STATE OF NEW YORK

7677

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. LAVINE -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, the surrogate's court procedure act, the banking law, the civil practice law and rules, the not-for-profit corporation law, the abandoned property law, the general obligations law, the mental hygiene law and the social services law, in relation to establishing a new trust code; and to repeal parts 1, 2, 3, 5 and 8 of article 7 of the estates, powers and trusts law, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The estates, powers and trusts law is amended by adding a new article 7-A to read as follows:

ARTICLE 7-A

NEW YORK TRUST CODE

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7-A-1.10 Methods and waiver of notice.
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7-A-1.12 Nonjudicial settlement agreements.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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PART 1. IN GENERAL

§ 7-A-1.1 Short title

This article shall be known and may be cited as the "New York Trust Code".

§ 7-A-1.2 Scope

(a) This article shall apply to: (1) express trusts, defined pursuant to paragraph (h) of section 7-A-1.4 of this part, (2) resulting trusts, and (3) where expressly made applicable, bank accounts in trust form.

(b) This article shall not apply to constructive trusts.

(c) Cross-reference: For provisions regarding charitable trusts, see article eight of this chapter.

§ 7-A-1.3 Purchase-money resulting trust abolished

A disposition of property to one person for a valuable consideration paid, in whole or in part, by another is presumed fraudulent as against the creditors of the payor at the time of such disposition and, unless the presumption is rebutted, a trust results in favor of such creditors to the extent necessary to satisfy their claims; but title to the property vests in the transferee and no trust results to the payor unless the transferee either:

(a) Takes such property, in his or her own name, as an absolute transfer without the consent or knowledge of the payor; or

(b) In violation of some trust, purchases the property so transferred with money or property belonging to another.

§ 7-A-1.4 Definitions

For the purposes of this article, the following terms shall have the following meanings:

(a) "Action" shall include a failure to act, with respect to an act of a trustee.

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

(c) "Beneficiary" means a person that:

(1) has a present or future beneficial interest in a trust, vested or contingent, including a person who would be entitled to trust property if a resulting trust arose, or

(2) holds a power of appointment over trust property in a capacity other than that of trustee.

(d) "Breach of trust" means a violation by a trustee or trust director of a duty imposed on such trustee or trust director by the terms of the trust, the provisions of this article, or other provisions of law of this state.

(e) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose, pursuant to section 8-1.1 of this chapter.

(f) "Creator" means a person defined pursuant to section 1-2.2 of this chapter.

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

(h) "Express trust" is defined as follows:

(1) Except as provided in subparagraph two of this paragraph, an express trust means a fiduciary relationship with respect to property arising from a manifestation of intent to create such relationship and subjecting the person who holds title to such property to duties to deal with the property for:

(A) one or more persons, at least one of whom is not the sole trustee; or

(B) the benefit of charity; or

(C) the care of an animal, pursuant to section 7-A-3.12 of this article; or

(D) a noncharitable purpose, pursuant to section 7-A-3.13 of this article, and includes a trust created pursuant to any other statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

(2) An express trust shall not include a trust for the benefit of creditors, a business trust where certificates of beneficial interest are issued to the beneficiary, an investment trust, a voting trust, a

security instrument such as a deed of trust or a mortgage, a liquidation or a reorganization trust, a trust for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, a trust created as an individual retirement account pursuant to section 408(a) of the Internal Revenue Code, instruments wherein persons are mere nominees for others, any other type of trust created for a business or commercial purpose, or a bank account in trust form.

(i) "Guardian for property" means a guardian for property management as appointed pursuant to article seventeen or seventeen-A of the SCPA, or pursuant to article eighty-one of the mental hygiene law, or any person appointed by a court outside of New York for property management of an incapacitated person. Such term shall not include guardian ad litem.

(j) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(k) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended. Such references, however, shall be deemed to constitute references to any corresponding provisions of any subsequent federal tax code.

(l) "Irrevocable trust" means a trust that is not a revocable trust.

(m) "Jurisdiction" shall include a state or country, or similar governmental entity, with respect to a geographic area.

(n) "Lifetime trust" means an express trust, including all amendments thereto, created other than by will.

(o) "Person" means a person as defined pursuant to section 1-2.12 of this chapter. As the context indicates, person may include more than one person.

(p) "Power of withdrawal" means a presently exercisable general power of appointment, as defined pursuant to paragraph (b) of section 10-3.2 of this chapter and paragraph (b) of section 10-3.3 of this chapter, other than a power: (1) limited by an ascertainable standard; or (2) exercisable by any person only upon consent of a person holding a substantial adverse interest.

(q) "Property" means property as defined pursuant to section 1-2.15 of this chapter.

(r) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's status as qualified beneficiary is determined:

(1) is entitled to receive, or is a permissible recipient of trust income or principal; or

(2) would be entitled to receive, or would be a permissible recipient of trust income or principal if the interests of the recipients described in subparagraph one terminated on that date without causing the trust to terminate; or

(3) would be entitled to receive, or would be a permissible recipient of trust income or principal if the trust terminated on that date.

(s) "Resulting trust" means a trust that arises in favor of the settlor or the settlor's successor's interest on the failure of an express trust in whole or in part.

(t) "Revocable", as applied to a trust, means revocable by a trust contributor without the consent of a person holding a substantial adverse interest.

(u) (1) "Settlor" means a person, including the testator, who:

(A) initially transfers property of the person to a trustee; or

(B) declares as the owner of property that the person holds identifiable property as trustee; or

(C) exercises a power of appointment in favor of a trustee, where the terms of such trust are created in connection with the exercise of the power of appointment, including the exercise by a trustee of a discretionary power in favor of a trustee.

(2) For purposes of this paragraph, if a person authorized to act on behalf of a person acts with respect to property owned by such person, the person owning the property shall be deemed to have taken the action.

(3) Cross-reference: provisions regarding a devise to a trustee, see section 3-3.7 of this chapter and for provisions regarding a beneficiary designation of a trustee, see section 13-3.3 of this chapter.

(v) "Spendthrift provision" means the restraint on the voluntary transfer of a beneficiary's interest as provided by the terms of a trust or by application of sections 7-A-5.1 and 7-A-5.2 of this article, and the restraint on involuntary transfer of a beneficiary's interest, as provided by any statutory rule restraining the involuntary transfer of a beneficiary's interest. Such terms of a trust shall include any provision stating that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar meaning.

(w) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. Such term shall include an Indian Tribe or band recognized by federal law or formally acknowledged by a state.

(x) "Terms of a trust" means:

(1) the manifestation of the settlor's intent regarding a trust's provisions, except as otherwise provided in subparagraph two of this paragraph, as:

(A) expressed in the trust instrument; or

(B) established by other evidence that would be admissible in a judicial proceeding; or

(2) the trust's provisions as established, determined, or amended by:

(A) a trustee or trust director in accordance with applicable law; or

(B) a court order; or

(C) a nonjudicial settlement agreement, pursuant to section 7-A-1.12 of this part.

(y) "Testamentary trust" means an express trust created under a will.

(z) "Trust", unless otherwise provided, means a lifetime trust and a testamentary trust but shall not include a resulting trust.

(aa) "Trust contributor" means:

(1) a settlor, as defined pursuant to paragraph (u) of this section, other than a person who exercises, or who is considered to exercise, a special power of appointment in favor of a trustee; or

(2) a person who transfers or is deemed to transfer property owned by such person to the trustee of an existing trust, except to the extent another person has the power to revoke or has a non-lapsing power of withdrawal over such transferred property. For the purposes of this subparagraph:

(A) the exercise of a presently exercisable general power of appointment is deemed to be a transfer of property owned by the powerholder, and

(B) a person is deemed to transfer property owned by that person if the person's fiduciary actually transfers such property to, or exercises a power of appointment in favor of, a trustee; or

(3) if more than one person contributes property to the trustee of an existing trust, each person is the trust contributor of the portion of the trust property attributable to each such person's contribution,

except to the extent another person has the power to revoke or has a non-lapsing power of withdrawal over such portion.

(bb) "Trust director" means a person that is granted a power of direction, as defined pursuant to paragraph (c) of section 7-A-9.2 of this article, to the extent such power is exercisable while the person is not serving as a trustee. Such person is a trust director whether or not the terms of the trust refer to such person as a trust director and whether or not such person is a beneficiary, settlor or trust contributor, other than a settlor, of the trust.

(cc) "Trust instrument" means a properly executed instrument that contains terms of the trust, including any amendments thereto.

(dd) "Trustee" means a person who has accepted an appointment as trustee or has been issued letters of trusteeship. Such term shall include an original, additional, and successor trustee, and a co-trustee.

(ee) "Willful misconduct" means intentional wrongdoing, not mere negligence, gross negligence or recklessness.

(ff) "Wrongdoing" means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

§ 7-A-1.5 Knowledge

(a) Subject to paragraph (b) of this section, a person has knowledge of a fact if such person:

(1) has actual knowledge of such fact;

(2) has received a notice or notification of such fact; or

(3) from all the facts and circumstances known to such person at the time in question, has reason to know such fact.

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

§ 7-A-1.6 Default and mandatory rules

(a) Except as otherwise provided in the terms of the trust, court order, decree or other applicable law, this article shall govern the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this article except:

(1) the rules for the governing law of a trust, pursuant to section 7-A-1.8 of this part;

(2) the rules regarding the principal place of administration, pursuant to section 7-A-1.9 of this part;

(3) the rules for judicial proceedings, pursuant to sections 7-A-2.1 and 7-A-2.2 of this article;

(4) the requirements for creating and amending a trust, pursuant to sections 7-A-3.1 through 7-A-3.14 of this article;

(5) the rules for commencing a proceeding, pursuant to paragraph (b) of section 7-A-3.15 of this article, and the limitations on modification and termination, pursuant to paragraph (c) of section 7-A-3.15 of this article;

(6) the power of the court to amend or revoke a trust, pursuant to paragraph (c) of section 7-A-3.16 of this article, to modify or terminate a trust, pursuant to sections 7-A-3.1 through 7-A-3.21 of this article, or to combine or divide trusts, pursuant to section 7-A-3.22 of this article;

(7) the rights of creditors of trust beneficiaries, pursuant to part five of this article;

(8) the power of the court to require, dispense with, modify or terminate a bond, pursuant to section 7-A-7.2 of this article;

(9) the requirement that a trustee of a testamentary trust provide the court with written notice of resignation, pursuant to paragraph (d) of section 7-A-7.7 of this article;

(10) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust, pursuant to section 7-A-8.1 of this article;

(11) the duty to administer the trust, pursuant to section 7-A-8.4 of this article;

(12) the duties relating to delegation if a delegation is made, pursuant to section 7-A-8.7 of this article;

(13) the duties relating to recordkeeping and identification of property, pursuant to section 7-A-8.9 of this article;

(14) the duty, pursuant to paragraph (a) of section 7-A-8.12 of this article, to respond to the reasonable request of a beneficiary of an irrevocable trust for information related to the administration of a trust, beginning at the death of the later to die of the settlor or the settlor's surviving spouse, or after twenty-one years if the settlor is not an individual;

(15) the duty, pursuant to subparagraphs two and three of paragraph (b) of section 7-A-8.12 of this article, to notify qualified beneficiaries of an irrevocable trust, who have attained twenty-five years of age, of the existence of such trust, of the identity of the trustee, and of their right to request information related to the administration of the trust, beginning at the death of the later to die of the settlor or the settlor's surviving spouse, or after twenty-one years if the settlor is not an individual;

(16) the duty and the restrictions on powers, pursuant to section 7-A-8.18 of this article;

(17) the principles for the computation of damages, pursuant to section 7-A-10.2 of this article;

(18) the effect of an exculpatory provision, pursuant to section 7-A-10.8 of this article;

(19) the rights of a person other than a trustee or beneficiary, pursuant to sections 7-A-10.10 through 7-A-10.13 of this article;

(20) periods of limitation for commencing a judicial proceeding; and

(21) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

§ 7-A-1.7 Common law and principles of equity

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

§ 7-A-1.8 Governing law

(a) As used in this section:

(1) "Real property" means land or any estate in land, including leaseholds, fixtures and mortgages or other liens thereon. Notwithstanding such definition of "real property", whether an estate in, leasehold of, fixture, mortgage or other lien on land is real or personal is deter-

mined by the local law of the jurisdiction in which the land is situated.

(2) "Personal property" means any property other than real property, including tangible and intangible things.

(3) "Intrinsic validity" relates to the rules of substantive law by which a jurisdiction determines the legality of a disposition in trust, including the general capacity of the settlor and the rule against perpetuities.

(4) "Effect" relates to the legal consequences attributed under the law of a jurisdiction to a valid disposition in trust.

(5) "Interpretation" relates to the procedure of applying the law of a jurisdiction to determine the meaning of language employed by the settlor where the settlor's intention is not otherwise ascertainable.

(6) "Local law" means the law which the courts of the jurisdiction apply in adjudicating legal questions that have no relation to another jurisdiction.

(b) The intrinsic validity, effect, interpretation and amendment of any term of a lifetime trust, created by a domiciliary or non-domiciliary, and the revocation of a lifetime trust, by a domiciliary or non-domiciliary, shall be governed by:

(1) the law of the jurisdiction designated in the trust instrument unless the designation of that jurisdiction's law is contrary to a mandatory trust rule, pursuant to paragraph (b) of section 7-A-1.6 of this part, or a strong public policy, including the rule against perpetuities, of the jurisdiction having the most significant relationship to the matter at issue, in which case subparagraph two of this paragraph shall apply. This state shall not be the jurisdiction having the most significant relationship to any matter at issue that does not involve real property located in this state where the trust instrument designates the law of a jurisdiction other than this state, provided none of the trustees are domiciled in this state, whether or not this state is the domicile of the settlor or of any of the beneficiaries; or

(2) in the absence of a controlling designation in the trust instrument, the law of the jurisdiction where the settlor was domiciled at the time the instrument was executed, except that:

(A) with respect to real property, the law of the situs shall govern; and

(B) with respect to the interpretation of the terms of the trust applying to personal property, the local law of the jurisdiction in which the settlor was domiciled at the time of execution shall govern.

(c) Notwithstanding any provision of paragraph (b) of this section to the contrary, whenever a person, not domiciled in this state, creates a lifetime trust which provides that one or more terms shall be governed by the laws of this state, such provision shall be given effect by using the local law of this state to determine the intrinsic validity, effect, interpretation and amendment of the designated term or terms and the revocation of a lifetime trust with respect to:

(1) any trust property situated in this state at the time the trust is created;

(2) any trust property situated in this state at the time such property is added to the trust; and

(3) personal property, wherever situated, if the trustee of the trust is a person residing, incorporated or authorized to do business in this state, or a national bank having an office in this state.

(d) The law governing any aspect of the administration of a trust, created by a domiciliary or non-domiciliary, shall be the law so desig-

nated in the trust instrument unless the designation of that jurisdiction's law is contrary to a mandatory trust rule pursuant to paragraph (b) of section 7-A-1.6 of this part, or a strong public policy of the jurisdiction of the trust's principal place of administration, pursuant to section 7-A-1.9 of this part. If the terms of the trust do not designate the governing law, both of the following shall apply:

(1) The law of the trust's principal place of administration, as determined pursuant to section 7-A-1.9 of this part, governs the administration of the trust; and

(2) If the trust's principal place of administration is transferred to another jurisdiction, pursuant to section 7-A-1.9 of this part, the law of the new principal place of administration of the trust governs the administration of the trust from the time of such transfer.

(e) Notwithstanding any provision of paragraph (d) of this section to the contrary, whenever a person, not domiciled in this state, creates a trust which provides that one or more terms for trust administration shall be governed by the laws of this state, such provision shall be given effect by using the local law of this state with respect to:

(1) any trust property situated in this state at the time the trust is created;

(2) any trust property situated in this state at the time such property is added to the trust; and

(3) personal property, wherever situated, if the trustee of the trust is a person residing, incorporated or authorized to do business in this state, or a national bank having an office in this state.

(f) Cross-reference: For provisions relating to the choice of law rules involving testamentary trusts, see section 3-5.1 of this chapter, and for provisions relating to the formal validity of lifetime trusts, see section 7-A-3.6 of this article.

§ 7-A-1.9 Principal place of administration

(a) The terms of a trust designating the principal place of administration of the trust are valid only if there is a sufficient connection with the designated jurisdiction. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

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

(2) a trust director's usual place of business is located in or a trust director is a resident of the designated jurisdiction; or

(3) all or part of the administration occurs in the designated jurisdiction.

(b) Unless designated pursuant to paragraph (a) of this section:

(1) If there is one trustee, the principal place of administration of a trust is the trustee's usual place of business for administering trusts or, if the trustee has no such usual place of business, the trustee's residence.

(2) If there are two or more co-trustees, the principal place of administration is:

(A) the usual place of business for administering trusts of that trustee, if there is only one corporate co-trustee;

(B) the place agreed upon by the co-trustees, if there is more than one corporate co-trustee, where any corporate co-trustee has the usual place of business for administering trusts or if the co-trustees do not agree, the place where a majority of the trust administration occurs, or if there is no such place, the place as a court may determine; or

(C) the place agreed upon by the co-trustees, if there is no corporate co-trustee, where any co-trustee carries on the work of trust administration or if the co-trustees do not agree, the place where a majority of the trust administration occurs or if there is no such place, the place as a court may determine.

(c) Notwithstanding the provisions of paragraph (b) of this section, if a corporate trustee is designated as the trustee of a trust and the corporate trustee has offices in multiple states and performs administrative functions for the trust in multiple states, the corporate trustee may designate which state is the corporate trustee's usual place of business for administering trusts with respect to a particular trust, by providing notice to the qualified beneficiaries and trust directors. Such notice is valid and controlling if the corporate trustee has a connection to the jurisdiction designated in the notice, including an office where trustee services are performed and the actual performance of some administrative functions for that particular trust take place in such particular jurisdiction. The subsequent transfer of some of the administrative functions of the corporate trustee to another state or states does not transfer the principal place of administration as long as the corporate trustee continues to maintain an office and perform some administrative functions in the jurisdiction designated in the notice and the corporate trustee does not notify the qualified beneficiaries of a change in the principal place of administration pursuant to paragraph (f) of this section.

(d) A trustee may transfer the trust's principal place of administration of a testamentary trust to another state or to a jurisdiction outside of the United States upon the approval of the court that has most recently issued letters of trusteeship to the trustee of such trust.

(e) A trustee may transfer the principal place of administration of a lifetime trust to another state or to a jurisdiction outside of the United States:

(1) upon the approval of any court that has jurisdiction over the trustee; or

(2) without the approval of any court and in the absence of any objection by a qualified beneficiary; or

(3) without the approval of any court or of any beneficiary if the terms of the trust so provide.

(f) A trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days, and in the case of a charitable trust, not less than ninety days, before initiating the transfer. The notice of proposed transfer shall include:

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

(2) the address and phone number of the new location at which the trustee can be contacted;

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

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

(5) the date, not less than forty-five days, and in the case of a charitable trust, not less than sixty days, after the giving of such notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust prop-

erty to a successor trustee designated in the terms of the trust or appointed pursuant to section 7-A-7.5 of this article.

(h) If there are two or more co-trustees of a trust, decisions made with respect to actions described pursuant to this section are governed by section 7-A-7.3 of this article.

(i) Nothing in this section shall limit the application of section 7-A-8.18 of this article to any trust.

(j) Notwithstanding any other provision of this article, the trustee has no duty to inform beneficiaries about the availability of this section and further has no duty to review the trust instrument to determine whether any action should be taken under this section, unless requested to do so in writing by a beneficiary then entitled to receive reports and information related to the administration of the trust.

§ 7-A-1.10 Methods and waiver of notice

(a) Notice to a person pursuant to this article or the sending of a document to a person pursuant to this article shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or sending a document to the person's last known place of residence or place of business include, but are not limited to, first-class mail, special mail service, personal delivery, or sending such notice or document to an email address provided by the intended recipient.

(b) Notice otherwise required pursuant to this article or a document otherwise required to be sent pursuant to this article need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice pursuant to this article or the sending of a document pursuant to this article may be waived by the person to be notified or sent the document.

(d) Notice to an incapacitated person may be given to any guardian for property of such incapacitated person or to a parent or other person with whom such incapacitated person resides.

(e) Notice of a judicial proceeding shall be given as provided pursuant to the SCPA and other applicable rules of civil procedure.

(f) The notice provision of subparagraph two of paragraph (i) of section 7-A-8.18 of this article, with respect to the exercise of the power to appoint to an appointed trust under paragraph (a) or (b) of section 7-A-8.18 of this article, shall apply in lieu of the notice provisions provided by this section.

§ 7-A-1.11 Others treated as qualified beneficiaries

(a) A charitable organization expressly designated to receive distributions under the terms of a charitable trust shall have the rights of a qualified beneficiary pursuant to this article if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) is entitled to receive or is a permissible recipient of trust income or principal;

(2) would be entitled to receive or is a permissible recipient of trust income or principal upon the termination of the interests of others entitled to receive or permissible recipients then receiving or eligible to receive distributions; or

(3) would be entitled to receive or is a permissible recipient of trust income or principal if the trust terminated on such date.

(b) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose, pursuant to section 7-A-3.12 or

7-A-3.13 of this article, shall have the rights of a qualified beneficiary pursuant to this article.

(c) The attorney general of this state shall have the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. Nothing in this paragraph shall limit the rights of the attorney general under any other provision of law.

§ 7-A-1.12 Nonjudicial settlement agreements

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court, determined by taking into account SCPA 315, as if the settlement were the result of a proceeding in which process was required to be served on all persons interested in the trust. The following persons, if not described by the foregoing sentence, shall be deemed interested persons: the settlor if no adverse income or transfer tax results would arise from the settlor's participation and the currently serving trustee or trustees.

(b) Except as otherwise provided in paragraph (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving the trust.

(c) A nonjudicial settlement agreement is valid only to the extent it: (1) does not violate the purposes of the trust, unless the settlor is a party to the agreement, and (2) includes terms and conditions that could be approved by the court pursuant to this article or other applicable law. In the case of a charitable trust, a nonjudicial settlement agreement shall not be valid unless the attorney general is a party to the agreement or provides a written statement of no objection to the agreement. Notwithstanding any other provision of this paragraph, a nonjudicial settlement agreement shall not be used to transfer the principal place of administration of a testamentary trust or accomplish any of the following actions for which court approval is specifically required: trust termination pursuant to paragraph (b) of section 7-A-3.17 of this article, modification of dispositive provisions pursuant to paragraph (b) of section 7-A-3.17 of this article, cy pres reformation pursuant to paragraph (c) of section 8-1.1 of this chapter, removal from this state of trust property in a testamentary trust pursuant to SCPA 710(4); and appointment of a successor or co-trustee of a testamentary trust pursuant to SCPA 706(2) and 1502.

(d) Matters that may be resolved by a nonjudicial settlement agreement include, but are not limited to:

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

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

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

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

(5) transfer of the principal place of administration of a lifetime trust; and

(6) the liability of a trustee for an action or omission to act relating to the trust.

(e) A nonjudicial settlement agreement shall be in writing and shall be executed by all interested persons described in paragraph (a) of this section in the manner required by the laws of this state for the conveyance of real property.

(f) An agreement entered into pursuant to this section shall be final and binding on all beneficiaries, the trustee and all other persons

identified in paragraph (a) of this section as if ordered by a court with jurisdiction over the trust. The failure of a court to approve a nonjudicial settlement agreement as provided in paragraph (g) of this section shall have no effect on the binding nature of the agreement.

(g) Notwithstanding paragraph (f) of this section, any interested person may petition the court to approve or disapprove a proposed or an executed nonjudicial settlement agreement. Such petition may request a court to determine any issue regarding such agreement, including but not limited to, whether the representation pursuant to SCPA 315 is adequate, whether the agreement contains terms and conditions that violate the purposes of the trust or whether the agreement contains terms and conditions that the court could properly approve.

