TITLE 18-B

TRUSTS

PART 1

MAINE UNIFORM TRUST CODE

CHAPTER 1

GENERAL PROVISIONS AND DEFINITIONS

§101. Short title

This Part may be known and cited as "the Maine Uniform Trust Code." [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§102. Scope

This Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§103. Definitions

As used in this Code, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Action. "Action," with respect to an act of a trustee, includes a failure to act.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1-A. Ascertainable standard. "Ascertainable standard" means an ascertainable standard relating to an individual's health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the federal Internal Revenue Code of 1986, as in effect on July 1, 2005.
[PL 2005, c. 184, §2 (NEW).]

2. Beneficiary. "Beneficiary" means a person that:

A. Has a present or future beneficial interest in a trust, vested or contingent; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. In a capacity other than that of trustee, holds a power of appointment over trust property. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Charitable trust. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 405, subsection 1.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3-A. Code. "Code" means the Maine Uniform Trust Code.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Conservator. "Conservator" means a person appointed by the court to administer an estate of a minor or adult individual.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4-A. Current beneficiary. "Current beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.
[PL 2011, c. 42, §1 (NEW).]

5. Environmental law. "Environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Guardian. "Guardian" means a person who has qualified pursuant to court appointment to make decisions regarding the support, care, education, health and welfare of a minor or adult individual. The term does not include a guardian ad litem.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

7. Interests of beneficiaries. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

8. Jurisdiction. "Jurisdiction," with respect to a geographic area, includes a state or country.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

9. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

10. Power of withdrawal. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee that is limited by an ascertainable standard, or exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
[PL 2005, c. 184, §3 (AMD).]

11. Property. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

12. Qualified beneficiary. "Qualified beneficiary" means a living beneficiary who on the date the beneficiary's qualification is determined:

A. Is a distributee or permissible distributee of trust income or principal; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph A terminated on that date, but the termination of those interests would not cause the trust to terminate; or [PL 2005, c. 184, §4 (AMD).]

C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

"Qualified beneficiary" does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust is not reasonably expected to vest.
[PL 2005, c. 184, §4 (AMD).]

13. Revocable. "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

14. Settlor. "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

15. Spendthrift provision. "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

16. State. "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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

17. Terms of a trust. "Terms of a trust" means:

A. Except as otherwise provided in paragraph B, the manifestation of the settlor's intent regarding a trust's provisions as:

(1) Expressed in the trust instrument; or

(2) Established by other evidence that would be admissible in a judicial proceeding; or [PL 2019, c. 301, §1 (NEW).]

B. The trust's provisions as established, determined or amended by:

(1) A trustee or other person in accordance with applicable law;

(2) Court order; or

(3) A nonjudicial settlement agreement under this Code. [PL 2019, c. 301, §1 (NEW).]
[PL 2019, c. 301, §1 (RPR).]

18. Trust instrument. "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

19. Trustee. "Trustee" includes an original, additional and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §§2-4 (AMD). PL 2011, c. 42, §1 (AMD). PL 2019, c. 301, §1 (AMD).

§104. Knowledge

1. Person. Subject to subsection 2, a person has knowledge of a fact if the person:

A. Has actual knowledge of it; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Has received a notice or notification of it; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. From all the facts and circumstances known to the person at the time in question, has reason to know it. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Organization. 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 the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§105. Default and mandatory rules

1. Code governs. Except as otherwise provided in the terms of the trust, this Code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Terms prevail; exceptions. The terms of a trust prevail over any provision of this Code except:

A. The requirements for creating a trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Subject to the Maine Uniform Directed Trust Act, the duty of a trustee to act in good faith and in accordance with the purposes of the trust; [PL 2019, c. 301, §2 (AMD).]

C. The requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The power of the court to modify or terminate a trust under sections 410 to 416; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. The power of the court under section 702 to require, dispense with, modify or terminate a bond; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

G. The power of the court under section 708, subsection 2 to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

H. Subject to subsection 3, the duty under section 813, subsection 2, paragraphs B and C to notify current beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee and of their right to request trustee's reports; [PL 2011, c. 42, §2 (AMD).]

I. Subject to subsection 3, the duty under section 813, subsection 1 to respond to the request of a current beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust; [PL 2011, c. 42, §3 (AMD).]

J. The effect of an exculpatory term under section 1008; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

K. The rights under sections 1010 to 1013 of a person other than a trustee or beneficiary; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

L. Periods of limitation for commencing a judicial proceeding; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

M. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

N. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 203 and 204. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2019, c. 301, §2 (AMD).]

3. Waiver or modification. The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify one or more of the duties of a trustee under section 813, subsections 1, 2 and 3 to give notice, information and reports to qualified beneficiaries in either or both of the following ways:

A. Waiving or modifying such duties as to all qualified beneficiaries except the settlor's surviving spouse during the lifetime of the settlor or the lifetime of the settlor's surviving spouse; and [PL 2005, c. 184, §6 (NEW).]

B. With respect to one or more of the current beneficiaries as to whom the settlor has waived or modified such duties, designating a person or persons, any of whom may or may not be a beneficiary, to act in good faith to protect the interests of the current beneficiaries who are not receiving notice, information or reports and to receive any notice, information or reports required under section 813, subsection 1, 2 or 3 in lieu of providing such notice, information or reports to the current beneficiaries. The person or persons designated under this paragraph are deemed to be representatives of the current beneficiaries not receiving notice, information or reports for the purposes of the time limitation for a beneficiary to commence an action against the trustee for breach of trust as provided in section 1005, subsection 1. [PL 2017, c. 349, §1 (AMD).]

[PL 2017, c. 349, §1 (AMD).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §§5,6 (AMD). PL 2005, c. 683, §C7 (AMD). PL 2011, c. 42, §§2-4 (AMD). PL 2017, c. 349, §1 (AMD). PL 2019, c. 301, §2 (AMD).

