of education or religion, the promotion of
14 health, governmental or municipal purposes or other purposes the
15 achievement of which is beneficial to the community.

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

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

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

6 **§44D-4-406. Creation of trust induced by fraud, duress or undue**
7 **influence.**

8 A trust is void to the extent its creation was induced by
9 fraud, duress or undue influence. As used in this section, "fraud,"
10 "duress" and "undue influence" have the same meanings for trust
11 validity purposes as they have for purposes of determining the
12 validity of a will.

13 **§44D-4-407. Oral trusts unenforceable.**

14 Oral trusts are unenforceable in this state.

15 **§44D-4-408. Trust for care of animal.**

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

21 (b) A trust authorized by this section may be enforced by a
22 person appointed in the terms of the trust instrument or, if no
23 person is so appointed, by a person appointed by the court. A
24 person having an interest in the welfare of the animal may request

1 the court to appoint a person to enforce the trust or to remove a
2 person appointed.

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

10 **§44D-4-409. Noncharitable trust without ascertainable beneficiary.**

11 Except as otherwise provided in section four hundred eight of
12 this article, or by the provisions of article five-a, chapter
13 thirty-five of this code, or by another statute, the following
14 rules apply:

15 (1) A trust may be created for a noncharitable purpose without
16 a definite or definitely ascertainable beneficiary or for a
17 noncharitable but otherwise valid purpose to be selected by the
18 trustee. The trust may not be enforced for more than the period set
19 forth in section one, article one-a, chapter thirty-six of this
20 code.

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

24 (3) Property of a trust authorized by this section may be
25 applied only to its intended use, except to the extent the court

1 determines that the value of the trust property exceeds the amount
2 required for the intended use. Except as otherwise provided in the
3 terms of the trust instrument, property not required for the
4 intended use must be distributed to the grantor, if then living,
5 otherwise to the grantor's successors in interest.

6 **§44D-4-410. Modification or termination of trust; proceedings for**
7 **approval or disapproval.**

8 (a) In addition to the methods of termination prescribed by
9 sections four hundred eleven through four hundred fourteen, article
10 four of this chapter, a trust terminates to the extent the trust is
11 revoked or expires pursuant to its terms, no purpose of the trust
12 remains to be achieved, or the purposes of the trust have become
13 unlawful, contrary to public policy, or impossible to achieve.

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

1 **§44D-4-411. Modification or termination of noncharitable**
2 **irrevocable trust by consent.**

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

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

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

1 trust.

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

5 (e) If all of the beneficiaries do not consent to a proposed
6 modification or termination of the trust under subsection (a) or
7 (b) of this section, the modification or termination including any
8 distributions of the trust property, may be approved by the court
9 if the court is satisfied that:

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

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

14 **§44D-4-412. Modification or termination because of unanticipated**
15 **circumstances or inability to administer trust**
16 **effectively.**

17 (a) The court may modify the administrative or dispositive
18 terms of a trust or terminate the trust if, because of
19 circumstances not anticipated by the grantor, modification or
20 termination will further the purposes of the trust. To the extent
21 practicable, the modification must be made in accordance with the
22 grantor's probable intention.

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

4 (c) Upon termination of a trust under this section, the
5 trustee shall distribute the trust property in a manner consistent
6 with the purposes of the trust.

7 **§44D-4-413. Cy pres.**

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

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

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

14 (3) Upon petition by a trustee or a person having a special
15 interest in the trust, the court shall apply cy pres to fulfill as
16 nearly as possible the grantor's charitable intention, whether it
17 be general or specific.

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

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

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

3 **§44D-4-414. Modification or termination of uneconomic trust.**

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

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

14 (c) Upon termination of a trust under this section, the
15 trustee shall distribute the trust property in a manner consistent
16 with the purposes of the trust.

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

19 **§44D-4-415. Reformation to correct mistakes.**

20 The court may reform the terms of a trust, even if
21 unambiguous, to conform the terms to the grantor's intention if it
22 is proved by preponderance of the evidence that both the grantor's
23 intent and the terms of the trust instrument were affected by a
24 mistake of fact or law, whether in expression or inducement.

1 **§44D-4-416. Modification to achieve grantor's tax objectives.**

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

6 **§44D-4-417. Combination and division of trusts.**

7 After notice to the qualified beneficiaries, a trustee may
8 combine two or more trusts into a single trust or divide a trust
9 into two or more separate trusts, if the result does not impair
10 rights of any beneficiary or adversely affect achievement of the
11 purposes of the trust.