(h) A petition pursuant to paragraph (g) of this section shall be filed no later than sixty days after the effective date of the agreement absent a showing of good cause why the petition was not timely filed. Process shall issue to all other interested persons described in paragraph (a) of this section.

(i) An interested person may also commence a proceeding to interpret, apply or enforce a nonjudicial settlement agreement. Process shall issue to all other interested persons described in paragraph (a) of this section.

(j) Cross reference: For provisions regarding the revocation or amendment of an irrevocable trust initiated by consent, see section 7-A-3.16 of this article.

PART 2. JUDICIAL PROCEEDINGS

§ 7-A-2.1 Role of court in administration of trust

The rules for court involvement in the administration of a trust are provided by numerous sections of this chapter, the surrogate's court procedure act, and the civil practice law and rules.

§ 7-A-2.2 Jurisdiction over trustee and beneficiary

The jurisdiction over trusts, trustees and beneficiaries is provided pursuant to article two of the SCPA.

PART 3. CREATION, VALIDITY, AMENDMENT, MODIFICATION, AND TERMINATION OF TRUST

§ 7-A-3.1 Methods of creating trust

(a) Subject to the requirements of sections 7-A-3.2, 7-A-3.3 and 7-A-3.7 of this part, a trust may be created by:

(1) a transfer of property to another person as trustee during the settlor's lifetime or by will or other transfer of property taking effect upon the settlor's death;

(2) a declaration by the owner of property that such owner holds identified property as trustee;

(3) the exercise of a power of appointment in favor of a trustee where the terms of such trust are created by the exercise of the power of appointment, including the exercise by a trustee of a discretionary power in favor of a trustee; or

(4) a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

(b) For purposes of subparagraph one of paragraph (a) of this section, a transfer of property shall include a beneficiary designation pursuant to section 13-3.3 of this chapter.

(c) Cross reference: For provisions related to the disposition in will to a trustee, see section 3-3.7 of this chapter.

§ 7-A-3.2 General requirements for trust creation

(a) In addition to the requirements for creating a lifetime trust pursuant to section 7-A-3.3 of this part and the formality requirements to create a testamentary trust, and subject to the provisions of section 7-A-3.7 of this part, a trust is created pursuant to section 7-A-3.1 of this part only if:

(1) the settlor, or a person authorized to act for the settlor, has capacity to create a trust;

(2) the settlor, or a person authorized to act for the settlor, indicates an intention to create the trust;

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

(A) a charitable trust;

(B) a trust for the care of an animal, pursuant to section 7-A-3.12 of this part; or

(C) a trust for a noncharitable purpose, pursuant to section 7-A-3.13 of this part;

(4) the trustee has duties to perform; and

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

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

§ 7-A-3.3 Specific rules for creation of lifetime trusts

(a) Any person may by lifetime trust dispose of real and personal property. A natural person who creates a lifetime trust shall be eighteen years of age or older.

(b) Every estate in property may be disposed of by lifetime trust.

(c) Every lifetime trust shall be in writing and shall be executed by the settlor or the person authorized to act on behalf of the settlor and, unless such person is the sole trustee, by at least one trustee thereof. The signature of the settlor, or the person authorized to act on behalf of the settlor, shall either be affixed to the document in the presence of two witnesses, who then affix their signatures to the document, or acknowledged by the settlor, or the person authorized to act on behalf of the settlor, in the manner required by the laws of this state for the conveyance of real property. If the signature of a trustee is required, the signature of the trustee shall be either affixed to the document in the presence of two witnesses, who then affix their signatures to the document, or acknowledged by the trustee in the manner required by the laws of this state for the conveyance of real property.

(d) A lifetime trust shall be valid as to any assets therein to the extent such assets have been transferred to the trustee. A transfer is not accomplished by recital of assignment, holding or receipt in the trust instrument. An asset shall be deemed to have been transferred to a trustee on the delivery of the asset to the trustee, except that when the settlor is the sole trustee, in the case of assets capable of registration such as real estate, stocks, bonds, bank and brokerage accounts and the like, such assets are deemed transferred on the recording of the deed or the completion of registration of the asset in the name of the trust or trustee, and in the case of other assets, such assets are deemed transferred to the trustee:

(1) by a written assignment, either in the trust instrument or by a separate writing, describing the asset with particularity; or

(2) by describing with particularity, either in the trust instrument or in a schedule attached to the trust instrument, the asset held in the trust; or

(3) by affixing the asset to the trust instrument.

(e) A lifetime trust shall be irrevocable unless the terms of the trust expressly provide that such trust is revocable and the capacity to create an irrevocable trust is the same as that required to make a gift. The capacity needed to create a revocable trust is governed by section 7-A-6.1 of this article.

§ 7-A-3.4 Trustee of passive trust not to take

Every disposition of property shall be made directly to the person in whom the right to possession and income is intended to be vested and not to another in trust for such person, and if made to any person in trust for another, no estate, legal or equitable, vests in the trustee. But neither this section nor section 7-A-3.5 of this part shall apply to trusts arising or resulting by implication of law.

§ 7-A-3.5 When trust interests not to merge

A trust shall not be merged or invalid because a person, including but not limited to, the settlor of the trust, is or may become the sole trustee and the sole holder of the present beneficial interest therein, provided that one or more other persons hold a beneficial interest therein, whether such interest be vested or contingent, present or future, and whether created by an express provision of the instrument or as a result of reversion to the settlor's estate.

§ 7-A-3.6 Trusts created in jurisdictions outside of New York

(a) A lifetime trust created outside of New York shall be validly created if it is in writing and its creation complies with:

(1) the law of the jurisdiction in which the trust instrument was executed, or

(2) the law of the jurisdiction in which, at the time of creation:

(A) the settlor was domiciled, had a place of abode, or was a national; or

(B) a trustee was domiciled or had a place of business; or

(C) any trust property was situated.

(b) A testamentary trust shall be validly created if the will creating the trust may be admitted to probate in New York pursuant to paragraph (c) of section 3-5.1 of this chapter, provided, however, if the trust property includes real property, the trust shall be validly created under the law of the jurisdiction in which the land is situated.

§ 7-A-3.7 Trust purposes

A trust may be created only to the extent its purposes are lawful, and not contrary to public policy.

§ 7-A-3.8 Supplemental needs trusts established for persons with severe and chronic or persistent disabilities

(a) For purposes of this section, the following terms shall have the following meanings, unless otherwise expressly stated or unless the context otherwise requires:

(1) "Developmental disability" means developmental disability as defined pursuant to subdivision twenty-two of section 1.03 of the mental hygiene law.

(2) "Government benefits or assistance" means any program of benefits or assistance which is intended to provide or pay for support, maintenance or health care and which is established or administered, in whole or in part, by any federal, state, county, city or other governmental entity.

(3) "Mental illness" means mental illness as defined pursuant to subdivision twenty of section 1.03 of the mental hygiene law.

(4) "Person with a severe and chronic or persistent disability" means a person:

(A) with a mental illness, a developmental disability, or other physical or mental impairment;

(B) whose disability is expected to, or does, give rise to a long-term need for specialized health, mental health, developmental disabilities, social or other related services; and

(C) who may need to rely on government benefits or assistance.

(5) "Supplemental needs trust" means a discretionary trust established for the benefit of a person with a severe and chronic or persistent disability (hereinafter referred to in this section as the "beneficiary") which conforms to all of the following criteria:

(A) The trust document clearly evidences the creator's intent to supplement, not supplant, impair or diminish, government benefits or assistance for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving, except as provided in item (B) of this subparagraph;

(B) The trust document prohibits the trustee from expending or distributing trust assets in any way which may supplant, impair or diminish government benefits or assistance for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving. Provided, however, that the trustee may be authorized to make such distributions to third parties to meet the beneficiary's needs for food, clothing, shelter or health care but only if the trustee determines that the beneficiary's basic needs will be better met if such distribution is made, and that it is in the beneficiary's best interests to suffer the consequent effect, if any, on the beneficiary's eligibility for or receipt of government benefits or assistance;

(C) The beneficiary shall not have the power to assign, encumber, direct, distribute or authorize distributions from the trust;

(D) If an inter vivos trust, the creator of the trust is a person or entity other than the beneficiary or the beneficiary's spouse; and

(E) Notwithstanding item (D) of this subparagraph, the beneficiary of a supplemental needs trust may be the creator of the trust if such trust meets the requirements of subparagraph two of paragraph (b) of subdivision two of section three hundred sixty-six of the social services law and of the regulations implementing such clauses. Provided, however, that if the trust is funded with the proceeds of retroactive payments made as a result of a court action and due the beneficiary under the federal supplemental security income program, as established under title XVI of the federal social security act, the creation of a supplemental needs trust by the beneficiary under this subparagraph shall not impair nor limit any right under applicable law of a representative payee to receive reimbursement out of such proceeds for expenses incurred on behalf of the beneficiary pending the determination of the beneficiary's eligibility for such federal supplemental security income program, nor any right under applicable law of any state or local governmental entity which provided the beneficiary with interim assistance pending the determination of the beneficiary's eligibility for such federal supplemental security income program to be repaid out of such proceeds for the amount of such interim assistance.

(b) A supplemental needs trust shall be construed in accordance with the following:

(1) It shall be presumed that the creator of the trust intended that neither principal nor income be used to pay for any expense which would otherwise be paid by government benefits or assistance for which the beneficiary might otherwise be eligible or which the beneficiary might be receiving, notwithstanding any authority the trustee may have to make distributions for food, clothing, shelter or health care as provided in item (B) of subparagraph five of paragraph (a) of this section;

(2) This paragraph shall not be applicable to the extent that the application or possible application of such paragraph would reduce or eliminate the beneficiary's entitlement to government benefits or assistance;

(3) Neither principal nor income held in trust shall be deemed an available resource to the beneficiary under any program of government benefits or assistance; however, actual distributions from the trust may be considered to be income or resources of the beneficiary to the extent provided by the terms of any such program;

(4) The trustee of the trust shall not be deemed to be holding assets for the benefit of the beneficiary for purposes of section 43.03 of the mental hygiene law or section one hundred four of the social services law; and

(5) If the trust provides the trustee with the authority to make distributions for food, clothing, shelter or health care as provided in item (B) of subparagraph five of paragraph (a) of this section, and if the mere existence of such authority would, under the terms of any program of government benefits or assistance, result in the beneficiary's loss of government benefits or assistance, regardless of whether such authority were actually exercised, then:

(A) if the trust instrument expressly provides, such provision shall be null and void and the trustee's authority to make such distributions shall cease and shall be limited as otherwise provided; or

(B) the trust shall no longer be treated as a supplemental needs trust pursuant to this section and the trust shall be construed, and the trust assets considered, without regard to the provisions of this section.

(c) (1) Paragraph (b) of this section shall not apply to the extent that the trust is funded, directly or indirectly, by the beneficiary, except as provided in item (E) of subparagraph five of paragraph (a) of this section, by someone with a legal obligation of support to the beneficiary, or by someone with another financial obligation to the beneficiary to the extent of such obligation, at the time the beneficiary is receiving or applying to receive:

(A) Government benefits or assistance for which an income and resource calculation is made; or

(B) Services, care or assistance for which payment or reimbursement is or may be sought under section 43.03 of the mental hygiene law or section one hundred four of the social services law.

(2) To the extent that paragraph (b) of this section does not apply, the trust shall not be treated as a supplemental needs trust under this section, and the trust shall be construed, and the trust assets considered, without regard to the provisions of this section.

(d) The provisions of paragraph (b) of this section shall not apply to bar claims by the government against persons with an interest in or under the trust other than the beneficiary.

(e) (1) The following language may be used as part of a trust instrument, but is not required, to qualify a trust as a supplemental needs trust:

"1. The property shall be held, IN TRUST, for the benefit of (hereinafter the "beneficiary") and shall be held, managed, invested and reinvested by the trustee, who shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall, at any time and from time to time, apply for the benefit of the beneficiary, so much (even to the extent of the whole) of the net income and/or principal of this trust as the trustee shall deem advisable, in his or her sole and absolute discretion, subject to the limitations set forth below. The trustee shall add to the principal of such trust the balance of net income not so paid or applied.

2. It is the grantor's intent to create a supplemental needs trust which conforms to the provisions of section 7-A-3.8 of the estates, powers and trusts law. The grantor intends that the trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving. Consistent with that intent, it is the grantor's desire that, before expending any amounts from the net income and/or principal of this trust, the trustee consider the availability of all benefits from government or private assistance programs for which the beneficiary may be eligible and that, where appropriate and to the extent possible, the trustee endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the beneficiary.

3. None of the income or principal of this trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving.

4. The beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from this trust."

(2) (A) If the creator elects, the following additional language may be used:

"Notwithstanding the provisions of paragraphs two and three above, the trustee may make distributions to meet the beneficiary's need for food, clothing, shelter or health care even if such distributions may result in an impairment or diminution of the beneficiary's receipt or eligibility for government benefits or assistance but only if the trustee determines that (i) the beneficiary's needs will be better met if such distribution is made, and (ii) it is in the beneficiary's best interests to suffer the consequent effect, if any, on the beneficiary's eligibility for or receipt of government benefits or assistance."

(B) If the trustee is provided with the authority to make the distributions as described in item (A) of subparagraph two of this paragraph, the creator may elect to add the following clause:

"; provided, however, that if the mere existence of the trustee's authority to make distributions pursuant to this paragraph shall result in the beneficiary's loss of government benefits or assistance, regardless of whether such authority is actually exercised, this paragraph shall be null and void and the trustee's authority to make such distributions shall cease and shall be limited as provided in paragraphs two and three above, without exception."

(f) Nothing in this section shall affect the establishment, interpretation or construction of trust instruments which do not conform with the provisions of this section, nor shall this section impair the state's authority to be paid from or seek reimbursement from any trust

which does not conform with the provisions of this section or to deem the principal or income of such trust an available resource under any program of government benefits or assistance.

§ 7-A-3.9 Charitable purposes; enforcement

The rules for charitable purposes and enforcement are provided in article eight of this chapter.

§ 7-A-3.10 Creation of trust induced by fraud, duress, or undue influence or the result of mistake

A trust is voidable to the extent its creation, amendment or restatement was induced by fraud, duress, or undue influence or the creation, amendment or restatement of the trust was the result of a mistake.

§ 7-A-3.11 Oral trusts not recognized

Other than a testamentary trust in a nuncupative will created pursuant to section 3-2.2 of this chapter, no oral trust can be created in New York.

§ 7-A-3.12 Trusts for pets

(a) A trust for the care of a designated domestic or pet animal is valid. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive.

(b) The intended use of the principal or income of a trust that is authorized pursuant to paragraph (a) of this section may be enforced by a person designated for that purpose in the trust instrument. If no person is appointed to act or the person appointed is unable or unwilling to act, a court may appoint a person to act. A trustee or person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Except as otherwise expressly provided in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of all covered animals.

(d) Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such directions in the trust instrument, the property shall pass to the settlor or to the settlor's successors in interest.

(e) A court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property pursuant to paragraph (d) of this section.

(f) If no trustee is designated or no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the settlor and the purposes of this section.

§ 7-A-3.13 Noncharitable trust without ascertainable beneficiary

Except as otherwise provided in section 7-A-3.12 of this part, or by another statute, the following rules apply:

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

(b) A trust authorized by this section shall, or may, be enforced by a person appointed in the terms of the trust or, if no person is appointed, or if the person so appointed is unwilling or unable to act, by a person appointed by the court.

(c) Property of a trust authorized by this section may be applied only for its intended purpose. Except as otherwise provided by the terms of the trust, if the court determines that not all of the trust property is

required for its intended purpose, the excess property shall be distributed to the settlor or to the settlor's successors in interest.

§ 7-A-3.14 Amendment of trust other than by trust contributor to a revocable trust

(a) A trust may be amended by a person other than the trust contributor to a revocable trust to the extent the trust terms provide.

(b) Any authorized trust amendment by a person other than the trust contributor to a revocable trust shall be in writing and executed by the person authorized to amend the trust, and except as otherwise provided in the governing instrument, shall be acknowledged or witnessed in the manner required by paragraph (c) of section 7-A-3.3 of this part, and shall take effect as of the date of such execution. Written notice of such amendment shall be delivered to at least one other trustee within a reasonable time if the person executing such amendment is not the sole trustee, but failure to give such notice shall not affect the validity of the amendment or the date upon which such amendment shall take effect. No trustee shall be liable for any act reasonably taken in reliance on an existing trust instrument prior to actual receipt of notice of amendment thereof. Absent written consent, no trustee shall be liable for the failure to comply with an amendment that expands, restricts or otherwise modifies the trustee's duties, powers, obligations, or compensation for a period of sixty days after receipt of notice of amendment.

§ 7-A-3.15 Modification, termination, or reformation of trust; proceedings for approval or disapproval

(a) A trust terminates when and to the extent:

(1) The terms of the trust so provide, including by the valid exercise of a power to revoke pursuant to the terms of the trust;

(2) No purpose of the trust remains to be achieved;

(3) The purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve;

(4) All of the trust property has been distributed by the trustee in accordance with the terms of the trust;

(5) A trust is revoked pursuant to section 7-A-3.16 of this part; or

(6) A court orders a termination in a proceeding brought pursuant to either section 7-A-3.17 or section 7-A-3.19 of this part.

(b) A proceeding to approve or disapprove a modification or termination pursuant to sections 7-A-3.17, 7-A-3.19 and 7-A-3.21 of this part, or a reformation pursuant to section 7-A-3.20 of this part may be commenced solely by a trustee or beneficiary on notice to the parties interested in the proceeding. The parties interested in such a proceeding shall include the trustee and any person or persons upon whom service of process would be required in a proceeding for the judicial settlement of the account of the trustee, taking into account SCPA 315. In addition, the party commencing any proceeding pursuant to this paragraph shall notify the settlor in writing that such proceeding has been commenced.

(c) Notwithstanding any of the provisions in sections 7-A-3.17, 7-A-3.19 and 7-A-3.21 of this part to the contrary, a trust shall not be modified or terminated to the extent that doing so would jeopardize:

(A) the deduction or exclusion originally claimed with respect to any contribution to the trust that qualified for the annual exclusion under section 2503(b) of the Internal Revenue Code, the marital deduction under section 2056(a) or 2523(a) of the Internal Revenue Code, or the charitable deduction under section 170(a), 642(c), 2055(a) or 2522(a) of the Internal Revenue Code; or

(B) the qualification of a transfer as a direct skip under section 2642(c) of the Internal Revenue Code; or

(C) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code; or

(D) a beneficiary's eligibility for, or a beneficiary's receipt of, public benefits or both.

§ 7-A-3.16 Revocation or amendment of irrevocable lifetime trust initiated by consent

(a) Upon the written consent, acknowledged or proved in the manner required by the laws of this state for the recording of a conveyance of real property, of all the living persons beneficially interested in a trust of property, heretofore or hereafter created, the creator of such trust may revoke or amend the whole or any part thereof by an instrument in writing acknowledged or proved in like manner, and thereupon the estate of the trustees ceases with respect to any part of such trust property, the disposition of which has been revoked. If the conveyance or other instrument creating a trust of property was recorded in the office of the clerk or register of any county of this state, the instrument revoking or amending such trust, together with such written consents thereto, shall be recorded in the same office of every county in which the conveyance or other instrument creating such trust was recorded. The creator's power to consent to a revocation or amendment may be exercised by an agent under a power of attorney only to the extent authorized by the power of attorney or under the terms of the trust.

(b) For the purposes of paragraph (a) of this section, a disposition, contained in a trust created on or after September first, nineteen hundred fifty-one, in favor of a class of persons described only as the heirs, next of kin or distributees, or by any term of like import, of the creator of the trust does not create a beneficial interest in such persons.

(c) If not all of the beneficiaries consent to a revocation or amendment of the trust under paragraph (a) of this section and the creator so consents, the revocation or amendment may be approved by the court in a proceeding brought by the creator or a beneficiary if the court is satisfied that:

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

(2) the interests of a beneficiary who does not or cannot consent will be adequately protected; and

(3) the revocation or amendment will not jeopardize any tax described in paragraph (c) of section 7-A-3.15 of this part; and

(4) the revocation or amendment will not jeopardize a beneficiary's eligibility for, or a beneficiary's receipt of, public benefits or both.

(d) A trustee is not an interested person for the purposes of paragraph (c) of this section.

(e) For the purposes of this section, a trustee who exercises a power pursuant to section 7-A-8.18 of this article is not a creator.

§ 7-A-3.17 Modification or termination because of unanticipated circumstances or inability to administer trust effectively

(a) The court may modify the administrative terms of a trust if the modification, because of circumstances not anticipated by the settlor or for any other compelling reason, will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intention.

(b) The court may modify the dispositive terms of a trust, other than a wholly charitable trust or a supplemental needs trust that conforms to the provisions of section 7-A-3.8 of this part, or terminate such trust if, because of circumstances not anticipated by the settlor, including changes in law, modification or termination will further the purposes of the trust; provided, however, no modification allowing invasion of principal for an income beneficiary may be made if the trust terms expressly provide that the settlor does not intend an invasion of principal for an income beneficiary's health, education, maintenance or support. To the extent practicable, the modification shall be made in accordance with the settlor's probable intention.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in accordance with the terms of the trust or as the court may otherwise direct.

§ 7-A-3.18 Cy pres

The rules for cy pres to be applied to this article are provided in subparagraph one of paragraph (c) of section 8-1.1 of this chapter.

§ 7-A-3.19 Modification or termination of uneconomical trust

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. Upon termination of a trust pursuant to this paragraph, the trustee shall distribute the trust property as the trustee determines will best effectuate the settlor's intention.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines, under the circumstances, that the value of the trust property is insufficient to justify the cost of administration. Upon termination of a trust pursuant to this paragraph, the trust property shall be distributed as the court determines will best effectuate the settlor's intention. Nothing in this paragraph shall be deemed to supersede the provisions of paragraph (c) of section 8-1.1 of this chapter governing a wholly charitable trust.

(c) Notwithstanding paragraphs (a) and (b) of this section, a trust shall not be terminated if the express terms of the trust prohibit its early termination.

(d) This section shall not apply to:

(1) an easement for conservation or preservation; or

(2) a supplemental needs trust, pursuant to section 7-A-3.8 of this part; or

(3) a wholly charitable trust, pursuant to subparagraph four of paragraph (c) of section 8-1.1 of this chapter.

§ 7-A-3.20 Reformation to correct mistakes

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intent was and that specific terms of the trust do not carry out that intent because the specific terms were affected by a mistake of fact or law, whether in expression or inducement.

§ 7-A-3.21 Modification to achieve settlor's tax or supplemental needs trust objectives

(a) The court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention in order to achieve the settlor's tax objectives or to conform such trust to the requirements of section 7-A-3.8 of this part. The court may provide that the modification has a retroactive effect.

(b) Cross reference: For provisions regarding the limited power of a trustee to amend a trust for certain tax purposes, see section 11-1.11 of this chapter.

§ 7-A-3.22 Combination and division of trusts

(a) After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts and distribute the trust property to the trustee of each separate trust if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust, including any tax purposes.

(b) The court, having jurisdiction of an express trust, upon the petition of the trustee or of any qualified beneficiary and upon notice to all qualified beneficiaries, may direct the combination of two or more trusts for any reason not directly contrary to the primary purpose of each trust, or may direct the establishment of two or more separate trusts for any reason not directly contrary to the primary purpose of the trust.