§106. Common law of trusts; principles of equity

The common law of trusts and principles of equity supplement this Code, except to the extent modified by this Code or another statute of this State. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§107. Governing law

The meaning and effect of the terms of a trust are determined by: [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Law of jurisdiction designated; exception. The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Law of jurisdiction with most significant relationship. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§108. Principal place of administration

1. Terms of trust controlling. 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:

A. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. All or part of the administration occurs in the designated jurisdiction. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Duty of trustee. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration and the interests of the beneficiaries.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Transfer of place of administration. Without precluding the right of the court to order, approve or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection 2, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Notice of transfer of place of administration. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

A. The name of the jurisdiction to which the principal place of administration is to be transferred; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The address and telephone number at the new location at which the trustee can be contacted; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. An explanation of the reasons for the proposed transfer; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The date on which the proposed transfer is anticipated to occur; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. The date, which may not be less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Objection to transfer. The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Transfer property to successor trustee. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§109. Methods and waiver of notice

1. Manner. Notice to a person under this Code or the sending of a document to a person under this Code must 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 for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business or a properly directed electronic message.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Notice not required. Notice otherwise required under this Code or a document otherwise required to be sent under this Code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Waiver. Notice under this Code or the sending of a document under this Code may be waived by the person to be notified or sent the document.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Notice of judicial proceeding. Notice of a judicial proceeding must be given as provided in the applicable Maine Rules of Civil Procedure.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§110. Others treated as qualified beneficiaries

1. Charitable organization or person to enforce trust. A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this Code if the charitable organization, on the date the charitable organization's qualification is being determined:

A. Is a distributee or permissible distributee of trust income or principal; [PL 2005, c. 184, §7 (NEW).]

B. Would be a distributee or a permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or [PL 2005, c. 184, §7 (NEW).]

C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. [PL 2017, c. 39, §1 (AMD).]

A charitable organization whose interest in the trust as a contingent distributee of the trust income or principal is not reasonably expected to vest does not have the rights of a qualified beneficiary.
[PL 2017, c. 39, §1 (AMD).]

1-A. Person appointed to enforce trust. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary under this Code.
[PL 2005, c. 184, §7 (NEW).]

2. Attorney General. The Attorney General has the rights provided in Title 5, section 194 with respect to a charitable trust having its principal place of administration in this State, but may not be treated as and does not have the rights of a qualified beneficiary.
[PL 2005, c. 184, §7 (AMD).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §7 (AMD). PL 2017, c. 39, §1 (AMD).

§111. Nonjudicial settlement agreements

1. Interested persons defined. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Binding nonjudicial settlement agreement. Except as otherwise provided in subsection 3, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Validity of nonjudicial settlement agreement. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this Code or other applicable law.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Matters of nonjudicial settlement agreement. Matters that may be resolved by a nonjudicial settlement agreement include:

A. The interpretation or construction of the terms of the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The approval of a trustee's report or accounting; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The resignation or appointment of a trustee and the determination of a trustee's compensation; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. Transfer of a trust's principal place of administration; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. Liability of a trustee for an action relating to the trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Court approval. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in chapter 3 was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§112. Rules of construction

The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 2

JUDICIAL PROCEEDINGS

§201. Role of court in administration of trust

1. Intervention. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Continuing judicial supervision. A trust is not subject to continuing judicial supervision unless ordered by the court.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Matter involving trust's administration. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§202. Jurisdiction over trustee and beneficiary

1. Trustee. By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Beneficiaries; recipients. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Not exclusive. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§203. Subject matter jurisdiction

1. Concurrent jurisdiction. The Probate Court and the Superior Court have concurrent jurisdiction of all proceedings in this State involving a trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Alternative dispute resolution not precluded. This section does not preclude judicial or nonjudicial alternative dispute resolution.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§204. Venue

1. Trust. Except as otherwise provided in subsection 2, venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Appointment of trustee. If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this State in which a beneficiary resides, in a county in which any trust property is located and, if the trust is created by will, in the county in which the decedent's estate was or is being administered.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 3

REPRESENTATION

§301. Representation; basic effect

1. Notice. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Consent. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Notice and consent on settlor's behalf. Except as otherwise provided in sections 411 and 602, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Limitation on representation by settlor. A settlor may not represent and bind a beneficiary under this chapter with respect to termination or modification of a trust under section 411, subsection 1.
[PL 2005, c. 184, §8 (NEW).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §8 (AMD).

§302. Representation by holder of general testamentary power of appointment

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

may represent and bind persons whose interests, as permissible appointees, takers in default or otherwise, are subject to the power. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§303. Representation by fiduciaries and parents

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute: [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Conservator. A conservator may represent and bind the estate that the conservator controls;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Guardian. A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Agent. An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Trustee. A trustee may represent and bind the beneficiaries of the trust;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Personal representative. A personal representative of a decedent's estate may represent and bind persons interested in the estate; and
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Parent. A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§304. Representation by person having substantially identical interest

Unless otherwise represented, a minor, an incapacitated or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§305. Appointment of representative

1. Interest not represented; representation inadequate. If the court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent and otherwise represent, bind and act on behalf of a minor, an incapacitated or unborn individual or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Scope of representation. A representative may act on behalf of the individual represented with respect to any matter arising under this Code, whether or not a judicial proceeding concerning the trust is pending.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Consider general benefit. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 4

CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

§401. Methods of creating trust

A trust may be created by: [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Transfer of property. Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Declaration. Declaration by the owner of property that the owner holds identifiable property as trustee; or
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Exercise of power. Exercise of a power of appointment in favor of a trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§402. Requirements for creation