12 **ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.**

13 **§44D-5-501. Rights of beneficiary's creditor or assignee.**

14 To the extent a beneficiary's interest is not subject to a
15 spendthrift provision, the court may authorize a creditor or
16 assignee of the beneficiary to reach the beneficiary's interest in
17 a trust by execution or other process against the present or future
18 distributions to or for the benefit of the beneficiary. The court
19 may limit the award to relief as appropriate under the
20 circumstances.

21 **§44D-5-502. Spendthrift provision.**

22 (a) A spendthrift provision contained in a trust instrument is
23 valid if it contains language substantially to the effect that it

1 restrains both voluntary and involuntary transfers of a
2 beneficiary's interest.

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

7 (c) A beneficiary may not transfer an interest in a trust in
8 violation of a valid spendthrift provision, and, except as
9 otherwise provided in this article, a creditor or assignee of the
10 beneficiary may not reach the interest or a distribution by the
11 trustee before its receipt by the beneficiary.

12 **§44D-5-503. Exceptions to spendthrift provision.**

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

16 (b) A spendthrift provision is unenforceable against:

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

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

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

23 (c) A claimant against whom a spendthrift provision cannot be
24 enforced may obtain from a court an order attaching present or
25 future distributions to or for the benefit of the beneficiary. The

1 court may limit the award to such relief as is appropriate under
2 the circumstances.

3 **§44D-5-504. Discretionary trusts; effect of standard.**

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

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

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

13 (2) The trustee has abused the discretion.

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

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

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

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

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

8 **§44D-5-505. Creditor's claim against grantor.**

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

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

13 (2) During the lifetime of the grantor, with respect to an
14 irrevocable trust, a creditor or assignee of the grantor may reach
15 the maximum amount that can be distributed to or for the grantor's
16 benefit. If a trust has more than one grantor, the amount the
17 creditor or assignee of a particular grantor may reach may not
18 exceed the grantor's interest in the portion of the trust
19 attributable to that grantor's contribution.

20 (3) After the death of a grantor, and subject to the grantor's
21 right to direct the source from which liabilities will be paid, the
22 property of a trust that was revocable at the grantor's death is
23 subject to claims of, to the extent the grantor's probate estate is
24 inadequate to satisfy them:

1 (A) The costs and expenses of administration of the grantor's
2 estate;

3 (B) Reasonable funeral expenses;

4 (C) Debts and taxes with preference under federal law;

5 (D) Unpaid child support which is due and owing at the time of
6 the decedent's death;

7 (E) Debts and taxes with preference under other laws of the
8 State of West Virginia;

9 (F) Reasonable and necessary medical and hospital expenses of
10 the last illness of the decedent, including compensation for
11 persons attending the decedent during his or her last illness; and

12 (G) All other claims.

13 (b) For purposes of this section:

14 (1) During the period the power may be exercised, the holder
15 of a power of withdrawal is treated in the same manner as the
16 grantor of a revocable trust to the extent of the property subject
17 to the power; and

18 (2) Upon the lapse, release or waiver of the power, the holder
19 is treated as the grantor of the trust only to the extent the value
20 of the property affected by the lapse, release or waiver exceeds
21 the greater of the amount specified in Section 2041(b)(2), Section
22 2503(b) or Section 2514(e) of the Internal Revenue Code.

23 **§44D-5-506. Overdue distribution.**

24 (a) In this section, "mandatory distribution" means a
25 distribution of income or principal which the trustee is required

1 to make to a beneficiary under the terms of the trust instrument,
2 including a distribution upon termination of the trust. The term
3 does not include a distribution subject to the exercise of the
4 trustee's discretion even if:

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

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

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

16 **§44D-5-507. Personal obligations of trustee.**

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

19 **ARTICLE 6. REVOCABLE TRUSTS.**

20 **§44D-6-601. Capacity of grantor of revocable trust.**

21 The capacity required to create, amend, revoke or add property
22 to a revocable trust, or to direct the actions of the trustee of a
23 revocable trust, is the same as that required to make a will.

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

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

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

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

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

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

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

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

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

1 (e) A grantor's powers with respect to revocation, amendment,
2 or distribution of trust property may be exercised by an agent
3 under a power of attorney only to the extent expressly authorized
4 by the terms of the trust instrument or the power.