(c) Unless the court otherwise directs, the trusts established pursuant to this section by the division of an existing trust shall be deemed to have been created as of the date the divided trust was created; provided that the separate trusts created under paragraph (a) of this section may be deemed created, unless in violation of the limitations pursuant to sections 9-1.1, 10-8.1 and 10-8.2 of this chapter, upon the date or dates provided in the instrument or instruments required by paragraph (g) of this section.

(d) Unless the court directs otherwise, a trust established by the combination of two or more trusts under paragraph (a) of this section shall be deemed to be created on the date specified by the trustee.

(e) Unless the court directs otherwise, and except as provided in paragraph (f) of this section, the property distributed to the separate trust shall be fairly representative of appreciation or depreciation and shall be based upon the fair market value of the assets on the date or dates of the distributions of such assets to the separate trusts.

(f) Where separate trusts are to be created to segregate property transferred in trust by a creator, including but not limited to, a transfer treated as made by a spouse by reason of section 2513 of the United States Internal Revenue Code, from property transferred in trust by one of more different creators or from property transferred pursuant to a disposing instrument from property transferred by the same creator pursuant to another disposing instrument, paragraph (e) of this section shall not apply if the original assets transferred remain or can be traced.

(g) Separate trusts or a trust resulting from the combination of existing trusts shall be established under paragraph (a) of this section by an instrument or instruments in writing, signed and acknowledged by the trustee. Such instruments shall be filed in the office of the clerk of the court having jurisdiction over the trust; except that where the divided trust was a lifetime trust or where all of the combined trusts were lifetime trusts and the divided trust or all of the combined trusts have not been the subject of a proceeding in surrogate's court, no filing is required. Whether or not filing is required, a copy of the instrument or instruments shall be served on all qualified beneficiaries of the trusts, or the guardian of the property, committee, conservator, adult guardian, or personal representative of such persons, by registered or certified mail, return receipt requested, or by personal deliv-

ery or upon application of the trustee in any other manner directed by the court.

(h) In any case where the Internal Revenue Code requires that an election or other action be made or taken by the executor, or if no trustee of a trust under a will has qualified, the term "trustee" as used in this section shall mean the executor or administrator of an estate. In any such case, the trustee shall comply with any action taken by the executor or administrator under this section.

(i) For purposes of this section, a division of a trust into two or more separate trusts to permit one or more such trusts to be governed by article eleven-A of this chapter and another one or more such trusts to be governed by section 11-2.4 of this chapter shall be deemed to be for a reason which is not directly contrary to the primary purpose of the trust unless such division is expressly prohibited by the terms of the disposing instrument.

(j) Unless the terms of the trust that is divided into separate trusts provide otherwise, the commissions allowed to a trustee as determined pursuant to article twenty-three of the SCPA, as amended from time to time, shall not be increased by reason of the establishment of separate trusts pursuant to this section unless the court otherwise permits an increase; provided, however, that such trustee shall be entitled to charge the trust for any additional reasonable and necessary expenses incurred in the administration of such separate trusts.

PART 4. BANK ACCOUNTS IN TRUST FORM

§ 7-A-4.1 Definitions

For the purposes of this part, the following terms shall have the following meanings:

(a) A "beneficiary" means a person who is described by a depositor as a person for whom a trust account is established or maintained.

(b) A "depositor" means a person in whose name a trust account subject to this part is established or maintained.

(c) A "financial institution" means a bank, trust company, national banking association, savings bank, industrial bank, private banker, foreign banking corporation, federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state, a federal credit union, or a credit union chartered and supervised under the laws of a state.

(d) A "trust account" means a savings, share, certificate or deposit account in a financial institution established by a depositor describing himself or herself as trustee for another, other than a depositor describing himself or herself as acting under a will, trust instrument or other instrument, court order or decree.

§ 7-A-4.2 Terms of a trust account

The funds in a trust account, which shall include any dividends or interest thereon, shall be trust funds subject to the following terms:

(a) The trust can be revoked, terminated or modified by the depositor during his or her lifetime only by means of, and to the extent of, withdrawals from or charges against the trust account made or authorized by the depositor or by a writing which specifically names the beneficiary and the financial institution. The writing shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded and shall be filed with the financial institution wherein the account is maintained.

(b) A trust can be revoked, terminated or modified by the depositor's will only by means of, and to the extent of, an express direction concerning such trust account, which shall be described in the will as being in trust for a named beneficiary in a named financial institution. Where the depositor has more than one trust account for a particular beneficiary in a particular financial institution, such a direction will affect all such accounts, unless the direction is limited to one or more accounts specifically identified by account number in addition to the foregoing requirements. A testamentary revocation, termination or modification pursuant to this paragraph can be affected by express words of revocation, termination or modification, or by a specific bequest of the trust account, or any part of it, to someone other than the beneficiary. A bequest or part of a trust account shall operate as a pro tanto revocation to the extent of the bequest.

(c) If the depositor survives the beneficiary, the trust shall terminate and title to the funds shall continue in the depositor free and clear of the trust.

(d) If the beneficiary survives the depositor, and the depositor's will contains no provision revoking, terminating or modifying the trust account under paragraph (b) of this section, the trust shall terminate and title to the funds shall vest in the beneficiary free and clear of the trust, subject to the rules for cy pres, pursuant to subparagraph one of paragraph (c) of section 8-1.1 of this chapter, if the beneficiary is a charitable organization that at the time of vesting or of payment of the funds is not in existence or is not carrying out charitable activities or if the circumstances otherwise support the application of cy pres, and further subject to the provisions of section one thousand two-a of the not-for-profit corporation law if the beneficiary is a dissolved or dissolving charitable corporation to which such section applies. The application of cy pres shall take precedence over the rule governing payment to multiple beneficiaries pursuant to paragraph (b) of section 7-A-4.6 of this part.

(e) If the beneficiary survives the depositor and the depositor's will contains language sufficient under paragraph (b) of this section, to revoke, terminate or modify the trust, in whole or in part, that part of the trust which is affected shall terminate and title to the funds shall be subject to disposition by the depositor's will, free and clear of the trust.

§ 7-A-4.3 Payment to beneficiary

(a) If the beneficiary survives the depositor under the circumstances provided in paragraph (d) of section 7-A-4.2 of this part, the funds shall be paid to the beneficiary upon his or her order, if, at the time of his or her demand for payment of all or part of the funds, he or she is eighteen or more years of age.

(b) If the beneficiary survives the depositor under the circumstances provided in paragraph (d) of section 7-A-4.2 of this part, and if the beneficiary is under eighteen years of age at the time demand for payment of any part or all of the funds is made, the funds may be paid to the order of the parent or parents of the beneficiary to be held for the use and benefit of such infant beneficiary or to the order of the duly appointed guardian of the property of the beneficiary, if the funds are equal to or are less than ten thousand dollars; but if the funds are more than ten thousand dollars, the funds shall be paid only to the order of the duly appointed guardian of the property of the beneficiary.

§ 7-A-4.4 Effect of payment

A financial institution which upon the death of a depositor and, prior to service upon it of a restraining order, injunction or other appropriate process from a court of competent jurisdiction prohibiting payment, makes payment to a beneficiary, or if the beneficiary is under eighteen years of age, to the guardian of the property or to the parent or parents of the infant pursuant to section 7-A-4.3 of this part, shall, to the extent of such payment, be released from liability to any person claiming a right to the funds and the receipt or acquittance of the person to whom payment is made shall be a valid and sufficient release and discharge of the financial institution.

§ 7-A-4.5 Joint depositors

If a trust account is established in the names of more than one depositor, in a form to be paid or delivered to any, or the survivor of them, in trust for another, such account shall be subject to the terms of this part, except that the title to the funds on deposit, as between the depositors, shall be governed by article XIII-E of the banking law.

§ 7-A-4.6 Multiple beneficiaries

(a) Whenever any proceeds of a trust account would pass to two or more beneficiaries, pursuant to section 7-A-4.2 of this part, such proceeds shall pass to such beneficiaries in equal proportions, unless the terms of the trust provide otherwise.

(b) Whenever any proceeds of a trust account would pass to two or more beneficiaries, pursuant to section 7-A-4.2 of this part, and one or more of the beneficiaries predeceases the depositor, such proceeds shall pass to the surviving beneficiary or beneficiaries in equal proportions, unless the terms of the trust provide otherwise or unless the rules of cy pres take precedence, pursuant to section 7-A-4.2 of this part.

§ 7-A-4.7 Application

This part shall apply to all funds in trust accounts, as defined pursuant to paragraph (d) of section 7-A-4.1 of this part, which are in existence on the effective date of this article, except that its provisions shall not impair or defeat any rights which have accrued prior to such date.

§ 7-A-4.8 Rights not affected

This part shall not affect:

(a) the rights of creditors of the depositor or his or her estate; or

(b) the rights of fiduciaries of the estate of the depositor; or

(c) the rights of the surviving spouse of the depositor.

PART 5. RIGHTS OF BENEFICIARIES AND CREDITORS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§ 7-A-5.1 Rules regarding transfer of income in trust; rights of creditors

(a) A right of a beneficiary to receive income from property and apply it to the use of or pay it to any person may not be transferred by assignment or otherwise unless a power to transfer such right, or any part thereof, is conferred upon such beneficiary by the instrument creating or declaring the trust. The provisions of this paragraph shall not apply to:

(1) a beneficiary's income interest with respect to trust property attributable to such beneficiary; or

(2) the proceeds of a life insurance policy, pursuant to section 7-A-5.3 of this part.

(b) Notwithstanding paragraph (a) of this section:

(1) The beneficiary of a trust who has the right to receive income from property and apply it to the use of or pay it to any person may, unless otherwise provided in the instrument creating or declaring such trust, transfer any amount in excess of ten thousand dollars of the annual income to which the beneficiary is entitled from such trust to the spouse, issue, ancestors, brothers, sisters, uncles, aunts, nephews or nieces of such beneficiary, or to a trustee, guardian for property, committee, conservator, curator, custodian, or the donee of a power during minority for the benefit only of any such person bearing such relationship to the beneficiary. Provided that such transfer is evidenced by a written instrument that is signed and acknowledged by the beneficiary and delivered to the trustee of the trust, together with an affidavit by the beneficiary that such transfer and any like transfer concurrently in effect are for all or part of the excess over ten thousand dollars of the annual income from such trust to which such beneficiary is entitled, and that the beneficiary has not received and is not to receive any consideration in money or money's worth for the transfer.

(2) Any such transfer shall be effective in any year only as to income from such trust in excess of ten thousand dollars to which such beneficiary is entitled, and for this purpose, all previous like transfers applicable to a given year shall be taken into account. If two or more transfers are made in or for any year in a total amount exceeding the sum of ten thousand dollars, transferees shall be preferred in the order in which the instruments of transfer were delivered to the trustee.

(3) A trustee shall be exonerated and fully discharged for any payment made to a transferee in reliance on the affidavit of a beneficiary pursuant to subparagraph one of this paragraph.

(4) The provisions of this paragraph shall not apply to sections 7-A-5.3 and 7-A-5.5 of this part.

(c) A transferee of income may, if he or she has not received or is not to receive any consideration in money or money's worth therefor, make a further transfer of such income only to one or more of the permissible transferees referred to in subparagraph one of paragraph (b) of this section, other than a prior transferor; provided, however, that upon the death of a transferee, any income not so transferred by him or her shall be an asset of his or her estate, subject to his or her testamentary disposition or passing to his or her distributees under the statutes of descent and distribution.

(d) A beneficiary who has the right to receive the income from property and apply it to the use of or pay it to any person, is not precluded by anything contained in this section from transferring by assignment or otherwise any part or all of such income to or for the benefit of persons whom the beneficiary is legally obligated to support.

(e) To the extent a trust beneficiary validly transfers an income interest during his or her lifetime or at death if the interest has not terminated, the transferee becomes a beneficiary of the trust.

(f) A beneficiary's income interest is subject to the claims of creditors of the beneficiary to the extent provided by law, including article fifty-two of the civil practice law and rules and sections 7-A-5.4 and 7-A-5.7 of this part.

§ 7-A-5.2 Rules regarding transfer of principal interests in trust; rights of creditors

(a) For all trusts created prior to the effective date of this article, the right of a beneficiary of a trust to receive principal may be transferred by assignment or otherwise, unless such transfer is prohibited by the instrument creating or declaring the trust. Such a provision

shall not apply to a beneficiary's interest in principal with respect to property attributable to that trust beneficiary.

(b) For all trusts created on or after the effective date of this article, the right of a beneficiary of a trust to receive principal shall not be transferred by assignment or otherwise, unless a power to transfer such right, or any part thereof, is conferred upon such beneficiary by the instrument creating or declaring the trust. The provisions of this paragraph shall not apply to a beneficiary's interest in principal with respect to property attributable to that trust beneficiary, or to proceeds of a life insurance policy pursuant to section 7-A-5.3 of this part.

(c) Whenever a trust is created:

(1) to the extent a trust beneficiary validly transfers an interest in principal during lifetime or at death if the interest has not terminated, the transferee becomes a beneficiary of the trust.

(2) a beneficiary's interest in principal is subject to the claims of creditors of the beneficiary to the extent provided by law, including article fifty-two of the civil practice law and rules, and sections 7-A-5.4 and 7-A-5.7 of this part.

§ 7-A-5.3 When proceeds of life insurance policy inalienable

The proceeds of a life insurance policy which, under a trust or other agreement, are upon the death of the insured left with the insurance company shall not be:

(a) transferred;

(b) subject to commutation or encumbrance; or

(c) subject to legal process except in an action for necessaries, if provisions to such effect were incorporated in such trust or other agreement.

§ 7-A-5.4 Special creditor exceptions to restraints on involuntary alienation

(a) An order of support directing the payment of alimony, maintenance, support or child support may be enforced against the income interest of a beneficiary who is subject to a spendthrift provision, pursuant to section five thousand two hundred forty-one of the civil practice law and rules, and against a principal interest that is subject to a spendthrift provision.

(b) A spendthrift provision shall be unenforceable against:

(1) a judgment creditor who has provided goods or performed services suitable to the condition in life of the person to whom they are furnished or for whose benefit they are performed, and which meet his or her actual needs at the time such goods are provided or services are performed;

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

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

(c) Nothing in this section shall be construed to limit the rights of creditors as otherwise provided by law.

§ 7-A-5.5 Discretionary trusts

(a) A beneficiary shall not transfer his or her discretionary trust interest whether or not the interest is spendthrifted.

(b) A beneficiary's discretionary trust interest shall be subject to the claims of creditors of the beneficiary to the extent provided by law, including section 7-A-5.7 of this part and article fifty-two of the civil practice law and rules.

(c) A beneficiary of a discretionary trust interest has the right to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

§ 7-A-5.6 Creditor's claim against trust contributor to a revocable trust

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

(1) During the lifetime of the trust contributor, the property of a trust which is revocable by the trust contributor shall be subject to claims of the trust contributor's creditors.

(2) After the death of a trust contributor, and subject to the trust contributor's right to direct the source from which liabilities shall be paid, the property of a trust over which immediately before the trust contributor's death the trust contributor has the power to revoke is subject to claims of the trust contributor's creditors, costs of administration of the trust contributor's estate, and the expenses of the trust contributor's funeral and disposal of the trust contributor's remains to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, and expenses.

(b) For purposes of paragraph (a) of this section, a trust created before the date of the enactment of this article is a revocable trust only if the creator reserved an unqualified power of revocation pursuant to section 10-10.6 of this chapter.

(c) During the period the holder of a power of withdrawal may exercise such power, the property subject to the power is subject to the claims of the powerholder's creditors, the creditors of the powerholder's estate and the expense of administering the powerholder's estate to the extent provided pursuant to section 10-7.2 of this chapter.

§ 7-A-5.7 Creditor claims to property contributed to a trust by a trust beneficiary

(a) To the extent that a beneficiary's trust interest is attributable to property contributed by a beneficiary, whether or not the beneficiary's interest is subject to a spendthrift provision, the interest is subject to the claims of the beneficiary's existing or subsequent creditors.

(b) For the purposes of paragraph (a) of this section, upon the lapse, release, or waiver of a power of withdrawal, the holder of the power of withdrawal is treated as making a contribution of property to the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest amount specified at the time of the lapse, release, or waiver in section 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code.

(c) Paragraph (a) of this section shall not apply to property contributed by a beneficiary to a trust for the beneficiary's spouse:

(1) described in section 2523(e) of the Internal Revenue Code; or

(2) for which the election described in section 2523(f) of the Internal Revenue Code has been made; and

(3) to a trust to the extent the assets of such trust are attributable to a trust described in either subparagraph one or two of this paragraph after the death of the beneficiary's spouse.

(d) A provision in any trust, other than a testamentary trust or a trust which meets the requirements of subparagraph two of paragraph (b) of subdivision two of section three hundred sixty-six of the social services law and of the regulations implementing such provisions, which provides directly or indirectly for the suspension, termination or diversion of the principal, income or beneficial interest of either the

creator or the creator's spouse in the event that the creator or creator's spouse should apply for medical assistance or require medical, hospital or nursing care or long term custodial, nursing or medical care shall be void as against the public policy of the state of New York, without regard to the irrevocability of the trust or the purpose for which the trust was created.

(e) Paragraph (a) of this section shall not apply by reason of the trustee's authority to pay trust income or principal to the trust contributor pursuant to section 7-A-8.17 of this article. Nor shall paragraph (a) of this section apply where the trustee, as defined pursuant to paragraph (b) of section 7-A-8.17 of this article, shall be authorized under the trust instrument or any other provision of law to pay or reimburse the trust contributor for any tax on trust income or trust principal that is payable by the trust contributor under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust contributor shall be entitled to reach any trust property based on the discretionary powers described in this paragraph.

(f) Cross-reference: For provisions regarding protections for a debtor's benefits under the terms of a specified retirement plan, savings plan, or individual retirement account, see subdivision (c) of section five thousand two hundred five of the civil practice law and rules.

§ 7-A-5.8 Overdue distribution

(a) For the purposes of this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term shall not include a distribution subject to the exercise of the trustee's discretion even if the discretion is expressed in the form of a standard of distribution, or the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor may compel the trustee to make a mandatory distribution of income or principal, including a distribution upon termination of the trust, to the beneficiary if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§ 7-A-5.9 Personal obligations of trustee

Trust property shall not be subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

PART 6. REVOCABLE TRUSTS

§ 7-A-6.1 Capacity of trust contributor of revocable trust

The trust contributor's capacity to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. Notwithstanding the foregoing, the trust contributor's capacity required to irrevocably release a power to revoke or amend such a trust is the same as that required to make a gift.

§ 7-A-6.2 Revocation or amendment of revocable trust

(a) If a revocable trust has more than one trust contributor:

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

(2) to the extent the trust consists of property other than community property, each trust contributor may revoke or amend the trust with regard to the portion of the trust property attributable to such trust contributor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the trust contributors, the trustee shall promptly notify the other trust contributors of such revocation or amendment.

(b) The trust contributor may revoke or amend a revocable trust:

(1) by substantially complying with any method provided in the terms of the trust requiring a writing; or

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

(A) a later will that expressly refers to the trust or a particular provision thereof; or

(B) by executing an instrument that both expressly refers to the trust or a particular provision thereof and complies with the formalities for the creation of a lifetime trust as provided pursuant to paragraph (c) of section 7-A-3.3 of this article, and such revocation or amendment shall take effect as of the date of such execution.

(c) Upon the revocation of a revocable trust, the trustee shall deliver the trust property as the trust contributor directs.

(d) A trust contributor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust, the power of attorney, or by law.

(e) A guardian of the trust contributor may exercise a trust contributor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(f) A trustee who does not know that a trust has been revoked or amended shall not be liable to the trust contributor or the trust contributor's successors in interest for distributions made and other actions taken on the assumption that such trust had not been amended or revoked.

(g) Written notice of an amendment or revocation by the trust contributor shall be delivered to at least one other trustee within a reasonable time if the trust contributor is not the sole trustee, but failure to give such notice shall not affect the validity of the amendment or revocation, or the date upon which the amendment or revocation shall take effect. No trustee shall be liable for any act reasonably taken in reliance on an existing trust instrument prior to actual receipt of notice of amendment or revocation thereof. Absent written consent, no trustee shall be liable for the failure to comply with an amendment that expands, restricts or otherwise modifies the trustee's duties, powers, obligations, or compensation for a period of sixty days after receipt of notice of amendment.

(h) Cross-reference: For provisions regarding lifetime trusts being irrevocable unless the terms of the trust expressly provide otherwise, see paragraph (e) of section 7-A-3.3 of this article.

§ 7-A-6.3 Rights and duties in revocable trusts; powers of withdrawal

(a) While a trust is revocable, the trustee shall follow a direction of the person having the unqualified power to revoke such trust that is contrary to the terms of the trust, unless the trustee has actual knowledge of the settlor's lack of capacity. The trustee shall not be liable for complying with the terms of the revocable trust or any revocation,

amendment or direction by the settlor when the settlor lacks capacity unless the trustee has actual knowledge of the lack of capacity.

(b) While a trust is revocable and the person having the power to revoke such trust is the only present beneficiary, the rights of all other beneficiaries are subject to the control of, the duties of the trustee are owed exclusively to, and the trustee is exclusively accountable to such person having the power to revoke the trust.

(c) After the death of a person, pursuant to paragraph (b) of this section:

(1) the personal representative of such person has standing to petition the court for an order compelling the trustee to account for the period before the death of the person having the power to revoke and has standing to file objections on the grounds that the trustee violated the trustee's duties to the person having the power to revoke; and

(2) the beneficiaries of the trust have standing to petition the court for an order compelling the trustee to account for the period before the death of the person having the power to revoke and have standing to file objections on the grounds that the trustee violated the trustee's duties to the person having the power to revoke and consequently impaired the interests of the objecting beneficiaries in such trust.

(d) If the person having the power to revoke the trust loses the capacity to exercise the power to revoke and if by reason of that loss of capacity additional persons become present beneficiaries of the trust, the trustee's duties shall be owed to those persons as well, so long as they are present beneficiaries of the trust.

(e) During the period the power to revoke the trust may be exercised, the holder of a non-lapsing power of withdrawal shall be treated, for the purposes of paragraphs (a) and (b) of this section, as if the holder of the non-lapsing power of withdrawal were the person having a power to revoke the trust to the extent of the property subject to such power.

§ 7-A-6.4 Limitations on action contesting validity of revocable trust; distribution of trust property

(a) The following persons may commence a judicial proceeding after the settlor's death to contest the validity of a trust that was revocable at the settlor's death:

(1) the personal representative of the settlor;

(2) the trustee of a trust created under the will of the settlor duly admitted to probate by a court of competent jurisdiction;

(3) the trustee of a trust to which a disposition was validly made by the will of the settlor duly admitted to probate by a court of competent jurisdiction;

(4) an adversely-affected beneficiary of the will of the settlor admitted to probate by any court of competent jurisdiction, or the guardian of or the agent duly authorized under a power of attorney granted by such beneficiary;

(5) the attorney general if an adversely-affected beneficiary of the will of the settlor admitted to probate by any court of competent jurisdiction is a charitable organization or an unnamed charitable beneficiary; or

(6) any adversely-affected distributee of the settlor.

A person who has been issued limited letters under SCPA 702(9) may also commence a proceeding under this paragraph.

(b) A petition to contest the validity of a revocable trust shall be filed by the earlier of:

(1) six years after the settlor's death in the case of trusts in existence on the effective date of this article, and in all other cases, three years after the settlor's death; or

(2) one hundred twenty days after the trustee sent the persons, described pursuant to paragraph (a) of this section, a copy of the trust instrument and a notice informing such persons of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding. Notice given to some but not all of the persons, described pursuant to paragraph (a) of this section is effective only as to the person or persons receiving such notice.