1. Requirements. A trust is created only if:

A. The settlor has capacity to create a trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The settlor indicates an intention to create the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. The trust has a definite beneficiary or is:

(1) A charitable trust;

(2) A trust for the care of an animal, as provided in section 408; or

(3) A trust for a noncharitable purpose, as provided in section 409; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The trustee has duties to perform; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. The same person is not the sole trustee and sole beneficiary. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Definite beneficiary. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Power to select beneficiary; failure of power. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§403. Trusts created in other jurisdictions

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which at the time of creation:
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Settlor. The settlor was domiciled, had a place of abode or was a national;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Trustee. A trustee was domiciled or had a place of business; or
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Trust property. Any trust property was located.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§404. Trust purposes

A trust may be created only to the extent its purposes are lawful, not contrary to public policy and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§405. Charitable purposes; enforcement

1. Purposes. A charitable trust may be created for the relief of poverty; the advancement of education or religion; the promotion of health; governmental or municipal purposes; or other purposes the achievement of which is beneficial to the community.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Selection by court. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Enforcement. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§406. Creation of trust induced by fraud, duress or undue influence

A trust is void to the extent its creation was induced by fraud, duress or undue influence. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§407. Evidence of oral trust

Except as required by a statute other than this Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§408. Trust for care of animal

1. To provide care for animal; termination. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Enforcement. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Intended use of property. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise, to the settlor's successors in interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§409. Noncharitable trust without ascertainable beneficiary

Except as otherwise provided in section 408 or by another statute, the following rules apply. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Noncharitable purpose. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Enforcement. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Intended use of property. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property

not required for the intended use must be distributed to the settlor, if then living, otherwise, to the settlor's successors in interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§410. Modification or termination of trust; proceedings for approval or disapproval

1. Termination. In addition to the methods of termination prescribed by sections 411 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful, contrary to public policy or impossible to achieve.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Modification or termination proceeding. A proceeding to approve or disapprove a proposed modification or termination under sections 411 to 416, or trust combination or division under section 417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 411 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 413.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§411. Modification or termination of noncharitable irrevocable trust by consent

1. Consent of settlor and all beneficiaries. If the settlor and all beneficiaries consent to the modification or termination of an irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust, if the court finds that the modification or termination is in the best interests of the beneficiaries. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.
[PL 2005, c. 184, §9 (AMD).]

2. Consent of beneficiaries. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Spendthrift provision. A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Distribution after termination. Upon termination of a trust under subsection 1 or 2, the trustee shall distribute the trust property as agreed by the beneficiaries.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Court approval without unanimous consent. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1 or 2, the modification or termination may be approved by the court if the court is satisfied that:

A. If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The interests of a beneficiary who does not consent will be adequately protected. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §9 (AMD).

§412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively

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

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Distribution after termination. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§413. Cy pres

1. Charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful. Except as otherwise provided in subsection 2, if a particular charitable purpose of a trust becomes unlawful, impracticable, impossible to achieve or wasteful:

A. The trust does not fail, in whole or in part; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The trust property does not revert to the settlor or the settlor's successors in interest; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Noncharitable beneficiary. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection 1 to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

A. The trust property is to revert to the settlor and the settlor is still living; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Fewer than 50 years have elapsed since the date of the trust's creation. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§414. Modification or termination of uneconomic trust

1. Termination by trustee after notice. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Modification, termination, new trustee by court. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Distribution after termination. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Easement for conservation or preservation. This section does not apply to an easement for conservation or preservation.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§415. 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 that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§416. Modification to achieve settlor's tax objectives

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§417. Combination and division of trusts

After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§501. Rights of beneficiary's creditor or assignee

To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. [PL 2005, c. 184, §10 (AMD).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §10 (AMD).

§502. Spendthrift provision

1. Restrains voluntary and involuntary transfers. A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Terminology. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. No transfer by beneficiary; creditors and assignees. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§503. Exceptions to spendthrift provision

There are no exceptions to spendthrift provisions except as provided in sections 504, 505 and 506.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§504. Discretionary trusts; effect of standard

1. Creditor may not compel distribution. Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

A. The discretion is expressed in the form of a standard of distribution; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The trustee has abused the discretion. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Right of beneficiary not limited. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for failure to exercise a discretionary power in accordance with the terms and purposes of the trust or for failure to comply with a standard for distribution.
[PL 2005, c. 184, §11 (AMD).]

3. Creditor limited. If a trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.
[PL 2011, c. 42, §5 (RPR).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §§11,12 (AMD). PL 2011, c. 42, §5 (AMD).

§505. Creditor's claim against settlor

1. Creditor's claims. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply.

A. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and allowances. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Holder of power. For purposes of this section:

A. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Upon the lapse, release or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in the federal Internal Revenue Code of 1986, Section 2041(b)(2) or 2514(e) or the federal Internal Revenue Code of 1986, Section 2503(b), in each case as in effect on July 1, 2005, or as later amended. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§506. Overdue distribution

1. Definitions. As used in this section, unless the context otherwise indicates, "mandatory distribution" means a distribution of income or principal that a trustee is required to make to a beneficiary under the terms of a trust, including a distribution upon termination of the trust. "Mandatory distribution" does not include a distribution subject to the exercise of the trustee's discretion even if:

A. The discretion is expressed in the form of a standard of distribution; or [PL 2011, c. 42, §6 (NEW).]

B. The terms of the trust authorizing a distribution couple language of discretion with language of direction. [PL 2011, c. 42, §6 (NEW).]

[PL 2011, c. 42, §6 (NEW).]

2. Unreasonable delay in distribution. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

[PL 2011, c. 42, §6 (NEW).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2011, c. 42, §6 (RPR).