5 (f) A conservator of the grantor or, if no conservator has
6 been appointed, a guardian of the grantor may exercise a grantor's
7 powers with respect to revocation, amendment or distribution of
8 trust property only with the approval of the court supervising the
9 conservatorship or guardianship.

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

14 (h) No trust which is otherwise irrevocable because the trust
15 instrument expressly provides or states that the trust is
16 irrevocable is or becomes revocable by the grantor because the
17 grantor is the sole beneficiary of the trust.

18 **§44D-6-603. Grantor's powers; powers of withdrawal.**

19 (a) While a trust is revocable and the grantor has capacity to
20 revoke the trust, rights of the beneficiaries are subject to the
21 control of, and the duties of the trustee are owed exclusively to,
22 the grantor.

23 (b) During the period the power may be exercised, the holder
24 of a power of withdrawal has the rights of a grantor of a revocable

1 trust under this section to the extent of the property subject to
2 the power.

3 **§44D-6-604. Limitation on action contesting validity of revocable**
4 **trust; distribution of trust property.**

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

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

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

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

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

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

22 (b) Upon the death of the grantor of a trust that was
23 revocable at the grantor's death, the trustee may proceed to
24 distribute the trust property in accordance with the terms of the

1 trust instrument. The trustee is not subject to liability for
2 doing so unless:

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

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

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

12 **ARTICLE 7. OFFICE OF THE TRUSTEE.**

13 **§44D-7-701. Accepting or declining trusteeship.**

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

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

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

1 (b) A person designated as trustee who has not yet accepted
2 the trusteeship may reject the trusteeship. A person designated as
3 trustee who does not accept the trusteeship within a reasonable
4 time after knowing of the designation is deemed to have rejected
5 the trusteeship.

6 (c) A person designated as trustee, without accepting the
7 trusteeship, may:

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

12 (2) Inspect or investigate trust property to determine
13 potential liability under environmental or other law or for any
14 other proper purpose.

15 **§44D-7-702. Trustee's bond.**

16 (a) A trustee shall give bond to secure performance of the
17 trustee's duties only if a bond is required by the terms of the
18 trust instrument or if the court having jurisdiction of the trust
19 finds that a bond is needed to protect the interests of the
20 beneficiaries and the court has not dispensed with the requirement
21 of a bond.

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

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

6 **§44D-7-703. Cotrustees.**

7 (a) Unless otherwise provided in the terms of the trust
8 instrument, cotrustees who are unable to reach a unanimous decision
9 may act by majority decision. Unless otherwise provided by the
10 trust instrument, when a dispute arises among trustees as to the
11 exercise or nonexercise of any of their powers and there is no
12 agreement by a majority of them, the court in its discretion upon
13 petition filed by any of the trustees, the grantor, if living, a
14 qualified beneficiary, or any interested person, may direct the
15 exercise or nonexercise of the power as it considers necessary for
16 the best interest of the trust.

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

20 (c) A cotrustee must participate in the performance of a
21 trustee's function unless the cotrustee is unavailable to perform
22 the function because of absence, illness, disqualification under
23 other law, or other temporary incapacity or the cotrustee has
24 properly delegated the performance of the function to another
25 trustee.

1 (d) If a cotrustee is unavailable to perform duties because of
2 absence, illness, disqualification under other law, or other
3 temporary incapacity, and prompt action is necessary to achieve the
4 purposes of the trust or to avoid injury to the trust property, the
5 remaining cotrustee or a majority of the remaining cotrustees may
6 act for the trust.

7 (e) A trustee may delegate to a cotrustee the performance of
8 a function other than a function that the terms of the trust
9 expressly require to be performed by the trustees jointly. Unless
10 a delegation was irrevocable, a trustee may revoke a delegation of
11 a function previously made.

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

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

16 (1) Prevent a cotrustee from committing a serious breach of
17 trust; and

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

19 (h) A dissenting trustee who joins in an action at the
20 direction of the majority of the trustees and who notifies any
21 cotrustee of the dissent at or before the time of the action is not
22 liable for the action unless the action is a serious breach of
23 trust.

24 **§44D-7-704. Vacancy in trusteeship; appointment of successor.**

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

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

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

4 (3) A trustee resigns;

5 (4) A trustee is disqualified or removed;

6 (5) A trustee dies; or

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

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

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

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

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

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

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

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

3 (2) By a person selected by the charitable organizations
4 expressly designated to receive distributions under the terms of
5 the trust instrument if the Attorney General of West Virginia
6 either concurs in writing to the selection or fails to make a
7 written objection to the selection within ninety days after
8 receiving by certified or registered mail a notice of the selection
9 by the charitable organizations; or

10 (3) By a person appointed by the court having jurisdiction
11 over the trust.