(c) Process shall issue to the following persons if not petitioners:

(1) all trustees of the trust that was revocable at the settlor's death;

(2) all persons designated as beneficiaries in the trust that was revocable at the settlor's death;

(3) all distributees of the settlor, unless the court dispenses with such process;

(4) the administrator of the settlor's estate, if any;

(5) the executor or executors named in and the beneficiaries under the will of the settlor admitted to probate or offered for probate in any court of competent jurisdiction;

(6) the trustee of a trust to which a disposition was validly made by the will of the settlor duly admitted to probate or offered for probate in a court of competent jurisdiction;

(7) the attorney general if the trust that was revocable at the settlor's death is a charitable trust; and

(8) such other persons as the court in its discretion may deem necessary.

(d) In any proceeding concerning the validity of a trust that was revocable at the settlor's death, the burden of proof on the issue of the settlor's capacity, due execution, the existence of undue influence, and the existence of fraud shall be on the person or persons seeking to challenge the validity of the trust instrument.

(e) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee shall not be subject to liability for doing so, unless:

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

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

(f) A beneficiary of a trust that is determined to have been invalid shall be liable to return any distribution received.

(g) Where applicable, this section shall apply to a trust contributor who is not a settlor.

PART 7. OFFICE OF TRUSTEE

§ 7-A-7.1 Accepting or declining trusteeship of a lifetime trust

(a) Except as otherwise provided in paragraph (c) of this section, a person designated as trustee of a lifetime trust shall accept the trusteeship by:

(1) complying with the execution requirements pursuant to paragraph (c) of section 7-A-3.3 of this article; or

(2) substantially complying with a method of acceptance provided in the terms of the trust; or

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

(b) A person designated as trustee of a lifetime trust who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee of a lifetime trust who does not accept the trusteeship within a reasonable time after knowing of the designation and knowing of the occurrence of the event that makes the designation effective is deemed to have rejected the trusteeship.

(c) A person designated as trustee of a lifetime trust, without accepting the trusteeship, may:

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

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

§ 7-A-7.2 Trustee's bond

(a) Except as provided in SCPA 710(2) and by paragraph (c) of this section, a trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) A trust company, as defined pursuant to subdivision two of section two of the banking law, any bank authorized to exercise fiduciary powers and any national bank having a principal, branch or trust office in this state and duly authorized to exercise fiduciary powers need not give a bond unless a bond is expressly required of such trust company or bank by the terms of the trust.

§ 7-A-7.3 Co-trustees

(a) Co-trustees who are unable to reach a unanimous decision with respect to the exercise of a joint power may act by majority decision.

(b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may continue to act as trustees.

(c) A co-trustee shall participate in carrying out the trustee's duties and in exercising joint powers unless the co-trustee is unavailable to do so because of absence, illness, disqualification under other law, or other temporary incapacity or the co-trustee has properly delegated the performance of the duty or exercise of the joint power to an agent or another trustee pursuant to section 7-A-8.7 of this article.

(d) If a co-trustee is either unwilling to perform duties or exercise joint powers or is unavailable to perform duties or exercise joint powers because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a majority of the remaining co-trustees may act.

(e) The rules for delegation by a trustee to another trustee are provided in paragraph (e) of section 7-A-8.7 of this article.

(f) Except as otherwise provided in paragraph (h) of this section, a trustee who does not join in an action of another trustee shall not be

liable for the action if such trustee is unavailable to join in the action due to absence, illness, disqualification under other law or other temporary incapacity, or if such trustee has properly delegated the performance of the action pursuant to section 7-A-8.7 of this article.

(g) Except as otherwise provided in paragraph (h) of this section, a dissenting trustee who joins in carrying out a decision of a majority of the trustees and who notified in writing any co-trustee of the dissent at or before the time of carrying out the decision shall not be liable for the consequences of the majority decision.

(h) A trustee shall not be excused from liability for failing to exercise reasonable care to:

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

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

(i) For the purposes of this section, a joint power shall include a power in a trustee to invade trust principal pursuant to section 7-A-8.18 of this article or under the terms of the dispositive instrument.

(j) Cross-reference: For provisions regarding excluded co-trustees, see section 7-A-5.1 of this article.

§ 7-A-7.4 Application to excluded co-trustee

(a) If the terms of the trust confer upon a co-trustee, to the exclusion of another co-trustee, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the duties and liabilities of the excluded trustee are as follows:

(1) If the terms of the governing instrument confer upon the co-trustee the power to direct certain actions of the excluded trustee, the excluded trustee shall act in accordance with the direction and shall have no duty to act in the absence of such direction and shall not be liable, individually or as a fiduciary, for any loss resulting directly or indirectly from compliance with the direction, unless compliance with such direction constitutes willful misconduct on the part of the directed co-trustee;

(2) If the terms of the governing instrument confer upon the co-trustee exclusive authority to exercise any power, the excluded trustee shall not be liable, individually or as a fiduciary, for any loss resulting directly or indirectly from the action taken by such co-trustee in the exercise of the power; and

(3) The excluded trustee has no duty to monitor the conduct of the co-trustee, provide advice to the co-trustee or consult with or request directions from the co-trustee. The excluded trustee shall not be required to give notice to any beneficiary of any action taken or not taken by the co-trustee whether or not the excluded trustee agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing directions of the co-trustee, including confirming that the directions of the co-trustee have been carried out, do not constitute monitoring of the co-trustee nor do they constitute participation in decisions within the scope of the co-trustee's authority.

(b) The co-trustee holding the power to take certain actions with respect to the trust shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustee were not in office and shall have the exclusive obligation to account to the beneficiaries and defend any action brought by the beneficiaries with respect to the exercise of the power.

§ 7-A-7.5 Vacancy in trusteeship; appointment of successor

(a) A vacancy in a trusteeship occurs if:
(1) a person designated as trustee rejects the trusteeship;
(2) a person designated as trustee cannot be identified or does not exist;
(3) a trustee resigns;
(4) a trustee is disqualified or removed;
(5) a trustee dies;
(6) a guardian is appointed for an individual serving as trustee; or
(7) a trust instrument so provides.
(b) If one or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee. If for any reason the trust has no remaining trustee, the trust estate immediately vests in the supreme court or surrogate's court, as the case may be, unless the settlor provides otherwise.
(c) A vacancy in a trusteeship of a lifetime noncharitable trust that is required to be filled shall be filled in the following order of priority:
(1) by a person designated in the terms of the trust to act as successor trustee;
(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
(3) by a person appointed by the court.
(d) A vacancy in a trusteeship of a lifetime charitable trust that is required to be filled shall be filled in the following order of priority:
(1) by a person designated in the terms of the trust to act as successor trustee;
(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or
(3) by a person appointed by the court.
(e) A vacancy in a trusteeship of a testamentary trust that is required to be filled shall be filled pursuant to SCPA 706 or 1502 by the court having jurisdiction of the decedent's estate.
(f) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee as provided in SCPA 1502.
(g) Nothing in this section shall be construed to limit the application of SCPA 706 and any other application of SCPA 1502.
§ 7-A-7.6 Suspension of powers of trustee in war service
(a) Whenever a trustee of an express trust is engaged in war service, as defined pursuant to this section, such trustee or any other person interested in the trust estate may present a petition to the supreme court or the surrogate's court, as the case may be, to suspend the powers of such trustee while he or she is so engaged and until the further order of the court, and if the suspension of such trustee will leave no person acting as trustee or leave a beneficiary of such trust as the only acting trustee thereof, the petition shall pray for the appointment of a successor trustee, unless a successor has been named in the trust instrument and is not engaged in war service or is not for any other reason unable or unwilling to act as such trustee.
(b) For the purposes of this section, a trustee is engaged in war service in any of the following cases:

(1) If the trustee is a member of the armed forces of the United States or of any of its allies, or if the trustee has been accepted for such service and is awaiting induction.

(2) If the trustee is engaged in any work abroad in connection with a governmental agency of the United States or with the American Red Cross or any other body with similar objectives.

(3) If the trustee is interned in any enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state.

(4) If the trustee is a member of the merchant marine or similar service.

(c) Where the application is made by a trustee engaged in war service, notice shall be given to such persons and in such manner as the court may direct. Where the application is made by any other person interested in the trust estate and the trustee is in the armed forces of the United States, notice shall be given to such trustee in such manner as the court may direct. In every other case, where the application is made by a person other than the trustee, notice thereof shall be given to such persons and in such manner as the court may direct.

(d) Upon the filing of the petition and proof of service of notice pursuant to paragraph (c) of this section, the court may, notwithstanding any other provision of law, suspend the trustee engaged in war service from the exercise of all of such trustee's powers and duties while engaged in such service and until further order of the court. The order may further provide that the remaining trustee or, if there is none, the successor named in the trust instrument or appointed by the court may exercise all of the powers and be subject to all of the duties of the original trustee.

(e) The successor trustee shall be limited to commissions as computed pursuant to SCPA 2308 or 2309, whichever is applicable, upon income received and disbursed and upon principal disbursed. Commissions may also be allowed under such sections upon rents if the trustee is authorized or required to collect the rents of and manage real property. In case of the resignation or removal of the suspended trustee, or in the event of such trustee's death, the provisions of this paragraph computing the commissions shall not apply and the trustee's commissions shall be computed in the same manner as those of any other trustee.

(f) When the suspended trustee ceases to be engaged in war service, the trustee may, upon application to the court and upon such notice as the court may direct, be reinstated as trustee if any of the duties of such office remain unexecuted. If the suspended trustee is reinstated, the court shall remove the trustee's successor and make such other order as justice requires, but such removal shall not bar the successor from subsequently qualifying as a trustee if for any reason it thereafter becomes necessary to appoint a trustee.

§ 7-A-7.7 Resignation of trustee

(a) A trustee may resign:

(1) upon at least thirty days' notice to the trust contributor and all co-trustees in the case of a revocable trust or the qualified beneficiaries and all co-trustees, in the case of any other trust; or

(2) with the approval of the court.

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

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee shall not be discharged or affected by the trustee's resignation.

(d) The resignation of a trustee of a testamentary trust shall not be effective until the trustee provides written notice of such resignation to the court that has taken jurisdiction over the trust.

§ 7-A-7.8 Removal of trustee

(a) In addition to any provision for removal in the trust instrument, the settlor, a co-trustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

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

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

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

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, provided that the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with the purposes of the trust, and a suitable co-trustee or successor trustee is available. A corporate reorganization is presumptively not a substantial change of circumstances.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief pursuant to paragraph (b) of section 7-A-10.1 of this article as may be necessary to protect the trust property or the interests of the beneficiaries.

(d) For the purposes of this section, "court" shall refer to the supreme court or the surrogate's court.

(e) Nothing in this section shall be construed to limit the application of SCPA 711, 712, 713 and 719.

§ 7-A-7.9 Delivery of property by former trustee

(a) Unless a co-trustee remains in office or the court orders otherwise, and until the trust property is delivered to a successor trustee or other person entitled to such trust property, a trustee who has resigned or been removed shall have the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession, subject to a reasonable reserve for the expenses of such trustee's accounting, to the co-trustee, successor trustee, or other person entitled to such trust property.

§ 7-A-7.10 Compensation of trustee

The rules for compensating a trustee are provided in SCPA 2308 through 2313.

§ 7-A-7.11 Reimbursement of expenses

(a) A trustee is entitled to be reimbursed out of the trust property, with interest, if appropriate, at a reasonable rate, for:

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

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

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

§ 7-A-7.12 Accounting by trustee in supreme court

Any proceeding for an accounting or other relief brought by a trustee or brought by a substituted or successor trustee may be commenced by such notice to the beneficiaries of the trust as the supreme court may direct.

PART 8. DUTIES AND POWERS OF TRUSTEE

§ 7-A-8.1 Duty to administer trust

The trustee shall administer the trust in good faith, in accordance with its terms and purposes, and in accordance with this article and other applicable law.

§ 7-A-8.2 Duty of loyalty

(a) As between a trustee and the beneficiaries, the duty of loyalty requires that a trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee pursuant to section 7-A-10.11 of this article, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account, or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests, is a breach of the duty of loyalty and voidable by a qualified beneficiary unless:

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

(2) the transaction was approved by the court;

(3) the qualified beneficiary did not commence a judicial proceeding within the time allowed by section 7-A-10.5 of this article;

(4) the qualified beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 7-A-10.8 of this article; or

(5) the transaction involves a contract entered into or claim acquired by the trustee before such person became trustee.

(c) For the purposes of paragraph (b) of this section, a sale, encumbrance, or other transaction involving the investment or management of trust property is conclusively presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's issue, siblings, parents, or their spouses;

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

(4) a corporation or other person or enterprise in which the trustee, or a person described in subparagraph one, two or three of this paragraph, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a qualified beneficiary that does not concern trust property but that occurs during the existence of the trust, and which is outside the ordinary course of the trustee's business or on terms and conditions substantially less favorable than those the trustee generally offers customers similarly situated, shall

be voidable by the qualified beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity is affected by a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust. Such transaction is a breach of the duty of loyalty and is voidable by a qualified beneficiary, subject to the exceptions in subparagraphs one through five of paragraph (b) of this section.

(f) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trustee is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who shall manage the corporation or enterprise in the best interests of the beneficiaries.

(g) This section shall not preclude the following transactions, if fair to the beneficiaries:

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

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trustee and another trustee of another trust or decedent's estate or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a bank, banking department or insured depository institution operated by the trustee or an affiliate; or

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

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that may violate this section if entered into by the trustee.

(i) Cross-reference: For provisions regarding other remedies for a breach of trust, see section 7-A-10.1 of this article, and for provisions regarding a trustee's liability that may require the restoration of trust property, see subparagraph two of paragraph (b) of section 7-A-10.2 of this article.

§ 7-A-8.3 Duty of impartiality

If a trust has two or more beneficiaries, the trustee shall have the duty to act impartially in investing, managing, distributing and otherwise administering the trust property, giving due regard to the beneficiaries' respective interests.

§ 7-A-8.4 Duty of prudent administration

(a) A trustee shall have the duty to administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) Cross-reference: For provisions regarding the duties under the prudent investor act, see section 11-2.3 of this chapter.

§ 7-A-8.5 Duty regarding costs of administration

In administering a trust, the trustee shall have a duty to incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee taking into account the provisions of section 7-A-8.7 of this part to the extent such section applies.

§ 7-A-8.6 Duty to exercise trustee's special skills and expertise

A trustee who has represented to the settlor that such trustee has special skills, other than special investment skills, or expertise, shall use those special skills or expertise, subject to the rules governing trustees with special investment skills pursuant to subparagraph six of paragraph (b) of section 11-2.3 of this chapter.

§ 7-A-8.7 Powers and duties regarding delegation by trustee to agent or another trustee

(a) A trustee may delegate to an agent duties and powers that a prudent trustee could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of the governing instrument;

(3) periodically reviewing the agent's exercise of the delegated function and compliance with the scope and terms of the delegation;

(4) taking any appropriate action based on the trustee's review; and

(5) controlling the overall cost by reason of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trustee and the beneficiaries to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the agent from liability for failure to meet such duty is contrary to public policy and void.

(c) A trustee who complies with paragraph (a) of this section shall not be liable for an action of the agent to whom the function was delegated.

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

(e) A trustee may delegate duties and powers to a co-trustee that a prudent trustee could properly delegate under the circumstances.

(1) In making a delegation under this paragraph, the trustee shall exercise reasonable care, skill, and caution in:

(A) selecting a trustee suitable to exercise the delegated function;

(B) establishing the scope and terms of the delegation consistent with the purposes of the governing instrument; and

(C) periodically reviewing the trustee's exercise of the delegated function and compliance with the scope and terms of such delegation.

(2) A trustee who complies with subparagraph one of this paragraph shall not be liable for an action of the trustee to whom the function was delegated.

(3) Unless a delegation was irrevocable, a trustee may revoke a delegation previously made pursuant to this paragraph.

§ 7-A-8.8 Duty to control and protect trust property

A trustee shall have the duty to take reasonable steps to take control of and protect the trust property.

§ 7-A-8.9 Duty regarding recordkeeping and identification of trust property

(a) A trustee shall have the duty to keep adequate records of the administration of the trust.

(b) A trustee shall have the duty to keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in paragraph (d) of this section, or in any other provision of this article, a trustee shall have the duty to cause the trust property to be designated as held in the trustee's

capacity as trustee so that the interest of the trustee, to the extent capable of registration, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee may invest as a whole the property in which the trustee has interests under two or more trust instruments, the trustee shall have the duty to maintain records clearly indicating the respective interests of the trustee under each trust instrument.

(e) Notwithstanding any other provision of this section to the contrary, this section shall not be construed to abridge in any way any duties imposed, or any powers conferred, upon a trustee under any other provision of this chapter, including but not limited to, the provisions of section 11-1.6 of this chapter.

§ 7-A-8.10 Duty to enforce and defend claims

A trustee shall have the duty to take reasonable steps to enforce claims of the trustee in the trustee's capacity as such and to defend claims against the trustee in such capacity.

§ 7-A-8.11 Duty to collect trust property

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

§ 7-A-8.12 Duty to inform and report

(a) Unless unreasonable under the circumstances, a trustee shall have the duty to promptly respond to a beneficiary's request for information related to the administration of a specifically identified trust in which the beneficiary has an interest, including a report containing the information referred to in paragraph (c) of this section.

(b) A trustee:

(1) upon request of a beneficiary, shall have the duty to promptly furnish to the beneficiary a copy of the terms of the trust that describe or affect the beneficiary's interest;

(2) within sixty days after accepting a trusteeship or if later, sixty days after the effective date of this article, the trustee shall have the duty to notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, or if later, sixty days after the effective date of this article, the trustee shall have the duty to notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided pursuant to paragraph (c) of this section; and

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

(c) A trustee shall have the duty to send to current recipients or permissible recipients of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a co-trustee remains in office, a report shall be sent to the qualified beneficiaries by the former trustee. A personal representative

or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

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

(e) Subparagraphs two and three of paragraph (b) shall not apply to a trustee who accepted a trusteeship or was issued letters of trusteeship before the effective date of this article, to an irrevocable trust created before the effective date of this article, or to a revocable trust that becomes irrevocable before the effective date of this article.

(f) Nothing in this section shall be construed to limit the application of SCPA 2102(1), 2309(4) and 2312(6).

(g) Cross-reference: For provisions regarding the rights and duties in revocable trusts, see section 7-A-6.3 of this article.

§ 7-A-8.13 Duty regarding discretionary powers

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall have the duty to exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust.

(b) The trustee shall not be compelled to exercise the trustee's discretion under paragraph (a) of this section in such a way that would jeopardize a beneficiary's eligibility for, or receipt of, public benefits or both.

(c) The rules that address the exercise of discretionary powers by a trustee-beneficiary are set forth in section 10-10.1 of this chapter.

§ 7-A-8.14 General powers of trustee

(a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust, a court order or decree or other applicable law:

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

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

(C) any other powers conferred by this article.

(b) The court having jurisdiction of the trust may authorize the trustee to exercise any power which in the judgment of the court is necessary for the proper administration of the trust.

(c) The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

§ 7-A-8.15 Specific powers of trustee

Without limiting the authority conferred, or the restrictions imposed by section 7-A-8.14 of this part, a trustee may:

(a) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(b) acquire or sell trust property at a public or private sale, and on such terms as in the opinion of the trustee will be most advantageous to those interested therein;

(c) exchange, partition, or otherwise change the character of trust property;

(d) deposit trust money in an account in a bank or other insured depository institution;

(e) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(f) with respect to an interest in a proprietorship and subject to SCPA 2108, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(g) with respect to stocks or other securities held as a trustee, exercise the rights of an absolute owner, including the right to:

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

(2) employ a financial institution as custodian of any such stock or other securities as in the same manner as authorized for a fiduciary pursuant to subparagraph nine of paragraph (b) of section 11-1.1 of this chapter;

(3) cause any such stock or other securities to be registered and held in the name of a nominee in the same manner as authorized for a fiduciary pursuant to subparagraph ten of paragraph (b) of section 11-1.1 of this chapter;

(4) cause any such stock or other securities to be deposited in the same manner as authorized for a fiduciary pursuant to sections 11-1.8 and 11-1.9 of this chapter;

(5) employ a broker-dealer as a custodian of any such stock or other securities and to register such securities in the name of such broker-dealer in the same manner as authorized for a fiduciary pursuant to section 11-1.10 of this chapter;

(6) pay calls, assessments, and other sums chargeable or accruing against the securities, in the same manner as authorized for a fiduciary pursuant to subparagraph fifteen of paragraph (b) of section 11-1.1 of this chapter; and

(7) sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers or liquidations, and consent to corporate sales, leases and encumbrances in the same manner as authorized for a fiduciary pursuant to subparagraph sixteen of paragraph (b) of section 11-1.1 of this chapter;

(h) with respect to repairs and other actions:

(1) for an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries; and

(2) for an interest in tangible personal property, make repairs to, conserve or improve such property;

(i) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(j) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(k) effect and keep in force fire, rent, title, liability casualty or other insurance to protect the property of the trust and to protect the trustee;

(l) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(m) with respect to possible liability for a violation of environmental law:

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

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

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

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

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

(n) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(o) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust, including the reasonable expense of obtaining and continuing the trustee's bond and any reasonable counsel fees the trustee may necessarily incur;

(p) exercise elections with respect to federal, state, and local taxes;

(q) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(r) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(s) pledge trust property to guarantee loans made by others to the beneficiary;

(t) appoint a trustee to act in another jurisdiction with respect to real or tangible or personal trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(u) pay an amount distributable to a beneficiary who is under a legal disability by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(1) paying it to the beneficiary's guardian;

(2) paying it to the beneficiary's custodian under New York's Uniform Transfers to Minors Act and, for that purpose, creating a custodianship pursuant to sections 7-6.5 and 7-6.6 of this chapter;

(3) if the amount is not in excess of ten thousand dollars, paying the amount to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf;

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

(5) if the sum payable to a patient in an institution in the state department of mental hygiene is not in excess of the amount which the director of the institution is authorized to receive under section 29.23 of the mental hygiene law, paying such sum to such director for use as provided in such section.

(v) on distribution of trust property or the division or termination of a trust, make distributions in cash, in kind valued at the fair market value of the property at the date of distribution, or partly in each, and make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(w) seek resolution of a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(x) contest, compromise or otherwise settle any claim in favor of the trust or trustee, or in favor of third persons and against the trust or trustee;

(y) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(z) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it;

(aa) acquire the remaining undivided interest in the property of a trust in which the trustee, in the trustee's capacity, holds an undivided interest;

(bb) invest and reinvest property of the trust under the provisions of the will, deed or other instrument or as otherwise provided by law;

(cc) take possession of, collect the rents from and manage any property or any estate owned by the trustee;

(dd) with respect to any mortgage on property owned by the trustee, continue the same upon and after the maturity, with or without renewal or extension, upon such terms as the trustee deems advisable; foreclose, as an incident to collection of any bond or note, any mortgage securing such bond or note; and purchase the mortgaged property or acquire the property by deed from the mortgagor in lieu of foreclosure;

(ee) in the case of a successor or substitute trustee, succeed to all of the powers, duties and discretion of the original trustee, with respect to the trust, as were given to the original trustee unless the exercise of such powers, duties or discretion of the original fiduciary are expressly prohibited by the will, deed or other instrument to any successor or substituted fiduciary;

(ff) hold the property of two or more trusts, or parts of such trusts, created by the same instrument as an undivided whole without separation as between such trusts or parts, provided that such separate trusts or parts shall have undivided interests and, provided further, that such holding shall not defer the vesting of any estate in possession or otherwise;

(gg) invest as a whole the property in which the trustee has interests under two or more trust instruments;

(hh) employ and compensate persons deemed necessary by the trustee to advise or assist in the proper administration of any trust, including but not limited to: agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, real estate managers, rental agents, realtors, appraisers, investment counsel, custodians and other professional advisors as may reasonably be required or desired in managing, protecting and investing any trust; and

(ii) in addition to those expenses specifically provided for in this section, to pay all other reasonable and proper expenses of administration from the property of the trust, including the reasonable expense of obtaining and continuing the trustee's bond and any reasonable counsel fees the trustee may necessarily incur.