§507. Personal obligations of trustee

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 6

REVOCABLE TRUSTS

§601. Capacity of settlor of revocable trust

The capacity required 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. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§602. Revocation or amendment of revocable trust

1. Revocable unless expressly provided. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2005.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Revocable trust with more than one settlor. If a revocable trust is created or funded by more than one settlor:

A. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall notify the other settlors of the revocation or amendment. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Revoke or amend. The settlor may revoke or amend a revocable trust:

A. By substantial compliance with a method provided in the terms of the trust; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(1) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(2) Any other method manifesting clear and convincing evidence of the settlor's intent. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Agent expressly authorized. A settlor'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 or the power.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Conservator or guardian of settlor. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

7. Trustee without knowledge of revocation or amendment. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§603. Settlor's powers; powers of withdrawal

1. Revocable trust. To the extent a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

[PL 2019, c. 301, §3 (AMD).]

2. Rights of settlor of revocable trust. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Revocable trust; direction of settlor. To the extent a trust is revocable by the settlor, the trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by the settlor in conjunction with a person other than the trustee or person holding an

adverse interest, the trustee may follow a direction of the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.
[PL 2019, c. 301, §4 (NEW).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §13 (AMD). PL 2019, c. 301, §§3, 4 (AMD).

§604. Limitation on action contesting validity of revocable trust; distribution of trust property

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

A. Three years after the settlor's death; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. One hundred and twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address and of the time allowed for commencing a proceeding. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Trustee liability for distributions. 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 is not subject to liability for doing so unless:

A. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Beneficiary to return distribution. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 7

OFFICE OF TRUSTEE

§701. Accepting or declining trusteeship

1. Acceptance. Except as otherwise provided in subsection 3, a person designated as trustee accepts the trusteeship:

A. By substantially complying with a method of acceptance provided in the terms of the trust; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee or otherwise indicating acceptance of the trusteeship. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Rejection. A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Action without acceptance. A person designated as trustee, without accepting the trusteeship, may:

A. Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§702. Trustee's bond

1. Bond. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Amount. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Financial institution. A financial institution qualified to do trust business in this State need not give bond, even if required by the terms of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Cost charged to trust. Unless otherwise directed by the court, the cost of a bond is charged to the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§703. Cotrustees

1. Unanimous decision; majority decision. Cotrustees who are unable to reach a unanimous decision may act by majority decision.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Vacancy. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Participation by cotrustee. Subject to the Maine Uniform Directed Trust Act, a cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.
[PL 2019, c. 301, §5 (AMD).]

4. Cotrustee unavailable. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification or other temporary incapacity, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Delegation. A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Liability. Except as otherwise provided in subsection 7, a trustee who does not join in an action of another trustee is not liable for the action.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

7. Reasonable care. Subject to the Maine Uniform Directed Trust Act, each trustee shall exercise reasonable care to:

A. Prevent a cotrustee from committing a serious breach of trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Compel a cotrustee to redress a serious breach of trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2019, c. 301, §6 (AMD); PL 2003, c. 618, Pt. A, §2 (AFF).]

8. Dissenting trustee. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2019, c. 301, §§5, 6 (AMD).

§704. Vacancy in trusteeship; appointment of successor

1. Vacancy. A vacancy in a trusteeship occurs if:

A. A person designated as trustee rejects the trusteeship; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. A person designated as trustee can not be identified or does not exist; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. A trustee resigns; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. A trustee is disqualified or removed; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. A trustee dies; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. A guardian or conservator is appointed for an individual serving as trustee. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Filling of vacancies. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Order of priority; noncharitable trust. A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

A. By a person designated in the terms of the trust to act as successor trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. By a person appointed by unanimous agreement of the qualified beneficiaries; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. By a person appointed by the court. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Order of priority; charitable trust. A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

A. By a person designated in the terms of the trust to act as successor trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. By a person appointed by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust; or [PL 2005, c. 184, §14 (AMD).]

C. By a person appointed by the court. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2005, c. 184, §14 (AMD).]

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

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §14 (AMD).

§705. Resignation of trustee

1. Resignation. A trustee may resign:

A. Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. With the approval of the court. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§706. Removal of trustee

1. Request to remove trustee. The settlor, a cotrustee or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Removal by court. The court may remove a trustee if:

A. The trustee has committed a serious breach of trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Lack of cooperation among cotrustees substantially impairs the administration of the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. 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 [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Appropriate relief. 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 under section 1001, subsection 2 as may be necessary to protect the trust property or the interests of the beneficiaries.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§707. Delivery of property by former trustee

1. Duties of former trustee. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to the cotrustee, successor trustee or other person entitled to it, a trustee who has resigned or been removed or disqualified has the duties of a trustee and the powers necessary to protect the trust property.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Expeditious delivery. A trustee who has resigned or been removed or disqualified shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee or other person entitled to it.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§708. Compensation of trustee

1. Reasonable. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances. A percentage fee is allowable under this section only if the fee is reasonable. Among the factors a court may consider as guides in determining the reasonableness of fees under this section are the following:

A. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the service properly; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The likelihood, if apparent to the trustee, that the acceptance of the particular employment will preclude the person employed from other employment; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. The fee customarily charged in the locality for similar services; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The amounts involved and the results obtained; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. The time limitations imposed by the trustee or by the circumstances; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. The experience, reputation and ability of the person performing the services. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

The order of the factors in this subsection does not imply their relative importance.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

A. The duties of the trustees are substantially different from those contemplated when the trust was created; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The compensation specified by the terms of the trust would be unreasonably low or high. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Review; refunds if excessive. On petition of a qualified beneficiary, after notice to all qualified beneficiaries, the court may review the reasonableness of the compensation determined by the trustee for the trustee's services. A trustee who has received excessive compensation from a trust may be ordered to make appropriate refunds.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§709. Reimbursement of expenses