12 (e) Whether or not a vacancy in a trusteeship exists or is
13 required to be filled, the court may upon petition of the grantor,
14 a qualified beneficiary, or a cotrustee appoint an additional
15 trustee or special fiduciary whenever the court considers the
16 appointment necessary for the administration of the trust.

17 **§44D-7-705. Resignation of trustee.**

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

22 (b) A trustee may resign with the approval of the court having
23 jurisdiction of the trust upon the filing of a petition for such
24 purpose which joins as respondents the grantor, if living, all of
25 the qualified beneficiaries, and all cotrustees, if any. In

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

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

8 **§44D-7-706. Removal of trustee.**

9 (a) The grantor, a cotrustee or a beneficiary may upon
10 petition request the court to remove a trustee, or a trustee may be
11 removed by the court on its own initiative. In the case of a
12 charitable trust, the Attorney General of West Virginia shall also
13 have standing to petition the court to remove a trustee.

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

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

17 (2) Lack of cooperation among cotrustees substantially impairs
18 the administration of the trust;

19 (3) Because of unfitness, unwillingness or persistent failure
20 of the trustee to administer the trust effectively, removal of the
21 trustee best serves the interests of the beneficiaries; or

22 (4) There has been a substantial change of circumstances or
23 removal is requested by all of the qualified beneficiaries, removal
24 of the trustee best serves the interests of all of the
25 beneficiaries, removal is not inconsistent with a material purpose

1 of the trust, and a suitable cotrustee or successor trustee is
2 available.

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

8 **§44D-7-707. Delivery of property by former trustee.**

9 (a) Unless a cotrustee remains in office or the court
10 otherwise orders, and until the trust property is delivered to a
11 successor trustee or other person entitled to it, a trustee who has
12 resigned or been removed has the duties of a trustee and the powers
13 necessary to protect the trust property.

14 (b) A trustee who has resigned or been removed shall proceed
15 expeditiously to deliver the trust property within the trustee's
16 possession to the cotrustee, successor trustee or other person
17 entitled to it.

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

21 **§44D-7-708. Compensation of trustee.**

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

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

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

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

10 **§44D-7-709. Reimbursement of expenses.**

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

13 (1) Expenses that were properly incurred in the administration
14 of the trust; and

15 (2) To the extent necessary to prevent unjust enrichment of
16 the trust, expenses that were not properly incurred in the
17 administration of the trust.

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

21 **ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.**

22 **§44D-8-801. Duty to administer trust.**

23 Upon acceptance of a trusteeship, the trustee shall administer
24 the trust and invest the trust assets in good faith, in accordance

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

7 **§44D-8-802. Duty of loyalty.**

8 (a) A trustee shall administer the trust solely in the
9 interests of the beneficiaries.

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

18 (1) The transaction was authorized by the terms of the trust
19 instrument;

20 (2) The transaction was approved by the court having
21 jurisdiction over the trust;

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

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

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

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

11 (1) The trustee's spouse;

12 (2) The trustee's descendants, siblings, parents or their
13 spouses;

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

15 (4) A corporation or other person or enterprise in which the
16 trustee, or a person that owns a significant interest in the
17 trustee, has an interest that might affect the trustee's best
18 judgment.

19 (d) A transaction between a trustee and a beneficiary that
20 does not concern trust property but that occurs during the
21 existence of the trust or while the trustee retains significant
22 influence over the beneficiary and from which the trustee obtains
23 an advantage beyond the normal commercial advantage from such
24 transaction is voidable by the beneficiary unless the trustee
25 establishes that the transaction was fair to the beneficiary.

1 (e) A transaction not concerning trust property in which the
2 trustee engages in the trustee's individual capacity involves a
3 conflict between personal and fiduciary interests if the
4 transaction concerns an opportunity properly belonging to the
5 trust.