§ 7-A-8.16 Duties and powers regarding distribution upon termination

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. Subject to the provisions of paragraph (c) of this section, the right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent, but only if the proposal informed the beneficiary of the right to object and of the time allowed for such objection.

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

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

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

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

§ 7-A-8.17 Power of trustee to pay income or principal to trust contributor as reimbursement for income taxes

(a) Notwithstanding any other provision of law to the contrary, the trustee, unless otherwise provided in the disposing instrument, may, from time to time pay to, or apply on behalf of, a trust contributor of such trust an amount equal to any income taxes on any portion of the trust income or trust principal of which such trust contributor is treated as the owner pursuant to Part 1 of Subchapter J of Subtitle 1 of the Internal Revenue Code. If the income tax is based on amounts allocated to trust income, payment shall be made from such trust income. If the income tax is based on amounts allocated to trust principal, payment shall be made from such trust principal.

(b) For the purposes of paragraph (a) of this section, a trustee shall not include a trust contributor unless the trust contributor has a power of revocation with respect to the trust.

(c) Paragraph (a) of this section shall not apply if the application, or the possibility of the application of paragraph (a) of this section, to any trust would reduce or eliminate a charitable deduction otherwise available to any person under any provision of the Internal Revenue Code.

(d) Paragraph (a) of this section shall not apply if the application, or the possibility of the application of paragraph (a) of this section, to any trust would reduce or eliminate for any person a gift tax marital

deduction or a gift tax annual exclusion under the Internal Revenue Code.

(e) Paragraph (a) of this section shall not apply if the application, or the possibility of the application of paragraph (a) of this section, would reduce or eliminate a public benefit otherwise available to the trust contributor or to the trust contributor's spouse.

§ 7-A-8.18 Powers and duties regarding decanting

(a) An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of such principal to a trustee of an appointed trust for, and only for the benefit of, one, more than one or all of the current beneficiaries of the invaded trust, to the exclusion of any one or more of such current beneficiaries. The successor and remainder beneficiaries of such appointed trust may be one, more than one or all of the successor and remainder beneficiaries of such invaded trust, to the exclusion of any one, more than one or all of such successor and remainder beneficiaries.

(1) An authorized trustee exercising the power pursuant to this paragraph may grant a discretionary power of appointment as defined pursuant to paragraph (b) of section 10-3.4 of this chapter, including a presently exercisable power of appointment, in the appointed trust to one or more of the current beneficiaries of the invaded trust, provided that the beneficiary granted a power to appoint could receive the principal outright under the terms of the invaded trust.

(2) If the authorized trustee grants a power of appointment under subparagraph one of this paragraph, except as otherwise provided in subparagraph three of this paragraph, the granted power may only exclude as permissible appointees one or more of the beneficiaries, the creator, or the creator's spouse, or any of the estates, creditors, or creditors of the estates of the beneficiary, the creator or the creator's spouse.

(3) If the authorized trustee exercises the power pursuant to this paragraph, the appointed trust may grant any power of appointment included in the invaded trust, provided such power has the same class of permissible appointees as the power of appointment in the invaded trust and is exercisable in the same fashion as the power of appointment in the invaded trust.

(4) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust may include present or future members of such class.

(b) An authorized trustee with the power to invade trust principal, but without unlimited discretion, may appoint part or all of the principal of the trust to a trustee of an appointed trust, provided that the current beneficiaries of the appointed trust shall be the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries of the appointed trust shall be the same as the successor and remainder beneficiaries of the invaded trust.

(1) If the authorized trustee exercises the power pursuant to this paragraph, the appointed trust shall include the same language authorizing the trustee to distribute the income or invade the principal of the appointed trust as in the invaded trust.

(2) If the authorized trustee exercises the power pursuant to this paragraph to extend the term of the appointed trust beyond the term of the invaded trust, for any period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, the appointed trust, in addition to the language required to be included in the appointed trust pursuant to subparagraph one of this paragraph, may also include language providing the trustees with unlimited discretion

to invade the principal of the appointed trust during such extended term.

(3) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust shall include present or future members of such class.

(4) If the authorized trustee exercises the power pursuant to this paragraph and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust shall grant such power of appointment in the appointed trust and the class of permissible appointees shall be the same as in the invaded trust.

(c) An exercise of the power to invade trust principal under paragraphs (a) and (b) of this section shall be considered the exercise of a special power of appointment as defined pursuant to section 10-3.2 of this chapter.

(d) The appointed trust to which an authorized trustee appoints the assets of the invaded trust may have a term that is longer than the term set forth in the invaded trust, including but not limited to, a term measured by the lifetime of a current beneficiary.

(e) If an authorized trustee has unlimited discretion to invade the principal of a trust and the same trustee or another trustee has the power to invade principal under the trust instrument, which power is not subject to unlimited discretion, such authorized trustee having unlimited discretion may exercise the power of appointment pursuant to paragraph (a) of this section.

(f) An authorized trustee may exercise the power to appoint in favor of an appointed trust pursuant to paragraphs (a) and (b) of this section whether or not there is a current need to invade principal under the terms of the invaded trust.

(g) An authorized trustee exercising the power pursuant to this section shall have a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances. The authorized trustee shall not exercise the power pursuant to this section if there is substantial evidence of a contrary intent of the creator and it cannot be established that the creator would be likely to have changed such intent under the circumstances existing at the time of the exercise of the power. The provisions of the invaded trust alone shall not be viewed as substantial evidence of a contrary intent of the creator unless the invaded trust expressly prohibits the exercise of the power in the manner intended by the authorized trustee.

(h) Unless the authorized trustee provides otherwise:

(1) The appointment of all of the assets comprising the principal of the invaded trust to an appointed trust shall include subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust; and

(2) The appointment of part but not all of the assets comprising the principal of the invaded trust to an appointed trust shall not include subsequently discovered assets belonging to the invaded trust, and principal paid to or acquired by the invaded trust after the appointment to the appointed trust; such assets shall remain the assets of the invaded trust.

(i) The exercise of the power to appoint to an appointed trust pursuant to paragraph (a) or (b) of this section shall be evidenced by an instrument in writing, signed, dated and acknowledged by the authorized

trustee. The exercise of the power shall be effective thirty days after the date of service of the instrument as specified in subparagraph two of this paragraph, unless the person entitled to notice consents in writing to a sooner effective date.

(1) An authorized trustee may exercise the power authorized by paragraphs (a) and (b) of this section without the consent of the creator, or of the persons interested in the invaded trust, and without court approval, provided that the authorized trustee seek court approval for the exercise with notice to all persons interested in the invaded trust.

(2) A copy of the instrument exercising the power and a copy of each of the invaded trust and the appointed trust shall be delivered:

(A) to the creator, if living, of the invaded trust;

(B) to any person having the right, pursuant to the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under paragraph (b) or (c) of this section; and

(C) to any persons interested in the invaded trust and the appointed trust, or, in the case of any persons interested in the trust, to any guardian of the property, conservator or personal representative of any such person or the parent or person with whom any such minor person resides, by registered or certified mail, return receipt requested, or by personal delivery or in any other manner directed by the court having jurisdiction over the invaded trust.

(3) The instrument exercising the power shall state whether the appointment is of all the assets comprising the principal of the invaded trust, or a part but not all the assets comprising the principal of the invaded trust and if a part, the approximate percentage of the value of the principal of the invaded trust that is the subject of the appointment.

(4) A person interested in the invaded trust may object to the trustee's exercise of the power pursuant to this section by serving a written notice of objection upon the trustee prior to the effective date of the exercise of the power. The failure to object shall not constitute a consent.

(5) The receipt of a copy of the instrument exercising the power shall not affect the right of any person interested in the invaded trust to compel the authorized trustee who exercised the power, pursuant to paragraph (a) or (b) of this section, to account for such exercise and shall not foreclose any such interested person from objecting to an account or compelling a trustee to account. Whether the exercise of a power pursuant to paragraph (a) or (b) of this section begins the running of the statute of limitations on an action to compel a trustee to account shall be based on all the facts and circumstances of the situation.

(6) A copy of the instrument exercising the power shall be kept with the records of the invaded trust and the original shall be filed in the court having jurisdiction over the invaded trust. Where a trustee of an inter vivos trust exercises the power and the trust has not been the subject of a proceeding in the surrogate's court, no filing shall be required. The instrument shall state that in certain circumstances the appointment shall begin the running of the statute of limitations that will preclude persons interested in the invaded trust from compelling an accounting by the trustees after the expiration of a given time.

(7) Prior to the effective date of this article, a trustee may revoke the exercise of the power to invade to a new trust. Where a trustee has served notice of the exercise of the power pursuant to subparagraph two of this paragraph, the trustee shall serve notice of the revocation of the exercise of the power to persons interested in the invaded trust and

the appointed trust by registered or certified mail, return receipt requested, or by personal delivery or in any other manner directed by the court having jurisdiction over the invaded trust. Where the notice of the exercise of the power was filed with the court, the trustee shall file the notice of revocation of the exercise of the power with such court.

(j) This section shall not be construed to abridge the right of any trustee to appoint property in further trust that arises under the terms of the governing instrument of a trust or under any other provision of law or under common law, or as directed by any court having jurisdiction over the trust.

(k) Nothing in this section shall be intended to create or imply a duty to exercise a power to invade principal, and no inference of impropriety shall be made as a result of an authorized trustee not exercising the power conferred pursuant to paragraph (a) or (b) of this section.

(l) A power authorized by paragraph (a) or (b) of this section may be exercised, subject to the provisions of paragraph (g) of this section, unless expressly prohibited by the terms of the governing instrument, but a general prohibition of the amendment or revocation of the invaded trust or a provision that constitutes a spendthrift provision shall not preclude the exercise of a power pursuant to paragraph (a) or (b) of this section.

(m) An authorized trustee shall not exercise a power authorized by paragraph (a) or (b) of this section to effect any of the following:

(1) To reduce, limit or modify any beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a right to withdraw a percentage of the value of the trust or a right to withdraw a specified dollar amount, provided that such mandatory right has come into effect with respect to the beneficiary. Notwithstanding any other provision of this paragraph, but subject to the other limitations pursuant to this section, an authorized trustee may exercise a power authorized pursuant to paragraph (a) or (b) of this section, to appoint to an appointed trust that is a supplemental needs trust that conforms to the provisions of section 7-A-3.8 of this article;

(2) To decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence and prudence;

(3) To eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power pursuant to paragraph (a) or (b) of this section, unless a court having jurisdiction over the trust specifies otherwise;

(4) To make a binding and conclusive fixation of the value of any asset for the purposes of distribution, allocation or otherwise; or

(5) To jeopardize:

(A) the deduction or exclusion originally claimed with respect to any contribution to the invaded trust that qualified for the annual exclusion pursuant to section 2503(b) of the Internal Revenue Code, the marital deduction under section 2056(a) or 2523(a) of the Internal Revenue Code, or the charitable deduction under section 170(a), 642(c), 2055(a) or 2522(a) of the Internal Revenue Code;

(B) the qualification of a transfer as a direct skip pursuant to section 2642(c) of the Internal Revenue Code; or

(C) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes pursuant to the Internal Revenue Code.

(n) An authorized trustee shall consider the tax implications of the exercise of the power pursuant to paragraph (a) or (b) of this section.

(o) An authorized trustee shall not exercise a power described in paragraph (a) or (b) of this section in violation of the limitations under sections 9-1.1, 10-8.1 and 10-8.2 of this chapter, and any such exercise shall void the entire exercise of such power.

(p) (1) Unless a court otherwise directs, an authorized trustee shall not exercise a power authorized by paragraph (a) or (b) of this section to change the provisions regarding the determination of the compensation of any trustee; the commissions or other compensation payable to the trustees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and shall be determined in the same manner as in the invaded trust.

(2) No trustee shall receive any paying commission or other compensation for the appointing of property from the invaded trust to an appointed trust pursuant to paragraph (a) or (b) of this section.

(q) Unless the invaded trust expressly provides otherwise, this section shall apply to:

(1) any trust governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state; and

(2) any trust that has a trustee who is an individual domiciled in this state or a trustee which is an entity having an office in this state, provided that a majority of the trustees select this state as the location for the primary administration of the trust by an instrument in writing, signed and acknowledged by a majority of the trustees. The instrument exercising this selection shall be kept with the records of the invaded trust.

(r) For the purposes of this section:

(1) The term "appointed trust" means an irrevocable trust which receives principal from an invaded trust under paragraph (a) or (b) of this section, including a new trust created by the creator of the invaded trust or by the trustees, in that capacity, of the invaded trust.

(2) The term "authorized trustee" means, as to an invaded trust, any trustee or trustees with authority to pay trust principal to or for one or more current beneficiaries other than:

(A) the creator; or

(B) a beneficiary to whom income or principal shall be paid currently or in the future, or who is or will become eligible to receive a distribution of income or principal in the discretion of the trustee, other than by the exercise of a power of appointment held in a non-fiduciary capacity.

(3) The term "current beneficiary or beneficiaries" means the person or persons, or as to a class, any person or persons who are or will become members of such class, to whom the trustees may distribute principal at the time of the exercise of the power; provided, however, that the interest of a beneficiary to whom income, but not principal, may be distributed in the discretion of the trustee of the invaded trust may be continued in the appointed trust.

(4) The term "invade" means the power to pay directly to the beneficiary of a trust or make application for the benefit of the beneficiary.

(5) The term "invaded trust" means any existing irrevocable inter vivos or testamentary trust whose principal is appointed under paragraph (a) or (b) of this section.

(6) The term "person or persons interested in the invaded trust" shall mean any person or persons upon whom service of process would be

required in a proceeding for the judicial settlement of the account of the trustee, taking into account the provisions of SCPA 315.

(7) The term "principal" shall include the income of the trust at the time of the exercise of the power that is not currently required to be distributed, including accrued and accumulated income.

(8) The term "unlimited discretion" means the unlimited right to distribute principal that is not modified in any manner. A power to pay principal that includes words such as best interests, welfare, comfort, or happiness shall not be considered a limitation or modification of the right to distribute principal.

(9) A trust contributor shall not be considered to be a beneficiary of an invaded or appointed trust by reason of the trustee's authority to pay trust income or principal to the creator pursuant to section 7-A-8.17 of this part, or by reason of the trustee's authority under the trust instrument or any other provision of law to pay or reimburse the trust contributor for any tax on trust income or trust principal that is payable by the trust contributor under the law imposing such tax or to pay any such tax directly to the taxing authorities.

(s) Cross-reference: For provisions regarding the exercise of the power pursuant to paragraph (a) or (b) of this section where there are multiple trustees, see sections 10-6.7 and 10-10.7 of this chapter.

§ 7-A-8.19 Duty when a resulting trust arises

Subject to the provisions of section 7-A-8.16 of this part, the trustee has the duty to distribute trust property to the settlor or the settlor's successors in interest when a resulting trust arises.

PART 9. NEW YORK UNIFORM DIRECTED TRUST ACT

§ 7-A-9.1 Short title

This part shall be known and may be cited as the "New York uniform directed trust act".

§ 7-A-9.2 Definitions

For the purposes of this part:

(a) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(b) "Directed trustee" means a trustee who is subject to a trust director's power of direction.

(c) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent such power is exercisable while the person is not then serving as a trustee. The term shall include a power over the investment, management, or distribution of trust property or other matters of trust administration. The term shall not include the powers described in paragraph (b) of section 7-A-9.4 of this part.

(d) "Trust director" means a trust director as defined pursuant to paragraph (bb) of section 7-A-1.4 of this article.

(e) "Willful misconduct" means willful misconduct as defined pursuant to paragraph (ee) of section 7-A-1.4 of this article.

§ 7-A-9.3 Application; principal place of administration

(a) This part shall apply to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(1) If the trust was created before the effective date of this article, this part shall only apply to a decision or action occurring on or after the effective date of this article.

(2) If the principal place of administration of the trust is changed to this state on or after the effective date of this article, this part shall only apply to a decision or action occurring on or after the date of such change.

(b) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust which designate the principal place of administration of the trust are valid and controlling if those terms satisfy the requirements of paragraph (a) of section 7-A-1.9 of this article.

§ 7-A-9.4 Exclusions

(a) For the purposes of this section, "power of appointment" means a power of appointment as defined pursuant to paragraph (a) of section 10-3.1 of this chapter.

(b) This part shall not apply to a person who has a:

(1) power of appointment;

(2) power to appoint or remove a trustee or trust director;

(3) power of a trust contributor over a trust to the extent such trust contributor has a power to revoke the trust;

(4) power of a beneficiary over a trust to the extent the exercise or non-exercise of such power affects the beneficial interest of:

(A) the beneficiary; or

(B) another beneficiary represented by the beneficiary pursuant to SCPA 315 with respect to the exercise or non-exercise of such power; or

(5) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power shall be held in a nonfiduciary capacity to achieve the trust contributor's tax objectives under the Internal Revenue Code and regulations issued thereunder, as amended.

(c) A power granted to a person by the terms of the trust that would otherwise be a power of appointment is a power of direction if the terms of the trust impose fiduciary duties on that person's exercise of the power.

§ 7-A-9.5 Powers of trust director

(a) The terms of a trust may grant to a trust director one or more powers of direction. Such powers, the listing of which is not exclusive but illustrative, may include a power to:

(1) direct investments;

(2) adjust between principal and income or convert to a unitrust;

(3) modify, reform, terminate, or decant a trust;

(4) direct a trustee's or another trust director's delegation of a trustee's or other trust director's powers;

(5) change the principal place of administration, situs, or governing law of the trust;

(6) ascertain the happening of an event that affects the administration of the trust;

(7) determine the capacity of a trustee, settlor, trust director, or beneficiary of the trust;

(8) determine the compensation to be paid to a trustee or trust director;

(9) prosecute, defend, or join an action, claim, or judicial proceeding relating to the trust;

(10) grant or withhold permission before a trustee or another trust director may exercise a power of the trustee or other trust director;

(11) release a trustee or another trust director from liability for an action proposed or previously taken by the trustee or other trust director;

(12) authorize loans to trust beneficiaries;

(13) guarantee loans made by trust beneficiaries;

(14) enforce a trust for pets pursuant to section 7-A-3.12 of this article; or

(15) enforce a non-charitable trust without an ascertainable beneficiary pursuant to section 7-A-3.13 of this article.

(b) For the purposes of subparagraph one of paragraph (a) of this section, unless the terms of the trust provide otherwise, the power to direct investments shall mean with respect to all of the trust's investments, or, if applicable, to investments specified in the governing instrument, the power to direct the retention, purchase, sale, exchange, tender or other transaction or decision affecting the ownership thereof or rights therein, including the powers to borrow and lend for investment purposes, to direct the exercise of all management, control and voting powers related directly or indirectly to such investments, including, without limitation, non-publicly traded investments, to direct the selection of custodians or subcustodians other than the trustee, the selection and compensation of, and delegation to, investments advisors, managers or other investment providers, and with respect to non-publicly traded investments, the valuation thereof.

(c) Unless the terms of a trust provide otherwise, a trust director may exercise any further power appropriate to the exercise or non-exercise of a power of direction granted to the trust director under paragraph (a) of this section. Such further powers, the listing of which is not exclusive but illustrative, may include a power to:

(1) incur reasonable costs and direct indemnification for such costs;

(2) make a report or accounting to a beneficiary or other interested party;

(3) direct a trustee to issue a certification of trust pursuant to section 7-A-10.13 of this article;

(4) prosecute, defend, or join an action, claim, or judicial proceeding relating to a trust;

(5) employ a professional to assist or advise the trust director in the exercise or non-exercise or the trust director's powers;

(6) delegate the trust director's power to an agent without liability for the actions of the agent provided the trust director exercises the reasonable care, skill, and caution that is required of a trustee in making a delegation pursuant to paragraph (a) of section 7-A-8.7 of this article; or

(7) prosecute, defend, or join an action, claim, or judicial proceeding pertaining to the trust where appropriate under the circumstances to the trust director's exercise or non-exercise of the trust director's power of direction.

(d) Unless the terms of a trust provide otherwise, trust directors with joint powers shall act by majority decision.

§ 7-A-9.6 Limitations on powers of trust director

A trust director having the power either to direct the trustee to make a discretionary distribution of principal or income to the trust director as a beneficiary or to consent to such a distribution shall be subject to the provisions of section 10-10.1 of this chapter, other than the last sentence thereof, as if for the purposes of such section the trust director were a trustee having the power to make a discretionary distribution to the trustee as beneficiary.

§ 7-A-9.7 General duties and liabilities of trust director

(a) Subject to paragraph (b) of this section:

(1) the trust director is a fiduciary and has the same duties as a trustee pursuant to part eight of this article, and the same liabilities of a trustee pursuant to part ten of this article, that a trustee would have if the power of direction authorized under the terms of the trust or any further power, pursuant to paragraph (c) of section 7-A-9.5 of this part, was held by a trustee. If the power is held jointly with a trustee or another trust director, the rules applicable to co-trustees pursuant to section 7-A-7.3 of this article shall also apply to the trust director; and

(2) the terms of the trust may vary the trust director's duties to the same extent the terms of the trust could vary the duties of a trustee.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law, other than this part, to provide health care in the ordinary course of the trust director's business or practice of a profession, to the extent the trust director acts in that capacity, the trust director shall have no duty or liability under this part and section 7-A-3.9 of this article shall not apply.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

(d) Cross-reference: For provisions regarding the additional duties of a trust director, see paragraph (b) of section 7-A-9.8 of this part.

§ 7-A-9.8 Duties and liabilities of directed trustee with respect to power of direction

(a) Subject to paragraph (b) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or non-exercise of a power of direction or a further power pursuant to paragraph (c) of section 7-A-9.5 of this part and, notwithstanding the provisions of subparagraph two of paragraph (m) of section 7-A-8.18 of this article and section 11-1.7 of this chapter, the directed trustee shall not be liable for any loss resulting directly or indirectly from any action taken pursuant to such exercise of a power of direction or any action not taken pursuant to the non-exercise of a power of direction.

(b) A directed trustee shall not comply with a trust director's exercise or non-exercise of a power of direction or further power pursuant to paragraph (c) of section 7-A-9.5 of this part to the extent that by complying the trustee would engage in willful misconduct.

(c) A directed trustee that has reasonable doubt about its duty not to engage in willful misconduct may timely petition the court for instructions or present the issue in a pending proceeding.

(d) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities pursuant to this section.

(e) Cross-reference: For provisions regarding the additional duties of directed trustees, see paragraph (a) of section 7-A-9.9 of this part

§ 7-A-9.9 Duty to provide information to trust director or trustee

(a) Unless the terms of a trust provide otherwise, and subject to the provisions of paragraph (a) of section 7-A-9.10 of this part, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the trustee; and

(2) the powers or duties of the trust director.

(b) Unless the terms of a trust provide otherwise, and subject to the provisions of paragraph (b) of section 7-A-9.10 of this part, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the trust director; and

(2) the powers or duties of the trustee or other trust director.