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

A. Expenses that were properly incurred in the administration of the trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Advance by trustee. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 8

DUTIES AND POWERS OF TRUSTEE

§801. Duty to administer trust

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries and in accordance with this Code. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§802. Duty of loyalty

1. Interests of beneficiaries. A trustee shall administer the trust solely in the interests of the beneficiaries.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Voidable transaction; exceptions. Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012, 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 that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

A. The transaction was authorized by the terms of the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The transaction was approved by the court; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. The beneficiary did not commence a judicial proceeding within the time allowed by section 1005; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 1009; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

A. The trustee's spouse; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The trustee's descendants, siblings or parents, or their spouses; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. An agent or attorney of the trustee; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Transaction between trustee and beneficiary. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an

advantage beyond the normal commercial advantage for such a transaction is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary. A transfer or obligation is not voidable under this section against a person who took property from the trustee in good faith for a reasonably equivalent value or against any subsequent transferee or obligee.
[PL 2005, c. 184, §15 (AMD).]

5. Opportunity belonging to trust. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Investment. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of chapter 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.
[PL 2005, c. 184, §15 (AMD).]

7. Act in best interests of beneficiaries. 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 trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

8. Transactions not precluded. This section does not preclude the following transactions, if fair to the beneficiaries:

A. An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Payment of reasonable compensation to the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. A transaction between a trust and another trust or a decedent's estate, a conservatorship or a guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. A deposit of trust money in a regulated financial service institution operated by the trustee; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. An advance by the trustee of money for the protection of the trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

9. Appointment of special fiduciary. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §15 (AMD).

§803. Impartiality

If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§804. Prudent administration

A trustee shall 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. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§805. Costs of administration

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§806. Trustee's skills

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§807. Delegation by trustee

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

A. Selecting an agent; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Agent's duty to trust. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Liability of trustee. A trustee who complies with subsection 1 is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Agent submits to jurisdiction. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Review of agent. Upon petition of a qualified beneficiary, after notice to all qualified beneficiaries, the trustee and the agent of the trustee, the court may review the employment of any agent by the trustee and the reasonableness of the agent's compensation. Any agent who is found to have received excess compensation from a trust may be ordered to make appropriate refunds.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§808. Powers to direct

(REPEALED)

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2019, c. 301, §7 (RP).

§809. Control and protection of trust property

A trustee shall take reasonable steps to take control of and protect the trust property. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§810. Record keeping and identification of trust property

1. Adequate records of administration. A trustee shall keep adequate records of the administration of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Separation of property. A trustee shall keep trust property separate from the trustee's own property.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Interest of trust, records. Except as otherwise provided in subsection 4, a trustee not subject to federal or state banking regulation shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary to whom the trustee has delivered the property.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Two or more trusts. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of 2 or more separate trusts.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§811. Enforcement and defense of claims

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§812. Collecting trust property

A trustee shall take reasonable steps: [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Compel delivery. To compel a former trustee or other person to deliver trust property to the trustee; and
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Redress breach. To redress a breach of trust known to the trustee to have been committed by a former trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§813. Duty to inform and report

1. Inform beneficiaries. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless a request is unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for that trustee's reports and other information reasonably related to the administration of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Information. A trustee:

A. Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Within 60 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, shall 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 in subsection 3; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. Shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Report. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified 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 and tax bases. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative of a deceased trustee or a conservator of the estate or, if no conservator has been appointed, a guardian of an incapacitated trustee may send qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Waiver. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Applicable date. Subsection 2, paragraphs B and C apply only to a trustee who accepts a trusteeship on or after July 1, 2005, to an irrevocable trust created on or after July 1, 2005 and to a revocable trust that becomes irrevocable on or after July 1, 2005.
[PL 2005, c. 184, §16 (NEW).]

6. Duty to settlor of revocable trust. During the lifetime of the settlor of a revocable trust, whether or not the settlor has capacity to revoke the trust, the trustee's duties under this section are owed exclusively to the settlor and the trustee has no duty to provide information or reports to distributees, permissible distributees or qualified beneficiaries. If the settlor lacks capacity to revoke the trust, a trustee may satisfy the trustee's duties under this section by providing information and reports to any one or more of the following in the order of preference listed:

A. The person or persons designated by the settlor in the trust to receive information and reports on the settlor's behalf; [PL 2011, c. 42, §7 (NEW).]

B. The settlor's spouse or registered domestic partner under Title 22, section 2710; [PL 2011, c. 42, §7 (NEW).]

C. The settlor's agent under a durable power of attorney; [PL 2011, c. 42, §7 (NEW).]

D. The settlor's court-appointed conservator; or [PL 2011, c. 42, §7 (NEW).]

E. The settlor's court-appointed guardian. [PL 2011, c. 42, §7 (NEW).]

If the settlor lacks capacity to revoke the trust and there are no persons listed in this subsection to whom the trustee may provide information and reports, the trustee shall satisfy its duties under this section by providing information and reports to the qualified beneficiaries.
[PL 2017, c. 349, §2 (AMD).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §16 (AMD). PL 2011, c. 42, §7 (AMD). PL 2017, c. 349, §2 (AMD).

§814. Discretionary powers; tax savings

1. Discretionary power; interests of beneficiaries. 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 exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust. A trustee's power to make distributions is discretionary notwithstanding terms of the trust providing that the trustee "shall" make distributions exercising a discretionary power, with or without standards.
[PL 2005, c. 184, §17 (AMD).]

2. Discretionary distributions. Subject to subsection 4, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

A. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and [PL 2005, c. 184, §18 (AMD).]

B. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2005, c. 184, §18 (AMD).]