6 (f) An investment by a trustee in securities of an investment
7 company or investment trust, mutual fund or other investment or
8 financial product to which the trustee, or its affiliate, provides
9 services in a capacity other than as trustee is not presumed to be
10 affected by a conflict between personal and fiduciary interests if
11 the investment otherwise complies with the Uniform Prudent Investor
12 Act in article six-c, chapter forty-four of this code. In addition
13 to its compensation for acting as trustee, the trustee may be
14 compensated by the investment company, investment trust, mutual
15 fund or other investment or financial product, or by the affiliated
16 entity sponsoring, selling or providing the service, and the
17 compensation may be in addition to the compensation the trustee is
18 receiving as a trustee if the trustee notifies the persons entitled
19 to receive a copy of the trustee's annual report as provided
20 hereunder of the rate and method by which that compensation was
21 determined and of any subsequent changes to the rate or method of
22 compensation.

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

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

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

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

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

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

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

15 (5) An advance by the trustee of money for the protection of
16 the trust.

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

21 **§44D-8-803. Impartiality.**

22 If a trust has two or more beneficiaries, the trustee shall
23 act impartially in investing, managing and distributing the trust
24 property, giving due regard to the beneficiaries' respective
25 interests.

1 **§44D-8-804. Prudent administration.**

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

7 **§44D-8-805. Costs of administration.**

8 In administering a trust, the trustee may incur only costs
9 that are reasonable in relation to the trust property, the purposes
10 of the trust and the skills of the trustee.

11 **§44D-8-806. Trustee's skills.**

12 A trustee who has special skills or expertise, or is named
13 trustee in reliance upon the trustee's representation that the
14 trustee has special skills or expertise, shall use those special
15 skills or expertise.

16 **§44D-8-807. Delegation by trustee.**

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

21 (1) Selecting an agent;

22 (2) Establishing the scope and terms of the delegation,
23 consistent with the purposes and terms of the trust instrument; and

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

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

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

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

13 (e) The delegating trustee is not responsible for the
14 decisions, actions or inactions of the trustee to whom those duties
15 and powers have been delegated if the delegating trustee has
16 exercised reasonable care, skill and caution in establishing the
17 scope and specific terms of the delegation and in reviewing
18 periodically the performance of the trustee to whom the duties and
19 powers have been delegated and the trustee's compliance with the
20 scope and specific terms of the delegation.

21 **§44D-8-808. Powers to direct.**

22 (a) While a trust is revocable, the trustee may follow a
23 direction of the grantor that is contrary to the terms of the trust
24 instrument.

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

9 (c) The terms of a trust instrument may confer upon a trustee
10 or other person a power to direct the modification or termination
11 of the trust.

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

18 **§44D-8-809. Control and protection of trust property.**

19 A trustee shall take reasonable steps to take control of and
20 protect the trust property.

21 **§44D-8-810. Recordkeeping and identification of trust property.**

22 (a) A trustee shall keep adequate records of the
23 administration of the trust.

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

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

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

9 **§44D-8-811. Enforcement and defense of claims.**

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

12 **§44D-8-812. Collecting trust property.**

13 A trustee shall take reasonable steps to compel a former
14 trustee or other person to deliver trust property to the trustee,
15 and to redress a breach of trust known to the trustee to have been
16 committed by a former trustee.

17 **§44D-8-813. Duty to inform and report.**

18 (a) A trustee shall keep the current beneficiaries of the
19 trust reasonably informed about the administration of the trust and
20 of the material facts necessary for them to protect their
21 interests. Unless unreasonable under the circumstances, a trustee
22 shall within a reasonable time respond to a beneficiary's request
23 for information related to the administration of the trust.

24 (b) A trustee:

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

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

6 (3) Within sixty days after the date the trustee acquires
7 knowledge of the creation of an irrevocable trust, or the date the
8 trustee acquires knowledge that a formerly revocable trust has
9 become irrevocable, whether by the death of the grantor or
10 otherwise, shall notify the qualified beneficiaries of the trust's
11 existence, of the identity of the grantor or grantors, of the right
12 to request a copy of the trust instrument, and of the right to a
13 trustee's report as provided in subsection (c) of this section; and

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

17 (c) A trustee shall send to the distributees or permissible
18 distributees of trust income or principal, and to other qualified
19 or nonqualified beneficiaries who request it, at least annually and
20 at the termination of the trust, a report of the trust property,
21 liabilities, receipts, and disbursements, including the source and
22 amount of the trustee's compensation, a listing of the trust assets
23 and, if feasible, their respective market values. Upon a vacancy
24 in a trusteeship, unless a cotrustee remains in office, a report
25 shall be sent to the qualified beneficiaries by the former trustee.