(c) Notwithstanding the provisions of section 11-1.7 of this chapter, a trustee that acts in reliance on information provided by a trust director shall not be liable for a breach of trust to the extent such breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) Notwithstanding the provisions of section 11-1.7 of this chapter, a trust director that acts in reliance on information provided by a trustee or another trust director shall not be liable for a breach of trust to the extent such breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

§ 7-A-9.10 No duty to monitor, inform, or advise

(a) Unless the terms of a trust provide otherwise:

(1) a trustee shall not have a duty to:

(A) monitor a trust director; or

(B) inform or give advice to a settlor, trust contributor, other than a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the trust director; and

(2) by taking an action pursuant to subparagraph one of this paragraph, a trustee shall not assume the duty excluded by such subparagraph.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director shall not have a duty to:

(A) monitor a trustee or another trust director; or

(B) inform or give advice to a settlor, trust contributor, other than a settlor, beneficiary, trustee, or another trust director concerning an instance in which the trust director might have acted differently than a trustee or another trust director; and

(2) by taking an action described in subparagraph one of this paragraph, a trust director shall not assume the duty excluded by such subparagraph.

§ 7-A-9.11 Limitation of action against trust director

An action against a trust director for breach of trust shall be commenced within the same limitation period as an action for breach of trust against a trustee pursuant to section 7-A-10.5 of this article.

§ 7-A-9.12 Defenses in action against trust director

In an action against a trust director for breach of trust, the trust director may assert the same defenses as a trustee may assert in an action for breach of trust against the trustee.

§ 7-A-9.13 Jurisdiction over trust director

(a) By accepting appointment as a trust director of a trust subject to this part, the trust director submits to the personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the trust director.

(b) This section shall not preclude other methods of obtaining jurisdiction over a trust director.

§ 7-A-9.14 Accepting or declining the position of trust director

(a) A person designated as trust director accepts the position of trust director:

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

(2) by exercising powers or performing duties as trust director, or otherwise indicating acceptance of the position of trust director, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive.

(b) A person designated as trust director who has not yet accepted the directorship may reject the position of trust director. A designated trust director of a lifetime trust who does not accept the position of trust director within a reasonable time after knowing of the designation and knowing of the occurrence of the event that makes the designation effective shall be deemed to have rejected the position of trust director.

§ 7-A-9.15 Compensation of trust directors and directed trustees

(a) If the terms of the trust provide for specific rates or amounts of commissions, other than a general reference to commissions allowed by law or words of like import, for a trust director or a directed trustee, or, if a corporate directed trustee has agreed to accept specific rates or amounts of commissions, a trust director or a directed trustee shall be entitled to be compensated in accordance with such provisions or agreement, as the case may be.

(b) If the terms of the trust do not so provide, a trust director, other than one described in paragraph (b) of section 7-A-9.7 of this part, and a directed trustee shall be entitled to such compensation as may be reasonable, and the court, upon application of a person interested in the trust, may review the reasonableness of such compensation.

(c) If the terms of the trust do not provide for the allocation of payment of commissions to income and principal, commissions shall be payable as pursuant to SCPA.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a charitable trust, the compensation of any trust director or directed trustee, other than a corporate trust director or corporate directed trustee, shall not exceed the amount provided pursuant to SCPA 2312 and the compensation of all trust directors and trustees, including directed trustees, of such trust shall be limited, pursuant to SCPA 2313.

§ 7-A-9.16 Trust director's bond

(a) Except as provided by paragraph (c) of this section, a trust director shall give bond to secure performance of the trust director's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) A trust company, as defined pursuant to subdivision two of section two of the banking law, any bank authorized to exercise fiduciary powers and any national bank having a principal, branch or trust office in this state and duly authorized to exercise fiduciary powers need not give a bond unless a bond is expressly required of the trust company or bank by the terms of the trust.

§ 7-A-9.17 Vacancy in the position of trust director; appointment of successor

(a) A vacancy in the position of trust director occurs if:

(1) a person designated as trust director rejects the position of trust director;

(2) a person designated as trust director cannot be identified or does not exist;
(3) a trust director resigns;
(4) a trust director is disqualified or removed;
(5) a trust director dies;
(6) a guardian is appointed for an individual serving as trust director; or
(7) a trust instrument so provides.
(b) A vacancy in the position of trust director shall be filled only if expressly required by the terms of the trust, or if the terms of the trust expressly provide that trustees, other trust directors, or other persons may fill the vacancy in their discretion. If the terms of the trust do not expressly require that a vacancy be filled, and there is no other trust director then serving that is authorized to exercise the same power of direction as that held by the trust director that is no longer serving, the trustee or co-trustee shall be authorized to exercise the power or powers authorized by that power of direction.
(c) A vacancy in the position of trust director of a noncharitable trust that is required to be filled shall be filled in the following order of priority:
(1) by a person designated in the terms of the trust to act as successor trust director;
(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
(3) by a person appointed by the court.
(d) A vacancy in the position of trust director of a charitable trust that is required to be filled shall be filled in the following order of priority:
(1) by a person designated in the terms of the trust to act as successor trust director;
(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or
(3) by a person appointed by the court.
§ 7-A-9.18 Resignation of trust director
(a) Unless the terms of a trust provide otherwise, a trust director may resign:
(1) upon at least thirty days' notice, pursuant to section 7-A-1.10 of this article, to the trust contributor, all co-trustees and all other trust directors in the case of a revocable trust, or the qualified beneficiaries, all co-trustees and all other trust directors, in the case of any other trust; or
(2) with the approval of the court.
(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
(c) Any liability of a resigning trust director and of any sureties on the trust director's bond for acts or omissions of the trust director are not discharged or affected by the trust director's resignation.
§ 7-A-9.19 Removal of trust director
(a) In addition to any provision for removal in the trust instrument, the settlor, a co-trustee, co-trust director or a beneficiary may request the court to remove a trust director or a trust director may be removed by the court on its own initiative.
(b) The court may remove a trust director if:
(1) the trust director has committed a serious breach of trust;

(2) lack of cooperation among co-trust directors substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trust director to effectively exercise the power of direction held by the trust director, the court determines that removal of the trust director best serves the interests of the beneficiaries; or

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, provided that the court finds that removal of the trust director best serves the interests of all of the beneficiaries and is not inconsistent with the purposes of the trust, and a suitable co-trust director or successor trust director is available.

(c) Pending a final decision on a request to remove a trust director, or in lieu of or in addition to removing a trust director, the court may order such appropriate relief pursuant to paragraph (b) of section 7-A-10.1 of this article, as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 7-A-9.20 Uniformity of application and construction

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

§ 7-A-9.21 Severability clause

If any provision of this part or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

§ 7-A-9.22 Application of part

This part shall apply to trusts created on or after the effective date of this article.

PART 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES

§ 7-A-10.1 Remedies for breach of trust

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

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

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

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

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

(4) order a trustee to account;

(5) appoint a successor trustee or co-trustee to take possession of the trust property and administer the trust as provided pursuant to SCPA 1502;

(6) suspend the trustee;

(7) remove the trustee, pursuant to section 7-A-7.8 of this article;

(8) reduce or deny compensation to the trustee;

(9) void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds, pursuant to section 7-A-10.11 of this part; or

(10) order any other appropriate relief.

(c) Nothing in this section shall be construed to limit the court's application of remedial provisions that are provided in the surrogate's court procedure act.

§ 7-A-10.2 Liability for breach of trust

(a) Unless section 7-A-10.9 of this part applies, and except as otherwise provided in this section, a trustee who commits a breach of trust is chargeable with the value of the capital lost by reason of the breach plus prejudgment interest as determined by the court.

(b) Unless section 7-A-10.9 of this part applies, a trustee who commits a breach of trust, other than breaching the duty of loyalty, by conduct constituting gross negligence, recklessness or bad faith is chargeable with the greater of:

(1) the value of the capital lost by reason of the breach plus prejudgment interest as determined by the court; or

(2) the amount at the time of the decree required to restore the values of the trust property to what they would have been if the portion of the trust affected by the breach had been properly administered.

(c) Unless section 7-A-10.9 of this part applies, a trustee who commits a breach of trust by breaching the duty of loyalty is chargeable with:

(1) the greater of:

(A) the value of the capital lost by reason of the breach plus prejudgment interest as determined by the court; or

(B) the amount required to restore the values of the trust property to what they would have been if the portion of the trust affected by the breach had been properly administered; and

(2) the amount of any benefit to the trustee personally as a result of the breach to the extent that such amount is not included in the amount determined under item (A) or item (B) of subparagraph one of this paragraph.

(d) In addition to charging the trustee pursuant to paragraphs (b) and (c) of this section, a trustee may be additionally chargeable as the court deems appropriate to fashion complete equitable relief.

(e) Except as otherwise provided in this paragraph, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee may be entitled to contribution from the other trustee or trustees in accordance with applicable law. A trustee shall not be entitled to contribution if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust shall not be entitled to contribution from another trustee to the extent of the benefit received.

(f) Cross-reference: For provisions regarding allowing qualified beneficiaries to void a transaction if a trustee breaches the duty of loyalty, see section 7-A-8.2 of this article.

§ 7-A-10.3 Damages in absence of breach

(a) A trustee shall be accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(b) Absent a breach of trust, a trustee shall not be liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§ 7-A-10.4 Compensation of attorneys' fees, costs and allowances

(a) In a judicial proceeding involving the administration of a trust, a court shall be authorized to:

(1) fix and determine the compensation of an attorney pursuant to SCPA 2110; and

(2) award costs and allowances pursuant to article twenty-three of the SCPA.

(b) Cross-reference: For provisions regarding a trustee's payment of reasonable counsel fees, see paragraph (ii) of section 7-A-8.15 of this article.

§ 7-A-10.5 Limitation of action against trustee

(a) A beneficiary shall not commence a proceeding against a trustee for breach of trust more than two years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

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

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

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

(3) the termination of the trust; or

(4) the open repudiation of the trust by the trustee.

(d) Paragraph (a) of this section shall not apply to the attorney general acting under the authority pursuant to article eight of this chapter or pursuant to any other provision of law.

§ 7-A-10.6 Reliance on trust instrument

To the extent section 11-2.3 of this chapter does not apply, a trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument shall not be liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 7-A-10.7 Event affecting administration or distribution

If the happening of an event, including but not limited to, marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event shall not be liable for a loss resulting from the trustee's lack of knowledge.

§ 7-A-10.8 Exculpation of trustee and trust director

The rules for the exculpation of a trustee and a trust director are provided in section 11-1.7 of this chapter.

§ 7-A-10.9 Beneficiary's consent, release, or ratification

(a) A trustee shall not be liable to a beneficiary for breach of trust if the beneficiary consented in writing to the conduct constituting the breach, executed a written release of the trustee from liability for the breach, or ratified in writing the transaction constituting the breach, unless:

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

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

(b) A consent, release, or ratification, pursuant to paragraph (a) of this section, that is made by a beneficiary upon whom service of process would be required in a proceeding to settle the trustee's account, is

binding upon all persons upon whom service of process would not be required pursuant to SCPA 315 because process was served upon the beneficiary.

§ 7-A-10.10 Limitation on personal liability of trustee

(a) Except as otherwise provided in the contract, a trustee shall not be personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee disclosed the fiduciary capacity in the contract.

(b) A trustee shall be personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee failed to exercise reasonable care, diligence, and prudence.

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

(d) In any case where liability is found against the trustee as the result of an action or proceeding brought under paragraph (c) of this section, issues of liability as between the trustee in the trustee's fiduciary capacity and the trustee in the trustee's individual capacity shall, if necessary, be determined in an accounting proceeding brought pursuant to SCPA 2205.

§ 7-A-10.11 Interest as general partner

(a) Unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership shall not be personally liable on a contract entered into by the partnership after the trustee's acquisition of the interest if the fiduciary capacity was disclosed in the contract or disclosed in a statement previously filed pursuant to the partnership law.

(b) A trustee who holds an interest as a general partner shall not be personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) If the trustee of a revocable trust holds an interest as a general partner, the trust contributor shall be personally liable for contracts and other obligations of the partnership as if the trust contributor were a general partner.

§ 7-A-10.12 Protection of person dealing with trustee

(a) Except in the case of a breach pursuant to section 7-A-8.2 of this article, a person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that such trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.

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

(c) A person who in good faith transfers money or property to a trustee is not responsible for the proper application of such money or property; and any right or title derived by him or her from the trustee in consideration of such transfer shall not be affected by the trustee's misapplication of such money or property.

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

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

(f) Paragraphs (a) through (e) of this section shall apply only to transactions that occur after the effective date of this article.

(g) With respect to transactions between a trustee or trustees and any person occurring before the effective date of this article:

(1) If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee, in contravention of the trust, except as authorized in this article and by any other provision of law, is void.

(2) An express trust not declared in the disposition to the trustee or an implied or resulting trust shall not defeat the title of a purchaser from the trustee for value and without notice of the trust, or the rights of a creditor who extended credit to the trustee in reliance upon his or her apparent ownership of the trust property.

§ 7-A-10.13 Certification of trust

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing so much of the following information as is requested by such person:

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

(2) the identity of the settlor;

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

(4) the powers of the trustee;

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

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

(7) the manner of taking title to trust property.

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

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

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

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

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

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the

trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument, in addition to a certification of trust or excerpts, is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

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

PART 11. MISCELLANEOUS PROVISIONS

§ 7-A-11.1 Relation to Electronic Signatures in Global and National Commerce Act

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this article modifies, limits, or supersedes Sections 101(c) and 7001(c) of such act or authorizes electronic delivery of any of the notices described in Sections 103(b) and 7003(b) of such act.

§ 7-A-11.2 Severability clause

If any provision of this article or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§ 7-A-11.3 Application to existing relationships

(a) Except as otherwise provided in this article, on the effective date of this article:

(1) this article shall apply to all trusts created before, on, or after its effective date;

(2) this article shall apply to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this article shall apply to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this article would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provisions of this article shall not apply and the superseding law shall apply;

(4) any rule of construction or presumption provided by this article shall apply to trust instruments executed before the effective date of this article unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act done before the effective date of this article shall not be affected by this article.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this article, such other statute shall continue to apply to the right even if it has been repealed or superseded.

(c) The provisions of this article shall not impair or defeat any rights which have accrued under dispositions or appointments in effect prior to its effective date.

§ 2. Section 1-2.4 of the estates, powers and trusts law is amended to read as follows:

§ 1-2.4 Disposition

(a) A disposition is a transfer of property by a person during his or her lifetime or by will.

(b) Cross-reference: For provisions regarding cy pres applications where a charitable organization is designated as a beneficiary or payee upon the person making the disposition in certain non-probate transfers, see subparagraph two of paragraph (c) of section 8-1.1 of this chapter.

§ 3. Section 1-2.12 of the estates, powers and trusts law is amended to read as follows:

§ 1-2.12 Person

The term "person" includes [~~a natural person, an association, board, any corporation, whether municipal, stock or non-stock, court, governmental agency, authority or subdivision, partnership or other firm and the state~~] an individual, corporation, business trust, estate, partnership, limited liability company, association or joint venture; government; government subdivision, agency or instrumentality; public corporation, or any other legal or commercial entity.

§ 4. The estates, powers and trusts law is amended by adding a new section 1-2.21 to read as follows:

§ 1-2.21 Charitable organization

The term "charitable organization" shall mean an "institution" as defined pursuant to paragraph (d) of section five hundred fifty-one of the not-for-profit corporation law.

§ 5. The estates, powers and trusts law is amended by adding a new section 3-3.10 to read as follows:

§ 3-3.10 Reformation of wills to correct mistakes

The court may reform the terms of a will, even if unambiguous, to conform the terms to the testator's intent if it is proved by clear and convincing evidence the testator's intent and that such terms of the will do not carry out such testator's intent because such terms were affected by a mistake of fact or law, whether in expression or inducement.

§ 6. The article heading of article 7 of the estates, powers and trusts law is amended to read as follows:

[~~TRUSTS~~] NON-GRATUITOUS TRUSTS, TRANSFERS TO MINORS AND CHILD PERFORMER TRUST ACCOUNTS

§ 7. Part 1 of article 7 of the estates, powers and trusts law is REPEALED and a new part 1 is added to read as follows:

PART 1. RULES GOVERNING NON-GRATUITOUS TRUSTS

Section 7-1.1 Scope.
7-1.2 Purposes for which trust may be created.
7-1.3 Duration of trust for benefit of creditors.
7-1.4 Provision by non-domiciliary creator as to law to govern trust.
7-1.5 Extent of trustee's estate.
7-1.6 Trust estate not to descend on death of trustee; appointment, duties and rights of successor trustee.
7-1.7 Suspension of powers of trustee in war service.
7-1.8 Resignation, suspension or removal of trustee.
7-1.9 Accounting by trustee in supreme court.
7-1.10 Commissions of trust to sell real property for benefit of creditors.
7-1.11 Common law and principles of equity.

PART 1. RULES GOVERNING NON-GRATUITIOUS TRUSTS

§ 7-1.1 Scope

(a) This part provides rules for non-gratuitous trusts. Non-gratuitous trusts are trusts that are not governed by article seven-A of this chapter.

(b) Cross-reference: For trusts governed by article seven-A, see paragraph (a) of section 7-A-1.2.

§ 7-1.2 Purposes for which trust may be created

A non-gratuitous trust may be created for any lawful purpose.

§ 7-1.3 Duration of trust for benefit of creditors

(a) Where an estate in real property has vested or shall vest in an assignee or other trustee for the benefit of creditors, it shall cease at the expiration of ten years from the time the trust was created, except where a different limitation is contained in the instrument creating the trust or is otherwise prescribed by law. Such estate shall then revert to the assignor.

(b) This section shall not apply to a trust of personal property or to a trust of real property created in connection with the salvaging of mortgage participation certificates. Nor shall this section affect any rights to the proceeds of a sale of real property made by the assignee or other trustee for the benefit of creditors.

§ 7-1.4 Provision by non-domiciliary creator as to law to govern trust

Whenever a person, not domiciled in this state, creates a non-gratuitous trust which provides that it shall be governed by the laws of this state, such provision shall be given effect in determining the validity, effect and interpretation of the disposition in such trust of:

(a) Any trust property situated in this state at the time the trust is created.

(b) Personal property, wherever situated, if the trustee of the trust is a person residing, incorporated or authorized to do business in this state or a national bank having an office in this state.

§ 7-1.5 Extent of trustee's estate

(a) A trust pursuant to sections 9-1.5, 9-1.6 and 9-1.7 of this chapter, including a business trust as defined pursuant to subdivision two of section two of the general associations law, may acquire property in the name of the trust as such name is designated in the instrument creating such trust. Any property so acquired can be conveyed, encumbered or otherwise disposed of only in such name by a conveyance, encumbrance or other instrument executed by:

(1) the person or persons authorized by the instrument creating such trust; or

(2) the person or persons authorized by a resolution duly adopted by the trustees; or

(3) a majority of the trustees, unless the instrument creating such trust provides otherwise.

(b) Any instrument of conveyance, encumbrance or disposition delivered prior to the effective date of this section to or by a trust to which this section applies, in its trust name is hereby validated; provided, however, that no action or proceeding to cancel or disaffirm it shall be instituted within one year from the effective date of this section, but no provision of this section shall affect any such pending action or proceeding.

§ 7-1.6 Trust estate not to descend on death of trustee; appointment, duties and rights of successor trustee

(a) On the death of the sole surviving trustee of a non-gratuitous trust, the trust estate shall not vest in his or her personal representative or pass to his or her distributees or devisees, but, in the

absence of a contrary direction by the creator, if the trust has not been executed, the trust estate shall vest in the supreme court or the surrogate's court, as the case may be, and the trust shall be executed by a person appointed by the court.

(b) Upon such notice to the beneficiaries of the trust, as the court may direct, of an application for the appointment of a successor trustee, unless the creator has directed otherwise, the court may appoint a successor trustee, even though the trust has terminated, whenever in the opinion of the court such appointment is necessary for the effective administration and distribution of the trust estate, subject to the following:

(1) A successor trustee shall give security in such amount as the court may direct; and

(2) A successor trustee shall be subject to the same duties, as to accounting and trust administration, as are imposed by law on trustees and, in addition to the reasonable expenses incurred in the course of trust administration, such successor trustee shall be entitled to such commissions as may be fixed by any court having jurisdiction to pass upon such trustee's final account, which shall in no case exceed the commissions allowable by law.

§ 7-1.7 Suspension of powers of trustee in war service

(a) Whenever a trustee of a non-gratuitous trust, not governed pursuant to article seven-A of this chapter, is engaged in war service, as defined pursuant to this section, such trustee or any other person interested in the trust estate may present a petition to the supreme court or the surrogate's court, as the case may be, to suspend the powers of such trustee while the trustee is so engaged and until the further order of the court, and if the suspension of such trustee will leave no person acting as trustee or leave a beneficiary of such trust as the only acting trustee thereof, the petition shall pray for the appointment of a successor trustee, unless a successor has been named in the trust instrument and is not engaged in war service or is not for any other reason unable or unwilling to act as such trustee.

(b) For the purposes of this section, a trustee is engaged in war service in any of the following cases:

(1) If the trustee is a member of the armed forces of the United States or of any of its allies, or if he has been accepted for such service and is awaiting induction.

(2) If the trustee is engaged in any work abroad in connection with a governmental agency of the United States or with the American Red Cross or any other body with similar objectives.

(3) If the trustee is interned in any enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state.

(4) If the trustee is a member of the merchant marine or similar service.

(c) Where the application is made by a trustee engaged in war service, notice shall be given to such persons and in such manner as the court may direct. Where the application is made by any other person interested in the trust estate and the trustee is in the armed forces of the United States, notice shall be given to such trustee in such manner as the court may direct. In every other case, where the application is made by a person other than the trustee, notice thereof shall be given to such persons and in such manner as the court may direct.

(d) Upon the filing of the petition and proof of service of notice prescribed in paragraph (c) of this section, the court may, notwith-

standing any other provision of law, suspend the trustee engaged in war service from the exercise of all of the trustee's powers and duties while engaged in such service and until the further order of the court. The order may further provide that the remaining trustee or, if there is none, the successor named in the trust instrument or appointed by the court may exercise all of the powers and be subject to all of the duties of the original trustee.

(e) The successor trustee shall be limited to commissions as computed pursuant to SCPA 2308 or 2309, whichever is applicable, upon income received and disbursed and upon principal disbursed. Commissions may also be allowed pursuant to such sections upon rents if the trustee is authorized or required to collect the rents of and manage real property. In case of the resignation or removal of the suspended trustee, or in the event of such trustee's death, the foregoing basis for computing the commissions shall not apply and the trustee's commissions shall be computed in the same manner as those of any other trustee.

(f) When the suspended trustee ceases to be engaged in war service the trustee may, upon application to the court and upon such notice as the court may direct, be reinstated as trustee if any of the duties of such office remain unexecuted. If the suspended trustee is reinstated, the court shall thereupon remove the trustee's successor and make such other order as justice requires, but such removal shall not bar the successor from subsequently qualifying as a trustee if for any reason it thereafter becomes necessary to appoint a trustee.

§ 7-1.8 Resignation, suspension or removal of trustee

(a) Subject to the relevant provisions of the civil practice law and rules, the supreme court has power:

(1) On the application of a trustee of a non-gratuitous trust, to accept the trustee's resignation and to discharge the trustee on such terms as it deems proper.

(2) On the application of any person interested in the trust estate, to suspend or remove a trustee who has violated or threatens to violate his or her trust, who is insolvent or whose insolvency is imminent or apprehended or who for any reason is a person unsuitable to execute the trust.

(3) In the case of the resignation or removal of a trustee, to appoint a successor trustee and, if there is no acting trustee, to cause the trust to be executed by a receiver or other officer under its direction. This section shall not apply to a trust arising or resulting by implication of law, nor to other provisions made by law for the resignation, suspension or removal of a trustee or the appointment of a successor trustee.

§ 7-1.9 Accounting by trustee in supreme court

(a) With respect to a non-gratuitous trust, any proceeding for an accounting or other relief brought by a trustee or by a substituted or successor trustee may be commenced by such notice to the beneficiaries of the trust as the supreme court may direct.