3. Cotrustees; special fiduciary. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Exceptions. Subsection 2 does not apply to:

A. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in the federal Internal Revenue Code of 1986, Section 2056(b)(5) or 2523(e), as in effect on July 1, 2005, or as later amended, was previously allowed; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Any trust during any period that the trust may be revoked or amended by its settlor; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. A trust if contributions to the trust qualify for the annual exclusion under the federal Internal Revenue Code of 1986, Section 2503(c) as in effect on July 1, 2005, or as later amended. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §17 (AMD). PL 2005, c. 184, §18 (AMD).

§815. General powers of trustee

1. General powers. A trustee, without authorization by the court, may exercise:

A. Powers conferred by the terms of the trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Except as limited by the terms of the trust:

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

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

(3) Any other powers conferred by this Code. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Subject to fiduciary duties. The exercise of a power is subject to the fiduciary duties prescribed by this chapter.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§816. Specific powers of trustee

Without limiting the authority conferred by section 815, a trustee may: [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Collect trust property. Collect trust property and accept or reject additions to the trust property from a settlor or any other person;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Acquire or sell property. Acquire or sell property, for cash or on credit, at public or private sale;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Change character of trust property. Exchange, partition or otherwise change the character of trust property;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Deposit trust money. Deposit trust money in an account in a regulated financial service institution;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Borrow money; pledge trust property. Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Continue business or enterprise. With respect to an interest in a proprietorship, 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;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

7. Exercise rights of owner. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

A. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Pay calls, assessments and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. Deposit the securities with a depositary or other regulated financial service institution; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

8. Improvements. With respect to 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;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

9. Enter into lease. 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;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

10. Grant or acquire option. 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;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

12. Abandon or decline administration. Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

13. Liability for violation of environmental law. With respect to possible liability for violation of environmental law:

A. 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; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. 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; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. 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; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. Pay the expense of any inspection, review, abatement or remedial action to comply with environmental law; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

14. Claims against trust. 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;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

15. Pay expenses of administration. 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;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

16. Taxes. Exercise elections with respect to federal, state and local taxes;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

17. Trustee compensation and benefits. Select a mode of payment under any employee benefit or retirement plan, annuity or life insurance payable to the trustee; exercise rights under those instruments, including exercise of the right to indemnification for expenses and against liabilities; and take appropriate action to collect the proceeds;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

18. Loans. 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; the trustee has a lien on future distributions for repayment of those loans;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

19. Guarantee loans. Pledge trust property to guarantee loans made by others to the beneficiary;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

20. Appoint trustee in another jurisdiction. Appoint a trustee to act in another jurisdiction with respect to 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;

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

21. Beneficiary under legal disability or incapacitated. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

A. Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Paying it to the beneficiary's custodian under Title 33, chapter 32, which is the Maine Uniform Transfers to Minors Act, or to a custodial trustee under the laws of another state, and, for that purpose, creating a custodianship or custodial trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. If the trustee does not know of a conservator, guardian, custodian or custodial trustee, paying it 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; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

22. Distribution, division or termination. On distribution of trust property or the division or termination of a trust, 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;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

23. Resolution of dispute. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration or other procedure for alternative dispute resolution;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

24. Prosecute or defend. Prosecute or defend an action, claim or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

25. Contracts and other instruments. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

26. Wind up administration and distribute. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§817. Distribution upon termination

1. Proposed distribution. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 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 objection.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Distribution; reasonable reserve. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Release from liability invalid. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

A. It was induced by improper conduct of the trustee; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. 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. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 9

MAINE UNIFORM PRUDENT INVESTOR ACT

§901. Prudent investor rule

1. Duty to comply. Except as otherwise provided in section 902, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Altered by provisions of trust. The prudent investor rule may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§902. Standard of care; portfolio strategy; risk and return objectives

1. Consideration of purposes, terms, distribution requirements and other circumstances. A trustee shall invest and manage trust assets, as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Overall investment strategy. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Relevant circumstances to consider. Among circumstances that a trustee shall consider in investing and managing trust assets are all of the following that are relevant to the trust or its beneficiaries:

A. General economic conditions; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The possible effect of inflation or deflation; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. The expected tax consequences of investment decisions or strategies; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. The expected total return from income and the appreciation of capital; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. Other resources of the beneficiaries, to the extent the other resources are known to the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

G. Needs for liquidity, regularity of income and preservation or appreciation of capital; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

H. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Reasonable effort to verify facts. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Kind of property; type of investment. A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§903. Diversification

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§904. Duties at inception of trusteeship

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust and with the requirements of this chapter. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§905. Reviewing compliance

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). RR 2011, c. 1, §22 (COR).

§906. Language invoking standard of chapter

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds"; "legal investments"; "authorized investments"; "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital"; "prudent man rule"; "prudent trustee rule"; "prudent person rule"; or "prudent investor rule." [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§907. Uniformity of application and construction

This chapter must be applied and construed to effectuate its general purposes to make uniform the law with respect to the subject of the Uniform Prudent Investor Act among the states enacting it. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§908. Short title

This chapter may be known and cited as the "Maine Uniform Prudent Investor Act." [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 10

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§1001. Remedies for breach of trust

1. Violation of duty. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Remedies. To remedy a breach of trust that has occurred or may occur, the court may:

A. Compel the trustee to perform the trustee's duties; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Enjoin the trustee from committing a breach of trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. Compel the trustee to redress a breach of trust by paying money, restoring property or other means; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. Order a trustee to account; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. Appoint a special fiduciary to take possession of the trust property and administer the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. Suspend the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

G. Remove the trustee as provided in section 706; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

H. Reduce or deny compensation to the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

I. Subject to section 1012, 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; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

J. Order any other appropriate relief. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1002. Damages for breach of trust