1 A personal representative, conservator or guardian is responsible
2 for sending the qualified beneficiaries a report on behalf of a
3 deceased or incapacitated trustee.

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

8 (e) Subdivisions (2) and (3), subsection (b) of this section
9 do not apply to a trustee who accepts a trusteeship before the
10 effective date of this chapter, to an irrevocable trust created
11 before the effective date of this chapter, or to a revocable trust
12 that becomes irrevocable before the effective date of this chapter.

13 **§44D-8-814. Discretionary powers; tax savings.**

14 (a) Notwithstanding the breadth of discretion granted to a
15 trustee in the terms of the trust instrument, including the use of
16 such terms as "absolute," "sole" or "uncontrolled," the trustee
17 shall exercise a discretionary power in good faith and in
18 accordance with the general and specific terms and purposes of the
19 trust and the interests of the beneficiaries.

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

23 (1) A person other than a grantor who is a beneficiary and
24 trustee of a trust that confers on the trustee a power to make
25 discretionary distributions to or for the trustee's personal

1 benefit may exercise the power only in accordance with an
2 ascertainable standard; and

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

6 (c) A power whose exercise is limited or prohibited by
7 subsection (b) of this section may be exercised by a majority of
8 the remaining trustees whose exercise of the power is not so
9 limited or prohibited. If the power of all trustees is so limited
10 or prohibited, the court having jurisdiction may appoint a special
11 fiduciary with authority to exercise the power.

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

13 (1) A power held by the grantor's spouse who is the trustee of
14 a trust for which a marital deduction, as defined in Section
15 2056(b)(5) or Section 2523(e) of the Internal Revenue Code;

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

18 (3) A trust if contributions to the trust qualify for the
19 annual exclusion under Section 2503(c) of the Internal Revenue
20 Code.

21 **§44D-8-815. General powers of trustee.**

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

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

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

1 (A) All powers over the trust property which an unmarried
2 competent owner has over individually owned property;

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

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

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

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

9 Without limiting the authority conferred by section eight
10 hundred fifteen of this article, a trustee has the powers
11 enumerated in the provisions of section three, article five-a,
12 chapter forty-four of this code.

13 **§44D-8-817. Distribution upon termination.**

14 (a) Upon termination or partial termination of a trust, the
15 trustee may send to the beneficiaries a proposal for distribution.
16 The right of any beneficiary to object to the proposed distribution
17 terminates if the beneficiary does not notify the trustee of an
18 objection within sixty days after the proposal was sent but only if
19 the proposal informed the beneficiary of the right to object and of
20 the time allowed for objection.

21 (b) Upon the occurrence of an event terminating or partially
22 terminating a trust, the trustee shall proceed expeditiously to
23 distribute the trust property to the persons entitled to it,
24 subject to the right of the trustee to retain a reasonable reserve
25 for the payment of debts, expenses and taxes.

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

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

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

7 **ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT.**

8 **§44D-9-901. Uniform Prudent Investor Act.**

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

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

13 **§44D-10-1001. Remedies for breach of trust.**

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

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

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

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

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

22 (4) Order a trustee to account;

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

1 (6) Suspend the trustee;

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

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

5 (9) Subject to section one thousand twelve of this article,
6 void an act of the trustee, impose a lien or a constructive trust
7 on trust property or trace trust property wrongfully disposed of
8 and recover the property or its proceeds; or

9 (10) Order any other appropriate relief.

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

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

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

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

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

1 breach of trust is not entitled to contribution from another
2 trustee to the extent of the benefit received.

3 **§44D-10-1003. Damages in absence of breach.**

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

7 **§44D-10-1004. Attorney's fees and costs.**

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

13 **§44D-10-1005. Limitation of action against trustee.**

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

20 (b) A report adequately discloses the existence of a potential
21 claim for breach of trust if it provides sufficient information so
22 that the beneficiary or representative of the beneficiary knows of
23 the potential claim or should know of the existence of the
24 potential claim.

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

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

6 (2) The termination of the beneficiary's interest in the
7 trust;

8 (3) The termination of the trust; or

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

11 **§44D-10-1006. Reliance on trust instrument.**

12 A trustee who acts in reasonable reliance on the terms of the
13 trust instrument as expressed in the trust instrument is not liable
14 to a beneficiary for a breach of trust to the extent the breach
15 resulted from the reliance.