(b) In case of the resignation, suspension or removal, pursuant to this part, of any trustee of a trust which includes real property and mortgage participation certificates held by more than one person and secured by a mortgage on real property or any estate therein, payment of which certificates are not guaranteed by the trustee or by any title or mortgage guaranty or investment company, the court, in its discretion, may dispense with a formal accounting by such trustee; provided, however, such trustee shall file with the court a statement of the condition of the trust and of the security underlying such certificates as of the

date of his or her resignation, suspension or removal and shall assign, transfer or convey all of the assets of the trust to the successor trustee or the receiver or other officer appointed by the court.

§ 7-1.10 Commissions of trust to sell real property for benefit of creditors

A trustee of a trust to sell real property for the benefit of creditors is entitled to the same commissions as an assignee for the benefit of creditors.

§ 7-1.11 Common law and principles of equity

Unless displaced by the provisions of this part, the common law of trusts and the principles of equity supplement its provisions.

§ 8. Part 2 of article 7 of the estates, powers and trusts law is REPEALED.

§ 9. Part 3 of article 7 of the estates, powers and trusts law is REPEALED.

§ 10. Part 5 of article 7 of the estates, powers and trusts law is REPEALED.

§ 11. Part 8 of article 7 of the estates, powers and trusts law is REPEALED.

§ 12. Paragraph (c) of section 8-1.1 of the estates, powers and trusts law, subparagraph 1 as designated and subparagraph 2 as added by chapter 492 of the laws of 1985, is amended to read as follows:

(c) (1) [~~The supreme court and, where the disposition is made by will, the surrogate's court in which such will is probated have~~] Subject to subparagraph three of this paragraph, whenever it appears to the court having jurisdiction over the dispositions referred to and authorized by paragraphs (a) and (b) of this section, and whenever it appears to such court that circumstances have so changed since the execution of an instrument making a disposition for religious, charitable, educational or benevolent purposes as to render impracticable or impossible a literal compliance with the terms of such disposition, [~~the~~] such court may, on application of the [~~trustee or of~~] donor, a charitable beneficiary named in the disposition, the attorney general, the fiduciary, or the person having custody of the property subject to the disposition on notice to the attorney general, and to the donor if such donor is available, and on such additional notice as the court may direct, make an order or decree directing that such disposition be administered and applied, in whole or in part, in [~~such manner as in the judgment of the court will most effectively accomplish its general purposes~~] a manner consistent with the donor's intent, which shall be presumed to be generally charitable subject to rebuttal, free from any specific restriction, limitation or direction contained therein[~~; provided, however, that any such order or decree is effective only with the consent of the creator of the disposition if he is living~~]. For the purposes of this subparagraph, "donor" means the creator of a disposition, including a settler as defined pursuant to paragraph (u) of section 7-A-1.4 of this chapter. A donor is deemed available if the donor: (A) is living, or (B) is not a natural person, such donor is in existence, is conducting activities and can be identified and located within reasonable efforts.

(2) [~~(i)~~] For the purposes of subparagraph one of this paragraph, the designation of a charitable organization as a beneficiary or payee upon the death of the person making the designation with respect to: (A) a trust account, as defined pursuant to paragraph (d) of section 7-A-4.1 of this chapter; or (B) a pension, retirement, death benefit, stock bonus or profit-sharing plan, system or trust, or an annuity or supplemental insurance contract, pursuant to section 13-3.2 of this chapter;

or (C) a security registered in beneficiary form, pursuant to section 13-4.4 of this chapter, constitutes a disposition for religious, charitable, educational or benevolent purposes. Such disposition is effective at the time ownership passes or the funds or assets become payable to such beneficiary or payee or would have passed or become payable to such beneficiary or payee but for the applicability of cy pres, but does not change the legal character of such designation for any other purpose.

(3) A provision in the terms of a charitable disposition that would result in distribution of the subject property to a noncharitable beneficiary or a different charitable beneficiary, hereinafter referred to as an "alternative disposition", shall prevail over the power of the court to apply its powers under subparagraph one of this paragraph to modify or terminate the disposition. An alternative disposition shall not include language in a beneficiary designation form, contract, policy, application, instrument, agreement or other document supplied by the insurer, financial institution, brokerage firm, investment firm or other entity that is not the owner, donor or customer, which states how the property shall be distributed on the death of the owner, donor or customer if no payee or beneficiary is designated.

(4) The attorney general or any trustee or beneficiary of a testamentary or lifetime trust wholly benefitting one or more charitable beneficiaries may petition a court of competent jurisdiction, on notice to the attorney general and all parties interested in the trust, seeking a termination of such trust when the trust is comprised of assets, the market value of which is one hundred thousand dollars or less and the expense of administering the trust is uneconomic when considered relative to income. When the court finds upon such application that continuation of the trust is economically impracticable or is not in the best interests of the beneficiaries, the court shall make an order or decree terminating the trust and directing the distribution of the trust assets to accomplish its charitable purposes, provided, however, that if the trust is one for the benefit of a particular charitable beneficiary or beneficiaries named therein, the court shall direct the distribution of the trust assets to such named charitable beneficiary or beneficiaries, and provided further that no such proceeding may be instituted without the consent of the creator of the disposition if he is living.

[~~(ii)~~] For purposes of this paragraph, the term "charitable beneficiary" shall mean the beneficiary of a disposition for a religious, charitable, educational or benevolent purpose.

§ 13. Section 10-6.6 of the estates, powers and trusts law, the section heading as amended by chapter 591 of the laws of 1992, paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s) as added by chapter 451 of the laws of 2011, the opening paragraph of paragraph (b), subparagraph 5 of paragraph (j), subparagraphs 1 and 4 of paragraph (s) as amended and paragraph (t) as added by chapter 482 of the laws of 2013, the opening paragraph of paragraph (j) and subparagraph 6 of paragraph (j) as amended and subparagraph 7 of paragraph (j) as added by chapter 441 of the laws of 2015 and subparagraph 10 of paragraph (s) as amended by chapter 130 of the laws of 2014, is amended to read as follows:

§ 10-6.6 Exercise of a power of appointment; effect when more extensive or less extensive than authorized; trustee's authority to invade principal in trust[~~.~~]

(a) An exercise of a power of appointment is not void because its exercise is:

(1) More extensive than was authorized but is valid to the extent authorized by the instrument creating the power.

(2) Less extensive than authorized by the instrument creating the power, unless the donor has manifested a contrary intention.

(b) [~~An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of such principal to a trustee of an appointed trust for, and only for the benefit of, one, more than one or all of the current beneficiaries of the invaded trust (to the exclusion of any one or more of such current beneficiaries). The successor and remainder beneficiaries of such appointed trust may be one, more than one or all of the successor and remainder beneficiaries of such invaded trust (to the exclusion of any one, more than one or all of such successor and remainder beneficiaries)~~] **Cross-reference: For the powers and duties regarding decanting, see section 7-A-8.18 of this chapter**.

[~~(1) An authorized trustee exercising the power under this paragraph may grant a discretionary power of appointment as defined in paragraph (c) of section 10-3.4 of this article (including a presently exercisable power of appointment) in the appointed trust to one or more of the current beneficiaries of the invaded trust, provided that the beneficiary granted a power to appoint could receive the principal outright under the terms of the invaded trust.~~

~~(2) If the authorized trustee grants a power of appointment under subparagraph (l) of this paragraph, except as otherwise provided in subparagraph (3) of this paragraph, the granted power may only exclude as permissible appointees one or more of the beneficiary, the creator, or the creator's spouse, or any of the estates, creditors, or creditors of the estates of the beneficiary, the creator or the creator's spouse.~~

~~(3) If the authorized trustee exercises the power under this paragraph, the appointed trust may grant any power of appointment included in the invaded trust provided such power has the same class of permissible appointees as the power of appointment in the invaded trust and is exercisable in the same fashion as the power of appointment in the invaded trust.~~

~~(4) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust may include present or future members of such class.~~

~~(c) An authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust, provided that the current beneficiaries of the appointed trust shall be the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries of the appointed trust shall be the same as the successor and remainder beneficiaries of the invaded trust.~~

~~(1) If the authorized trustee exercises the power under this paragraph, the appointed trust shall include the same language authorizing the trustee to distribute the income or invade the principal of the appointed trust as in the invaded trust.~~

~~(2) If the authorized trustee exercises the power under this paragraph to extend the term of the appointed trust beyond the term of the invaded trust, for any period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, the appointed trust, in addition to the language required to be included in the appointed trust pursuant to subparagraph (1) of this paragraph, may also include language providing the trustees with unlimited discretion to invade the principal of the appointed trust during such extended term.~~

~~(3) If the beneficiary or beneficiaries of the invaded trust are described by a class, the beneficiary or beneficiaries of the appointed trust shall include present or future members of such class.~~

~~(4) If the authorized trustee exercises the power under this paragraph and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust shall grant such power of appointment in the appointed trust and the class of permissible appointees shall be the same as in the invaded trust.~~

~~(d) An exercise of the power to invade trust principal under paragraphs (b) and (c) of this section shall be considered the exercise of a special power of appointment as defined in section 10-3.2 of this article.~~

~~(e) The appointed trust to which an authorized trustee appoints the assets of the invaded trust may have a term that is longer than the term set forth in the invaded trust, including, but not limited to, a term measured by the lifetime of a current beneficiary.~~

~~(f) If an authorized trustee has unlimited discretion to invade the principal of a trust and the same trustee or another trustee has the power to invade principal under the trust instrument which power is not subject to unlimited discretion, such authorized trustee having unlimited discretion may exercise the power of appointment under paragraph (b) of this section.~~

~~(g) An authorized trustee may exercise the power to appoint in favor of an appointed trust under paragraphs (b) and (c) of this section whether or not there is a current need to invade principal under the terms of the invaded trust.~~

~~(h) An authorized trustee exercising the power under this section has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances. The authorized trustee may not exercise the power under this section if there is substantial evidence of a contrary intent of the creator and it cannot be established that the creator would be likely to have changed such intention under the circumstances existing at the time of the exercise of the power. The provisions of the invaded trust alone are not to be viewed as substantial evidence of a contrary intent of the creator unless the invaded trust expressly prohibits the exercise of the power in the manner intended by the authorized trustee.~~

~~(i) Unless the authorized trustee provides otherwise:~~

~~(1) The appointment of all of the assets comprising the principal of the invaded trust to an appointed trust shall include subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust; and~~

~~(2) The appointment of part but not all of the assets comprising the principal of the invaded trust to an appointed trust shall not include subsequently discovered assets belonging to the invaded trust and principal paid to or acquired by the invaded trust after the appointment to the appointed trust; such assets shall remain the assets of the invaded trust.~~

~~(j) The exercise of the power to appoint to an appointed trust under paragraph (b) or (c) of this section shall be evidenced by an instrument in writing, signed, dated and acknowledged by the authorized trustee. The exercise of the power shall be effective thirty days after the date of service of the instrument as specified in subparagraph (2) of this paragraph, unless the persons entitled to notice consent in writing to a~~

~~sooner effective date. The exercise of the power is irrevocable on such effective date, either thirty days following service of the notice or the effective date as set forth in the written consent.~~

~~(1) An authorized trustee may exercise the power authorized by paragraphs (b) and (c) of this section without the consent of the creator, or of the persons interested in the invaded trust, and without court approval, provided that the authorized trustee may seek court approval for the exercise with notice to all persons interested in the invaded trust.~~

~~(2) A copy of the instrument exercising the power and a copy of each of the invaded trust and the appointed trust shall be delivered (A) to the creator, if living, of the invaded trust, (B) to any person having the right, pursuant to the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under paragraph (b) or (c) of this section, and (C) to any persons interested in the invaded trust and the appointed trust (or, in the case of any persons interested in the trust, to any guardian of the property, conservator or personal representative of any such person or the parent or person with whom any such minor person resides), by registered or certified mail, return receipt requested, or by personal delivery or in any other manner directed by the court having jurisdiction over the invaded trust.~~

~~(3) The instrument exercising the power shall state whether the appointment is of all the assets comprising the principal of the invaded trust or a part but not all the assets comprising the principal of the invaded trust and if a part, the approximate percentage of the value of the principal of the invaded trust that is the subject of the appointment.~~

~~(4) A person interested in the invaded trust may object to the trustee's exercise of the power under this section by serving a written notice of objection upon the trustee prior to the effective date of the exercise of the power. The failure to object shall not constitute a consent.~~

~~(5) The receipt of a copy of the instrument exercising the power shall not affect the right of any person interested in the invaded trust to compel the authorized trustee who exercised the power under paragraph (b) or (c) of this section to account for such exercise and shall not foreclose any such interested person from objecting to an account or compelling a trustee to account. Whether the exercise of a power under paragraph (b) or (c) of this section begins the running of the statute of limitations on an action to compel a trustee to account shall be based on all the facts and circumstances of the situation.~~

~~(6) A copy of the instrument exercising the power shall be kept with the records of the invaded trust and, within twenty days of the effective date, the original shall be filed in the court having jurisdiction over the invaded trust. Where a trustee of an inter vivos trust exercises the power and the trust has not been the subject of a proceeding in the surrogate's court, no filing is required. The instrument shall state that in certain circumstances the appointment will begin the running of the statute of limitations that will preclude persons interested in the invaded trust from compelling an accounting by the trustees after the expiration of a given time.~~

~~(7) Prior to the effective date as provided herein, a trustee may revoke the exercise of the power to invade to a new trust. Where a trustee has served notice of the exercise of the power pursuant to subparagraph (2) of this paragraph, the trustee shall serve notice of the revocation of the exercise of the power to persons interested in the invaded~~

~~trust and the appointed trust by registered or certified mail, return receipt requested, or by personal delivery or in any other manner directed by the court having jurisdiction over the invaded trust. Where the notice of the exercise of the power was filed with the court, the trustee shall file the notice of revocation of the exercise of the power with such court.~~

~~(k) This section shall not be construed to abridge the right of any trustee to appoint property in further trust that arises under the terms of the governing instrument of a trust or under any other provision of law or under common law, or as directed by any court having jurisdiction over the trust.~~

~~(l) Nothing in this section is intended to create or imply a duty to exercise a power to invade principal, and no inference of impropriety shall be made as a result of an authorized trustee not exercising the power conferred under paragraph (b) or (c) of this section.~~

~~(m) A power authorized by paragraph (b) or (c) of this section may be exercised, subject to the provisions of paragraph (h) of this section, unless expressly prohibited by the terms of the governing instrument, but a general prohibition of the amendment or revocation of the invaded trust or a provision that constitutes a spendthrift clause shall not preclude the exercise of a power under paragraph (b) or (c) of this section.~~

~~(n) An authorized trustee may not exercise a power authorized by paragraph (b) or (c) of this section to effect any of the following:~~

~~(1) To reduce, limit or modify any beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a right to withdraw a percentage of the value of the trust or a right to withdraw a specified dollar amount, provided that such mandatory right has come into effect with respect to the beneficiary. Notwithstanding the foregoing, but subject to the other limitations in this section, an authorized trustee may exercise a power authorized by paragraph (b) or (c) of this section to appoint to an appointed trust that is a supplemental needs trust that conforms to the provisions of section 7-1.12 of this chapter;~~

~~(2) To decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence and prudence;~~

~~(3) To eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power under paragraph (b) or (c) of this section unless a court having jurisdiction over the trust specifies otherwise;~~

~~(4) To make a binding and conclusive fixation of the value of any asset for purposes of distribution, allocation or otherwise; or~~

~~(5) To jeopardize (A) the deduction or exclusion originally claimed with respect to any contribution to the invaded trust that qualified for the annual exclusion under section 2503(b) of the internal revenue code, the marital deduction under section 2056(a) or 2523(a) of the internal revenue code, or the charitable deduction under section 170(a), 642(c), 2055(a) or 2522(a) of the internal revenue code, (B) the qualification of a transfer as a direct skip under section 2642(c) of the internal revenue code, or (C) any other specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under the internal revenue code.~~

~~(o) An authorized trustee shall consider the tax implications of the exercise of the power under paragraph (b) or (c) of this section.~~

~~(p) An authorized trustee may not exercise a power described in para-graph (b) or (c) of this section in violation of the limitations under sections 9-1.1, 10-8.1 and 10-8.2 of this chapter, and any such exercise shall void the entire exercise of such power.~~

~~(q)(1) Unless a court otherwise directs, an authorized trustee may not exercise a power authorized by paragraph (b) or (c) of this section to change the provisions regarding the determination of the compensation of any trustee; the commissions or other compensation payable to the trus-tees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and shall be determined in the same manner as in the invaded trust.~~

~~(2) No trustee shall receive any paying commission or other compen-sation for appointing of property from the invaded trust to an appointed trust pursuant to paragraph (b) or (c) of this section.~~

~~(r) Unless the invaded trust expressly provides otherwise, this section applies to:~~

~~(1) Any trust governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state; and~~

~~(2) Any trust that has a trustee who is an individual domiciled in this state or a trustee which is an entity having an office in this state, provided that a majority of the trustees select this state as the location for the primary administration of the trust by an instrument in writing, signed and acknowledged by a majority of the trustees. The instrument exercising this selection shall be kept with the records of the invaded trust.~~

~~(s) For purposes of this section:~~

~~(1) The term "appointed trust" means an irrevocable trust which receives principal from an invaded trust under paragraph (b) or (c) of this section including a new trust created by the creator of the invaded trust or by the trustees, in that capacity, of the invaded trust. For purposes of creating the new trust, the requirement of section 7-1.17 of this chapter that the instrument be executed and acknowledged by the person establishing such trust shall be deemed satisfied by the execution and acknowledgment of the trustee of the appointed trust.~~

~~(2) The term "authorized trustee" means, as to an invaded trust, any trustee or trustees with authority to pay trust principal to or for one or more current beneficiaries other than (i) the creator, or (ii) a beneficiary to whom income or principal must be paid currently or in the future, or who is or will become eligible to receive a distribution of income or principal in the discretion of the trustee (other than by the exercise of a power of appointment held in a non-fiduciary capacity).~~

~~(3) References to sections of the "internal revenue code" refer to the United States internal revenue code of 1986, as amended from time to time, or to corresponding provisions of subsequent internal revenue laws, and also refer to corresponding provisions of state law.~~

~~(4) The term "current beneficiary or beneficiaries" means the person or persons (or as to a class, any person or persons who are or will become members of such class) to whom the trustees may distribute prin-cipal at the time of the exercise of the power, provided however that the interest of a beneficiary to whom income, but not principal, may be distributed in the discretion of the trustee of the invaded trust may be continued in the appointed trust.~~

~~(5) The term "invade" shall mean the power to pay directly to the beneficiary of a trust or make application for the benefit of the bene-ficiary.~~

~~(6) The term "invaded trust" means any existing irrevocable inter vivos or testamentary trust whose principal is appointed under paragraph (b) or (c) of this section.~~

~~(7) The term "person or persons interested in the invaded trust" shall mean any person or persons upon whom service of process would be required in a proceeding for the judicial settlement of the account of the trustee, taking into account section three hundred fifteen of the surrogate's court procedure act.~~

~~(8) The term "principal" shall include the income of the trust at the time of the exercise of the power that is not currently required to be distributed, including accrued and accumulated income.~~

~~(9) The term "unlimited discretion" means the unlimited right to distribute principal that is not modified in any manner. A power to pay principal that includes words such as best interests, welfare, comfort, or happiness shall not be considered a limitation or modification of the right to distribute principal.~~

~~(10) The creator shall not be considered to be a beneficiary of an invaded or appointed trust by reason of the trustee's authority to pay trust principal to the creator pursuant to section 7-1.11 of this chapter or by reason of the trustee's authority under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities.~~

~~(t) Cross-reference. For the exercise of the power under paragraph (b) or (c) of this section where there are multiple trustees, see sections 10-6.7 and 10-10.7 of this article.~~]

§ 14. Section 10-10.1 of the estates, powers and trust law, as amended by chapter 82 of the laws of 2004, is amended to read as follows:

§ 10-10.1 Power to distribute principal or allocate income; restriction on exercise

A power held by a person as trustee of an express trust to make a discretionary distribution of either principal or income to such person as a beneficiary, or to make **a** discretionary [~~allocations in such person's favor of receipts or expenses as between~~] **distribution of either** principal [~~and~~] **or** income **in discharge of the trustee's personal obligation of support**, cannot be exercised by such person unless (1) such person is the grantor of the trust and the trust is revocable by such person during such person's lifetime, or (2) the power is a power to provide for such person's health, education, maintenance or support within the meaning of sections 2041 and 2514 of the Internal Revenue Code, or (3) the trust instrument, by express reference to this section, provides otherwise. If the power is conferred on two or more trustees, it may be exercised by the trustee or trustees who are not so disqualified. If there is no trustee qualified to exercise the power, its exercise devolves on the supreme court or the surrogate's court, except that if the power is created by will, its exercise devolves on the surrogate's court having jurisdiction of the estate of the donor of the power.

§ 15. Section 10-10.6 of the estates, powers and trusts law is amended to read as follows:

§ 10-10.6 Effect of reserved unqualified power to revoke

Where a creator reserves an unqualified power of revocation, he remains the absolute owner of the property disposed of so far as the rights of his **or her** creditors or purchasers are concerned. **This**

section shall not apply to the trust contributor of an express trust created after the effective date of section 7-A-5.6 of this chapter.

§ 16. Section 10-10.7 of the estates, powers and trusts law, as amended by chapter 482 of the laws of 2013, is amended to read as follows:

§ 10-10.7 Exercise of powers by multiple fiduciaries; joint and several powers

Unless contrary to the express provisions of an instrument affecting the disposition of property, a joint power other than a power of appointment [~~but including a power in a trustee to invade trust principal under section 10-6.6 of this article or under the terms of the dispositive instrument~~], conferred upon three or more fiduciaries, as that term is defined in **section** 11-1.1 **of this chapter**, by the terms of such instrument, or by statute, or arising by operation of law, may be exercised by a majority of such fiduciaries, or by a majority of survivor fiduciaries, or by the survivor fiduciary. Such a power conferred upon or surviving to two such fiduciaries may be exercised jointly by both such fiduciaries or by the survivor fiduciary, unless contrary to the express terms of the instrument creating the power. A fiduciary who fails to act through absence or disability, or a dissenting fiduciary who joins in carrying out the decision of a majority of the fiduciaries if his or her dissent is expressed promptly in writing to his or her co-fiduciaries, shall not be liable for the consequences of any majority decision, provided that liability for failure to join in administering the estate [~~or trust or to prevent a breach of the trust~~] may not thus be avoided. A power vested in one or more persons under a trust of real property created in connection with the salvaging of mortgage participation certificates may be executed by one or more of such persons as provided in such trust. This section shall not affect the right of any one of two or more personal representatives of a decedent to exercise a several power.