16 **§44D-10-1007. Event affecting administration or distribution.**

17 If the happening of an event, including, but not limited to,
18 marriage, divorce, performance of educational requirements,
19 attaining a specific age or death, affects the administration or
20 distribution of a trust, a trustee who has exercised reasonable
21 care to ascertain the happening of the event is not liable for a
22 loss resulting from the trustee's lack of knowledge.

23 **§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 of
8 a fiduciary or confidential relationship to the grantor.

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

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

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

18 **§44D-10-1009. Beneficiary's consent, release or ratification.**

19 (a) A trustee is not liable to a beneficiary for breach of
20 trust if the beneficiary, while having capacity, consented to the
21 conduct constituting the breach, released the trustee from
22 liability for the breach, or ratified the transaction constituting
23 the breach, unless:

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

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

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

7 **§44D-10-1010. Limitation on personal liability of trustee.**

8 (a) Except as otherwise provided in the contract, a trustee is
9 not personally liable on a contract properly entered into in the
10 trustee's fiduciary capacity in the course of administering the
11 trust if the trustee in the contract disclosed the fiduciary
12 capacity.

13 (b) A trustee is personally liable for torts committed in the
14 course of administering a trust, or for obligations arising from
15 ownership or control of trust property, including liability for
16 violation of environmental law, only if the trustee is personally
17 at fault.

18 (c) A claim based on a contract entered into by a trustee in
19 the trustee's fiduciary capacity, on an obligation arising from
20 ownership or control of trust property, or on a tort committed in
21 the course of administering a trust, may be asserted in a judicial
22 proceeding against the trustee in the trustee's fiduciary capacity,
23 whether or not the trustee is personally liable for the claim.

24 **§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, a
3 trustee who holds an interest as a general partner in a general or
4 limited partnership is not personally liable on a contract entered
5 into by the partnership after the trust's acquisition of the
6 interest if the fiduciary capacity was disclosed in the contract.
7 The requirement of disclosure in the contract is satisfied if the
8 trustee signs the contract, or signs another writing which is
9 contemporaneously delivered to the other parties to the contract,
10 in a manner that clearly evidences that the trustee executed the
11 contract in a fiduciary capacity.

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

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

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

1 **§44D-10-1012. Protection of person dealing with trustee.**

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

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

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

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

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

20 **§44D-10-1013. Certification of trust.**

21 (a) Instead of furnishing a copy of the trust instrument to a
22 person other than a beneficiary, the trustee may furnish to the
23 person a certification of trust containing the following
24 information:

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

3 (2) The identity of the grantor;

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

5 (4) The powers of the trustee;

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

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

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

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

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

15 (c) A certification of trust must state that the trust has not
16 been revoked, modified or amended in any manner that would cause
17 the representations contained in the certification of trust to be
18 incorrect.

19 (d) A certification of trust need not contain the dispositive
20 terms of a trust.

21 (e) A recipient of a certification of trust may require the
22 trustee to furnish copies of those excerpts from the original trust
23 instrument and later amendments which designate the trustee and
24 confer upon the trustee the power to act in the pending
25 transaction.

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

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

13 (h) A person making a demand for the trust instrument in
14 addition to a certification of trust or excerpts is liable for
15 damages if the court having jurisdiction over the trust determines
16 that the person did not act in good faith in demanding the trust
17 instrument.

18 (i) This section does not limit the right of a person to
19 obtain a copy of the trust instrument in a judicial proceeding
20 concerning the trust.

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

24 **ARTICLE 11. MISCELLANEOUS PROVISIONS.**

25 **§44D-11-1101. Uniformity of application and construction.**

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

4 **§44D-11-1102. Electronic records and signatures.**

5 The provisions of this chapter governing the legal effect,
6 validity or enforceability of electronic records or electronic
7 signatures, and of contracts formed or performed with the use of
8 the records or signatures, conform to the requirements of Section
9 102 of the Electronic Signatures in Global and National Commerce
10 Act (15 U.S.C. § 7002) and supersede, modify, and limit the
11 requirements of the Electronic Signatures in Global and National
12 Commerce Act.

13 **§44D-11-1103. Severability clause.**

14 If any provision of this chapter or its application to any
15 person or circumstances is held invalid, the invalidity does not
16 affect other provisions or applications of this chapter which can
17 be given effect without the invalid provision or application, and
18 to this end the provisions of this chapter are severable.

19 **§44D-11-1104. Effective date.**

20 This chapter takes effect on July 1, 2011.

21 **§44D-11-1105. Application to existing relationships.**

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

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

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

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

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

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

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