§ 17. Section 11-1.1 of the estates, powers and trusts law, as amended by chapter 686 of the laws of 1967, item (D) of subparagraph 5 of paragraph (b) as amended, item (E) of subparagraph 5 of paragraph (b) as added and item (F) of subparagraph 5 of paragraph (b) as relettered by chapter 257 of the laws of 1968, subparagraphs 9 and 10 of paragraph (b) as amended by chapter 501 of the laws of 1970 and the opening paragraph of subparagraph 9 of paragraph (b), item (B) of subparagraph 9 of paragraph (b), the opening paragraph of subparagraph 10 of paragraph (b) and item (B) of subparagraph 10 of paragraph (b) as further amended by section 104 of part A of chapter 62 of the laws of 2011, subparagraphs 13, 14, 15, 16, 17, 18, 21 and 22 of paragraph (b) as amended by chapter 686 of the laws of 1967 as renumbered by chapter 904 of the laws of 1973, subparagraph 19 of paragraph (b) as amended by chapter 595 of the laws of 1992, subparagraph 20 of paragraph (b) as amended by chapter 519 of the laws of 1987 and paragraph (d) as amended by chapter 158 of the laws of 1975, is amended to read as follows:

§ 11-1.1 Fiduciaries' powers

(a) As used in this section, unless the context or subject matter otherwise requires, (1) the term "estate" means the estate of a decedent; (2) the term "trust" means any express trust of property, created by a will, deed or other instrument, whereby there is imposed upon a trustee the duty to administer property for the benefit of a named or otherwise described income or principal beneficiary, or both. A trust shall not include trusts for the benefit of creditors, resulting or constructive trusts, business trusts where certificates of beneficial

interest are issued to the beneficiary, investment trusts, voting trusts, security instruments such as deeds of trust and mortgages, trusts created by the judgment or decree of a court, liquidation or reorganization trusts, trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, instruments wherein persons are mere nominees for others, or trusts created in deposits in any banking institution or savings and loan institution; (3) the term "fiduciary" means administrators, executors, preliminary executors, administrators d.b.n., administrators c.t.a.d.b.n., administrators c.t.a., ancillary executors, ancillary administrators, ancillary administrators c.t.a [~~and trustees of express trusts~~], including a corporate as well as a natural person acting as fiduciary, and a successor or substitute fiduciary, whether designated in a trust instrument or otherwise.

(b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:

(1) To accept additions to any estate [~~or trust~~] from sources other than the estate of the decedent [~~or the settlor of a trust~~].

(2) To acquire the remaining undivided interest in the property of an estate [~~or trust~~] in which the fiduciary, in his **or her** fiduciary capacity, holds an undivided interest.

(3) To invest and reinvest property of the estate [~~or trust~~] under the provisions of the will, deed or other instrument or as otherwise provided by law.

(4) To effect and keep in force fire, rent, title, liability, casualty or other insurance to protect the property of the estate [~~or trust~~] and to protect the fiduciary.

(5) With respect to any property or any estate therein owned by an estate [~~or trust~~], except where such property or any estate therein is specifically disposed of:

(A) To take possession of, collect the rents from and manage the same.

(B) To sell the same at public or private sale, and on such terms as in the opinion of the fiduciary will be most advantageous to those interested therein.

(C) With respect to fiduciaries [~~other than a trustee~~], to lease the same for a term not exceeding three years [~~and, in the case of a trustee, to lease the same for a term not exceeding ten years although such term extends beyond the duration of the trust and, in either of such cases~~], including the right to explore for and remove mineral or other natural resources, and in connection with mineral leases to enter into pooling and unitization agreements.

(D) To mortgage the same.

(E) Any power to take possession of, collect the rent from, manage, sell, lease or mortgage, granted by this subparagraph [~~(5)~~], which is prohibited by the terms of the will, deed or other instrument or by the provisions of this subparagraph [~~(5)~~], nonetheless exists, upon the approval of the surrogate, where such power is necessary for the purposes set forth in SCPA 1902.

(F) A fiduciary acting under a will may exercise all of the powers granted by this subparagraph [~~(5)~~] notwithstanding the effect upon such will of the birth of a child after its execution or of any election by a surviving spouse.

(6) To make ordinary repairs to the property of the estate [~~or trust~~].

(7) To grant options for the sale of property for a period not exceeding six months.

(8) With respect to any mortgage held by the estate [~~or trust~~] (A) to continue the same upon and after maturity, with or without renewal or extension, upon such terms as the fiduciary deems advisable; (B) to foreclose, as an incident to collection of any bond or note, any mortgage securing such bond or note, and to purchase the mortgaged property or acquire the property by deed from the mortgagor in lieu of foreclosure.

(9) To employ any bank or trust company incorporated in this state, any national bank located in this state or any private banker duly authorized by the superintendent of financial services of this state to engage in business here (who, as private banker, maintains a permanent capital of not less than one million dollars) as custodian of any stock or other securities held as a fiduciary, and the cost thereof, except in the case of a corporate fiduciary, shall be a charge upon the estate or trust. The records of such bank, trust company or private banker shall at all times show the ownership of such stock or other securities. Such stock or other securities shall at all times be kept separate from the assets of such bank, trust company or private banker and may be kept by such bank, trust company or private banker:

(A) in a manner such that all certificates representing the securities from time to time constituting the assets of a particular estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(B) in a manner such that, without certification as to ownership attached, certificates representing securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denomination into one or more certificates of large denomination, provided that a bank, trust company or private banker, when operating under the method of safekeeping security certificates described in this subparagraph [~~(B)~~], shall be subject to such rules and regulations as, in the case of state chartered institutions, the state superintendent of financial services and, in the case of national banking associations, the comptroller of the currency may from time to time issue. Such bank, trust company or private banker shall, on demand by the fiduciary, certify in writing the securities held by it for such estate, trust or fiduciary account.

(10) To cause any stock or other securities (hereinafter referred to as "securities") held by any bank or trust company, when acting as fiduciary, whether alone or jointly with an individual, with the consent of the individual fiduciary, if any (who is hereby authorized to give such consent), to be registered and held in the name of a nominee of such bank or trust company without disclosure of the fiduciary relationship; and, in the case of an individual acting as fiduciary, to direct any bank or trust company incorporated under the laws of this state, any national bank located in this state or any private banker duly authorized by the superintendent of financial services of this state to engage in business here (who, as private banker, maintains a permanent capital of not less than one million dollars) to register and hold any securities deposited with such bank, trust company or private banker (hereinafter referred to as "bank") in the name of a nominee of such bank. The bank shall not redeliver such securities to the individual fiduciary, who authorized their registration in the name of a nominee of the bank,

without first registering the securities in the name of the individual fiduciary, as such. But, any sale of such securities by the bank at the direction of the individual fiduciary shall not be treated as a redelivery. The bank may make any disposition of such securities which is authorized or directed by an order or decree of the court having jurisdiction of the estate or trust. Any such bank shall be absolutely liable for any loss occasioned by the acts of its nominee with respect to the securities so registered. The records of the bank shall at all times show the ownership of any such securities and of those held in bearer form. Such securities and those held in bearer form shall at all times be kept separate from the assets of the bank and may be kept by such bank:

(A) in a manner such that all certificates representing the securities from time to time constituting the assets of a particular estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(B) in a manner such that, without certification as to ownership attached, certificates representing securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denomination into one or more certificates of large denomination, provided that a bank, when operating under the method of safekeeping security certificates described in this subparagraph (B), shall be subject to such rules and regulations as, in the case of state chartered institutions, the state superintendent of financial services and, in the case of national banking associations, the comptroller of the currency may from time to time issue. Such bank or trust company shall, on demand by any party to an accounting by such bank or trust company as fiduciary or on demand by the attorney for such party, certify in writing the securities held by such bank or trust company as such fiduciary.

(11) In the case of the survivor of two or more fiduciaries, to continue to administer the property of the estate [~~or trust~~] without the appointment of a successor to the fiduciary who has ceased to act and to exercise or perform all of the powers given to the original fiduciaries unless contrary to the express provision of the will, deed or other instrument.

(12) As successor or substitute fiduciary, to succeed to all of the powers, duties and discretion of the original fiduciary, with respect to the estate [~~or trust~~], as were given to the original fiduciary, unless the exercise of such powers, duties or discretion of the original fiduciary are expressly prohibited by the will, deed or other instrument to any successor or substituted fiduciary.

(13) To contest, compromise or otherwise settle any claim in favor of the estate[~~, trust~~] or fiduciary or in favor of third persons and against the estate[~~, trust~~] or fiduciary.

(14) To vote in person or by proxy, discretionary or otherwise, shares of stock or other securities held by him as fiduciary.

(15) To pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures or other corporate securities held by a fiduciary, whenever such payments may be legally enforceable against the fiduciary or any property of the estate [~~or trust~~] or the fiduciary deems payment expedient and for the best interests of the estate [~~or trust~~].

(16) To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers or

liquidations, and to consent to corporate sales, leases and encumbrances. In the exercise of such powers the fiduciary is authorized to deposit stocks, bonds or other securities with any protective or other similar committee under such terms and conditions respecting the deposit thereof as the fiduciary may approve.

(17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate [~~or trust~~].

(18) [~~In the case of a trustee, to hold the property of two or more trusts or parts of such trusts created by the same instrument as an undivided whole without separation as between such trusts or parts, provided that such separate trusts or parts shall have undivided interests and provided further that no such holding shall defer the vesting of any estate in possession or otherwise.~~

~~(19)~~] When a legacy, a distributive share, the proceeds of any action brought as prescribed by 5-4.1, or the proceeds of a settlement of an action brought in behalf of an infant for personal injuries are payable to an infant, incompetent, conservatee or person under disability and the sum does not exceed ten thousand dollars, to make payment thereof to the father or mother or to some competent adult person with whom the infant, incompetent, conservatee or person under disability resides or who has some interest in his **or her** welfare for the use and benefit of such infant, incompetent, conservatee or person under disability. If the sum payable to a patient in an institution in the state department of mental hygiene is not in excess of the amount which the director of the institution is authorized to receive under section 29.23 of the mental hygiene law, to make payment of such sum to such director for use as provided in that section.

[~~(20)~~] **(19)** To make distribution in cash, in kind valued at the fair market value of the property at the date of distribution, or partly in each, without being required to make pro rata distributions of specific property.

[~~(21)~~] **(20)** To join with the surviving spouse or the executor of his **or her** will or the administrator of his **or her** estate in the execution and filing of a joint income tax return for any period prior to the death of a decedent for which he has not filed a return or a gift tax return on gifts made by the decedent's surviving spouse, and to consent to treat such gifts as being made one-half by the decedent, for any period prior to a decedent's death, and to pay such taxes thereon as are chargeable to the decedent.

[~~(22)~~] **(21)** In addition to those expenses specifically provided for in this paragraph, to pay all other reasonable and proper expenses of administration from the property of the estate or trust, including the reasonable expense of obtaining and continuing his **or her** bond and any reasonable counsel fees he may necessarily incur.

(c) The court having jurisdiction of the estate [~~or trust~~] may authorize the fiduciary to exercise any other power which in the judgment of the court is necessary for the proper administration of the estate [~~or trust~~].

(d) The powers set forth in this section shall apply to all estates [~~and trusts~~] now in existence or which may hereafter come into existence and are in addition to the powers granted by law or by the will, deed or other instrument.

§ 18. Paragraph (c) of section 11-2.3 of the estates, powers and trusts law, as added by chapter 609 of the laws of 1994, is amended to read as follows:

(c) Delegation of investment or management functions.

(1) [~~Delegation~~] **Except as provided in subparagraph four of this paragraph, delegation** of an investment or management function requires a trustee to exercise care, skill and caution in:

(A) selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;

(B) establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;

(C) periodically reviewing the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and

(D) controlling the overall cost by reason of the delegation.

(2) The delegee has a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and void.

(3) By accepting the delegation of a trustee's function from the trustee of a trust that is subject to the law of New York, the delegee submits to the jurisdiction of the courts of New York even if a delegation agreement provides otherwise, and the delegee may be made a party to any proceeding in such courts that places in issue the decisions or actions of the delegee.

(4) A trustee, as defined pursuant to paragraph (dd) of section 7-A-1.4 of this chapter, shall be authorized to delegate in its investment or management functions pursuant to section 7-A-8.7 of this chapter.

§ 19. Paragraph (a) and subparagraph 3 of paragraph (d) of section 13-3.2 of the estates, powers and trusts law, paragraph (d) as relettered by chapter 595 of the laws of 1992, are amended to read as follows:

(a) If a person is entitled to receive (1) payment in money, securities or other property under a pension, retirement, death benefit, stock bonus or profit-sharing plan, system or trust or (2) money payable by an insurance company or a savings bank authorized to conduct the business of life insurance under an annuity or pure endowment contract or a policy of life, group life, industrial life or accident and health insurance, or if a contract made by such an insurer relating to the payment of proceeds or avails of such insurance designates a payee or beneficiary to receive such payment upon the death of the person making the designation or another, the rights of persons so entitled or designated and the ownership of money, securities or other property thereby received shall not be impaired or defeated by any statute or rule of law governing the transfer of property by will, gift or intestacy**, except as provided in subparagraph three of paragraph (d) of this section**.

(3) Any person entitled to receive payment by reason of a payee or beneficiary designation described in this section**; provided, however, that the rules for cy pres, pursuant to section 7-A-3.18 of this chapter, shall apply if at the time of payment such person is a charitable organization that is not in existence or is not carrying out charitable activities, or if the circumstances otherwise support the application of cy pres; provided further, however, that the provisions of subparagraph one of paragraph (c) of section one thousand two-a of the not-for-profit corporation law shall apply if at the time of payment such person is a dissolved or dissolving charitable corporation to which such section applies**.

§ 20. Section 13-4.7 of the estates, powers and trusts law, as added by chapter 325 of the laws of 2005, is amended to read as follows:

§ 13-4.7 Ownership on death of owner

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners**; provided, however, that if any beneficiary is a charitable organization, the rules for cy pres, pursuant to section 7-A-3.18 of this chapter, shall apply if at the time ownership passes to the beneficiary, or at any time prior to payment or distribution to the beneficiary, the beneficiary is not in existence or is not carrying out charitable activities, or if the circumstances support the application of cy pres; provided further, however, that the provisions of subparagraph one of paragraph (c) of section one thousand two-a of the not-for-profit corporation law shall apply if at such time the beneficiary is a dissolved or dissolving charitable corporation to which such section applies**. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§ 21. Subdivision 5 of section 100-a of the banking law, as amended by chapter 961 of the laws of 1966, is amended to read as follows:

5. Bonds. No bond or other security, except as hereinafter provided, shall be required from any trust company [~~for or in respect to any trust, nor~~] when appointed executor, administrator, guardian, [~~trustee,~~] receiver, committee or depositary or in any other fiduciary capacity nor when receiving commissions under the provisions of SCPA 2310 or 2311. **The settlor of a trust pursuant to article seven-A of the estates, powers and trusts law may expressly require that a trust company furnish a bond.** The court, or officer making such appointment may, upon proper application, require any trust company, which shall have been so appointed to give such security as to the court or officer shall seem proper, or upon failure of such trust company to give security as required, may remove such trust company from and revoke such appointment.

§ 22. Paragraph 1 of subdivision (c) of section 5205 of the civil practice law and rules, as amended by chapter 93 of the laws of 1995, is amended and a new paragraph 6 is added to read as follows:

1. Except as provided in paragraphs four [~~and~~]**,** five **and six** of this subdivision, all property while held in trust for a judgment debtor, where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor, is exempt from application to the satisfaction of a money judgment.

6. For purposes of this subdivision, a trust shall be considered a trust which has been created by, or which has proceeded from the judgment debtor on the lapse, release or waiver of a power held by the judgment debtor to withdraw property from the trust only to the extent that the value of the property affected by the lapse, release or waiver exceeds the greatest amount specified at the time of the lapse, release or waiver, pursuant to section 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code of 1986, as amended.

§ 23. Subdivision 2 of section 706 of the surrogate's court procedure act, as amended by chapter 503 of the laws of 1980, is amended to read as follows:

2. When all the persons to whom letters have been issued die or where letters issued to all of them have been revoked by a decree of the surrogate's court, or, in the case of a lifetime trust, when all persons serving as trustee die or are removed, without any successor trustee having been effectively appointed pursuant to the terms of the lifetime trust instrument, **or if a trustee is appointed pursuant to subparagraph two of paragraph (c) or subparagraph two paragraph (d) of section 7-A-7.5 of the estates, powers and trusts law,** that court has, except in a case where it is otherwise specially prescribed by law, the same power to appoint a successor to the person or persons whose powers have ceased as if the letters had not been issued or as if no appointment had been made. The successor may complete the administration of the estate committed to his **or her** predecessor, he **or she** may continue in his **or her** own name a civil action or proceeding pending in favor of his **or her** predecessor and he **or she** may enforce a judgment, order or decree in favor of the latter.

§ 24. Section 715 of the surrogate's court procedure act, as amended by chapter 483 of the laws of 2013, is amended to read as follows:

§ 715. Application by fiduciary for permission to resign

A fiduciary may present to the court at any time a petition praying that he or she be permitted to resign, that his or her letters be revoked and that he or she be permitted to settle his or her account judicially or informally as such fiduciary, and that notice of the application be given to the persons and in the manner directed by the court. **Notwithstanding any other provision of this section, a testamentary trustee may resign in accordance with the provisions of section 7-A-7.7 of the estates, powers and trusts law.** The petition shall show the facts upon which the application is founded.

§ 25. Section 806 of the surrogate's court procedure act, as amended by chapter 503 of the laws of 1980, is amended to read as follows:

§ 806. Bond of [~~a testamentary trustee or~~] **an** executor acting as trustee

Whenever [~~a testamentary trustee is appointed by will or order of the court or~~] an executor is appointed who is required to hold, manage or invest real or personal property for the benefit of another, he shall unless the will provides otherwise, execute and file a bond.

§ 26. Subdivision 2 of section 1502 of the surrogate's court procedure act, as amended by chapter 503 of the laws of 1980, is amended to read as follows:

2. The court shall not appoint a trustee, successor or co-trustee if the appointment would contravene the express terms of the will or lifetime trust instrument or if a trustee may be or has been named in the will or lifetime trust instrument as successor, substitute or co-trustee and is not disqualified to act**, or if a trustee is appointed pursuant to subparagraph two of paragraph (c) or subparagraph two of paragraph (d) of section 7-A-7.5 of the estates, powers and trusts law.**

§ 27. Paragraph (e) of section 1317 of the not-for-profit corporation law is amended to read as follows:

(e) Where the voting trust agreement shall vest in the voting trustee the right to vote the shares of a foreign corporation which has an office in this state for conducting activities and either the principal activity of which is conducted within this state or the greater part of its property is located within this state, the voting trust agreement is an express trust created under the laws of this state and the supreme

court upon the petition of a voting trust certificate holder may exercise such power over the trustee named therein as is granted to the court by section [~~7-2.6~~] 7-1.8 of the estates, powers and trusts law.

§ 28. Paragraph (b) of subdivision 5 of section 1406 of the abandoned property law, as added by chapter 57 of the laws of 1978, is amended to read as follows:

(b) Payment by the comptroller on a claim for the proceeds of a deposit account, including any additions or accruals thereon, originally established pursuant to section [~~7-5.2~~] 7-A-4.2 of the estates, powers and trusts law or former subdivision two of section one hundred thirty-four of the banking law, may be made to the beneficiary of such deposit account upon presentation of satisfactory proof of entitlement. The receipt or acquittance of such beneficiary shall be a valid and sufficient release and discharge to the comptroller for the deposit account, or any part thereof, for such payment prior to the receipt by the comptroller of notice in writing that there exists a testamentary disposition sufficient to dispose of such deposit account pursuant to said section [~~7-5.2~~] 7-A-4.2 of the estates, powers and trusts law.

§ 29. Paragraph 3 of subdivision 3 of section 5-1514 of the general obligations law, as amended by chapter 340 of the laws of 2010, is amended to read as follows:

(3) opening, modifying or terminating a bank account in trust form as described in section [~~7-5.1~~] 7-A-4.1 of the estates, powers and trusts law, and designate or change the beneficiary or beneficiaries of such account;

§ 30. Subparagraph 1 and item A of subparagraph 2 of paragraph (b) of section 2-1.11 of the estates, powers and trusts law, as amended by chapter 27 of the laws of 2010, and subparagraph 1 of paragraph (b) as amended by chapter 285 of the laws of 2011, are amended to read as follows:

(1) The term "disposition" shall include a disposition created under a will or trust agreement including, without limitation, the granting of a power of appointment, a disposition created by the exercise or nonexercise of a power of appointment, a distributive share under 4-1.1, a transfer created by a trust account as defined in [~~7-5.1~~] 7-A-4.1, a transfer created by a life insurance or annuity contract, a transfer resulting from the creation of a joint tenancy or tenancy by the entirety, succession to an interest occurring by operation of law on the death of a joint tenant or tenant by the entirety, a transfer under an employee benefit plan (including, without limitation, any pension, retirement, death benefit, stock bonus or profit-sharing plan, system or trust), a transfer of a security to a beneficiary pursuant to part 4 of article 13 of this chapter, any other disposition or transfer created by any testamentary or nontestamentary instrument, or by operation of law, and any of the foregoing created or increased by reason of a renunciation made by another person.

A. If the disposition is created by will, the exercise or nonexercise of a testamentary power of appointment, a distribution pursuant to 4-1.1, the deposit of money in a trust account as defined in [~~7-5.1~~] 7-A-4.1, the registration of a security in beneficiary form pursuant to part 4 of article 13 of this chapter, a life insurance or annuity contract, the death of a joint tenant or tenant by the entirety, or an employee benefit plan, the date of death of the deceased testator, holder of the power of appointment, intestate, creator of the trust account, registered owner of the security, insured, annuitant, other joint tenant or tenant by the entirety, or employee, as the case may be;

§ 31. Subparagraph 1 of paragraph (b) of section 3-3.7 of the estates, powers and trusts law, as amended by chapter 352 of the laws of 2019, is amended to read as follows:

(1) The trust instrument is amendable or revocable, or both, provided, however, that the disposition or appointment shall be given effect in accordance with the terms of the trust instrument, including an amendment thereto, as they appear in writing on the date of the testator's death and, where the testator so directs, including amendments to the trust instrument after his or her death, if the instrument evidencing such amendment is executed and acknowledged in the manner provided for in paragraph [~~(b)~~] **(g)** of [~~7-1.17~~] **section 7-A-6.2 of this chapter**.

§ 32. Section 9-1.7 of the estates, powers and trusts law is amended to read as follows:

§ 9-1.7 Trust for self-employed individuals and others

No trust created under a retirement plan, which is exempt from federal income taxation under the laws of the United States, is invalid as violating the rule against perpetuities or the rules governing the accumulation of income. Such a trust may continue for such time as may be necessary to accomplish the purposes for which it is created; may permit the accumulation of income until such time as the income is distributed to the beneficiaries under the terms of the trust; and may, according to its terms, be made irrevocable and the interest of its beneficiaries nontransferable by assignment or otherwise. A trust so made irrevocable is not subject to revocation upon the written consent of its beneficiaries as provided in [~~7-1.9~~] **section 7-A-3.16 of this chapter**.

§ 33. Subdivision (d) of section 43.03 of the mental hygiene law, as added by chapter 433 of the laws of 1993, is amended to read as follows:

(d) The trustee of a supplemental needs trust for the benefit of a patient, which trust conforms to the provisions of section [~~7-1.12~~] **7-A-3.8** of the estates, powers and trusts law, shall not be deemed to be holding assets for the patient or on his or her behalf, as described in such section [~~7-1.12~~] **7-A-3.8**. As such, neither the trust nor the trustee shall be liable for the fees for services rendered to the patient.

§ 34. Subdivision 3 of section 104 of the social services law, as added by chapter 433 of the laws of 1993, is amended to read as follows:

3. To the extent described in section [~~7-1.12~~] **7-A-3.8** of the estates, powers and trusts law, the trustee of a supplemental needs trust which conforms to the provisions of such section [~~7-1.12~~] **7-A-3.8** shall not be deemed to be holding assets for the benefit of a beneficiary who may otherwise be the subject of a claim under this section and no action may be brought against either the trust or the trustee to recover the cost of assistance or care provided to such person, or anyone for whose support such person is or was liable.

§ 35. This act shall take effect immediately; provided, however, that sections two through twenty-four and section twenty-seven of this act shall take effect on the one hundred eightieth day after it shall have become a law; provided, further, that the amendments to section 5-1514 of the general obligations law made by section twenty-nine of this act shall not affect the expiration and repeal of such section and shall be deemed repealed therewith.