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

A. The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The profit the trustee made by reason of the breach. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Contribution from other trustees. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or 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 is not entitled to contribution from another trustee to the extent of the benefit received.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1003. Damages in absence of breach

1. Accountable for profit. A trustee is 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. Nothing in this section limits a trustee's right to reasonable compensation under section 708.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Not accountable for loss, depreciation or no profit. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1004. Attorney's fees and costs

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1005. Limitation of action against trustee

1. Report; one-year limitation. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Disclosure of potential claim. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Six years. If subsection 1 does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 6 years after the first to occur of:

A. The removal, resignation or death of the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The termination of the beneficiary's interest in the trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. The termination of the trust. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1006. Reliance on trust instrument

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1007. Event affecting administration or distribution

If the happening of an event, including 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 is not liable for a loss resulting from the trustee's lack of knowledge. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1008. Exculpation of trustee

1. Exculpation unenforceable. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

A. Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Invalid; proof otherwise. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1009. Beneficiary's consent, release or ratification

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless: [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

1. Induced by improper conduct. The consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Beneficiary did not know rights. 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.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1010. Limitation on personal liability of trustee

1. Not personally liable on contract; exception. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Personally liable for torts. A trustee is 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 is personally at fault.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Claim against trustee in fiduciary capacity. 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 the claim.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1011. Interest as general partner

1. Not personally liable on contract. Except as otherwise provided in subsection 3 or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act or the Uniform Limited Partnership Act of 2007.
[RR 2025, c. 2, Pt. A, §99 (COR).]

2. Not personally liable for torts. Except as otherwise provided in subsection 3, a trustee who holds an interest as a general partner is not 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Exceptions to immunity. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings or parents or the spouse of any of the trustee's descendants, siblings or parents.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Liability of settlor. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 543, §D12 (AMD). PL 2005, c. 543, §D18 (AFF). RR 2025, c. 2, Pt. A, §99 (COR).

§1012. Protection of person dealing with trustee

1. Exceeding or improperly exercising powers. 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 the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised those powers.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. No duty to inquire. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. In good faith delivery of assets. A person who in good faith delivers assets to a trustee need not ensure their proper application.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Former trustee. 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 is protected from liability as if the former trustee were still a trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Other protections prevail. Provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries that are more protective prevail over the protection provided by this section.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1013. Certification of trust

1. Information. 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 some or all of the following information:

A. That the trust exists and the date the trust instrument was executed; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The identity of the settlor; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. The identity and address of the currently acting trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. The powers of the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

F. The authority of cotrustees to sign or otherwise authenticate and whether all or fewer than all are required in order to exercise powers of the trustee; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

G. The trust's taxpayer identification number; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

H. The manner of taking title to trust property. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Authentication. A certification of trust may be signed or otherwise authenticated by any trustee.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. Representations correct. A certification of trust must 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

4. Dispositive terms. A certification of trust need not contain the dispositive terms of a trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

5. Excerpts from trust instrument. 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 that designate the trustee and confer upon the trustee the power to act in the pending transaction.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

6. Not liable for reliance on incorrect representations; knowledge. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

7. Enforce transactions. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

8. Demand not in good faith; damages. 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.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

9. Copy in judicial proceeding. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 11

MISCELLANEOUS PROVISIONS

§1101. Uniformity of application and construction

In applying and construing this Code, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1102. Electronic records and signatures

The provisions of this Code governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7002, and supersede, modify and limit the requirements of the federal Electronic Signatures in Global and National Commerce Act. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1103. Effective date

This Code takes effect on July 1, 2005. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§1104. Application to existing relationships

1. Application. Except as otherwise provided in this Code, on July 1, 2005:

A. This Code applies to all trusts created before, on or after July 1, 2005; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. This Code applies to all judicial proceedings concerning trusts commenced on or after July 1, 2005; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

C. This Code applies to judicial proceedings concerning trusts commenced before July 1, 2005 unless the court finds that application of a particular provision of this Code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this Code does not apply and the superseded law applies; [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

D. Any rule of construction or presumption provided in this Code applies to trust instruments executed before July 1, 2005 unless there is a clear indication of a contrary intent in the terms of the trust; and [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

E. An act done before July 1, 2005 is not affected by this Code. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Continued application of statute. 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 July 1, 2005, that statute continues to apply to the right even if it has been repealed or superseded.

[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

CHAPTER 12

MAINE UNIFORM TRUST DECANTING ACT

§1201. Short title

This Act may be known and cited as "the Maine Uniform Trust Decanting Act." Any references in this chapter to "Act" mean "the Maine Uniform Trust Decanting Act." [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1202. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [PL 2021, c. 235, §1 (NEW).]

1. Appointive property. "Appointive property" means the property or property interest subject to a power of appointment.

[PL 2021, c. 235, §1 (NEW).]

2. Ascertainable standard. "Ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of 26 United States Code, Section 2041(b)(1)(A), as amended, or 26 United States Code, Section 2514(c)(1), as amended, and any applicable regulations.

[PL 2021, c. 235, §1 (NEW).]

3. Authorized fiduciary. "Authorized fiduciary" means:

A. A trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries; [PL 2021, c. 235, §1 (NEW).]

B. A special fiduciary appointed under section 1208; or [PL 2021, c. 235, §1 (NEW).]

C. A special-needs fiduciary under section 1212. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

4. Beneficiary. "Beneficiary" means a person that:

A. Has a present or future, vested or contingent, beneficial interest in a trust; [PL 2021, c. 235, §1 (NEW).]

B. Holds a power of appointment over trust property; or [PL 2021, c. 235, §1 (NEW).]

C. Is an identified charitable organization that will or may receive distributions under the terms of the trust. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

5. Charitable interest. "Charitable interest" means an interest in a trust that:

A. Is held by an identified charitable organization and makes the organization a qualified beneficiary; [PL 2021, c. 235, §1 (NEW).]

B. Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the identified charitable organization a qualified beneficiary; or [PL 2021, c. 235, §1 (NEW).]

C. Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the identified charitable organization a qualified beneficiary. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

6. Charitable organization. "Charitable organization" means:

A. A person, other than an individual, organized and operated exclusively for charitable purposes; or [PL 2021, c. 235, §1 (NEW).]

B. A government or governmental subdivision, agency or instrumentality, to the extent it holds funds exclusively for a charitable purpose. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

7. Charitable purpose. "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose or another purpose the achievement of which is beneficial to the community.
[PL 2021, c. 235, §1 (NEW).]

8. Court. "Court" means the applicable court in this State having jurisdiction in matters relating to trusts.
[PL 2021, c. 235, §1 (NEW).]

9. Current beneficiary. "Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. "Current beneficiary" includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.
[PL 2021, c. 235, §1 (NEW).]

10. Decanting power. "Decanting power" means the power of an authorized fiduciary under this Act to distribute property of a first trust to one or more 2nd trusts or to modify the terms of the first trust.
[PL 2021, c. 235, §1 (NEW).]

11. Expanded distributive discretion. "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.
[PL 2021, c. 235, §1 (NEW).]

12. First trust. "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.
[PL 2021, c. 235, §1 (NEW).]

13. First-trust instrument. "First-trust instrument" means the trust instrument for a first trust.
[PL 2021, c. 235, §1 (NEW).]

14. General power of appointment. "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder or a creditor of the powerholder's estate.
[PL 2021, c. 235, §1 (NEW).]

15. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.
[PL 2021, c. 235, §1 (NEW).]

16. Power of appointment. "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. "Power of appointment" does not include a power of attorney.
[PL 2021, c. 235, §1 (NEW).]

17. Powerholder. "Powerholder" means a person in which a donor creates a power of appointment.
[PL 2021, c. 235, §1 (NEW).]

18. Presently exercisable power of appointment. "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. "Presently exercisable power of appointment":

A. Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified time period only after:

(1) The occurrence of the specified event;

(2) The satisfaction of the ascertainable standard; or

(3) The passage of the specified time period; and [PL 2021, c. 235, §1 (NEW).]

B. Does not include a power exercisable only at the powerholder's death. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

19. Qualified beneficiary. "Qualified beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined:

A. Is a distributee or permissible distributee of trust income or principal; [PL 2021, c. 235, §1 (NEW).]

B. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph A terminated on that date without causing the trust to terminate; or [PL 2021, c. 235, §1 (NEW).]

C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

20. Reasonably definite standard. "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 United States Code, Section 674(b)(5)(A) and any applicable regulations.

[PL 2021, c. 235, §1 (NEW).]

21. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[PL 2021, c. 235, §1 (NEW).]

22. Second trust. "Second trust" means:

A. A first trust after modification under this Act; or [PL 2021, c. 235, §1 (NEW).]

B. A trust to which a distribution of property from a first trust is or may be made under this Act. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

23. Second-trust instrument. "Second-trust instrument" means the trust instrument for a 2nd trust.

[PL 2021, c. 235, §1 (NEW).]

24. Settlor. "Settlor," except as otherwise provided in section 1224, means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to the person's contribution except to the extent another person has power to revoke or withdraw that portion.

[PL 2021, c. 235, §1 (NEW).]

25. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or [PL 2021, c. 235, §1 (NEW).]

B. To attach to or logically associate with the record an electronic symbol, sound or process. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1203. Scope

1. Express trust. Except as otherwise provided in subsections 2 and 3, this Act applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

[PL 2021, c. 235, §1 (NEW).]

2. Trust solely for charitable purposes. This Act does not apply to a trust held solely for charitable purposes.

[PL 2021, c. 235, §1 (NEW).]

3. Restricted or prohibited decanting power. Subject to section 1214, a trust instrument may restrict or prohibit exercise of the decanting power.

[PL 2021, c. 235, §1 (NEW).]

4. Power not limited. This Act does not limit the power of a trustee, powerholder or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, a law of this State other than this Act, common law, a court order or a nonjudicial settlement agreement.
[PL 2021, c. 235, §1 (NEW).]

5. Ability of settlor. This Act does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1204. Fiduciary duty

1. Act in accordance with fiduciary duty. In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.
[PL 2021, c. 235, §1 (NEW).]

2. No duty to exercise power; inform beneficiaries. This Act does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this Act.
[PL 2021, c. 235, §1 (NEW).]

3. Deemed to include decanting power. Except as otherwise provided in a first-trust instrument, for purposes of this Act and section 801 and section 802, subsection 1, the terms of the first trust are deemed to include the decanting power.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1205. Application; governing law

1. This State. This Act applies to a trust that:

A. Has its principal place of administration in this State, including a trust whose principal place of administration has been changed to this State; or [PL 2021, c. 235, §1 (NEW).]

B. Provides by its trust instrument that it is governed by the law of this State or is governed by the law of this State for the purpose of:

(1) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this State;

(2) Construction of terms of the trust; or

(3) Determining the meaning or effect of terms of the trust. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

2. Creation of trust; court proceedings. Except as otherwise provided in this Act:

A. The Act applies to a trust created before, on or after October 1, 2021; [RR 2021, c. 2, Pt. A, §37 (COR).]

B. The Act applies to any proceedings in court commenced on or after October 1, 2021; [PL 2021, c. 235, §1 (NEW).]

C. The Act applies to proceedings in court pending on October 1, 2021 unless the court finds that application of a particular provision of the Act would interfere substantially with the effective

conduct of the proceeding or prejudice a right of a party, in which case the particular provision of the Act does not apply; and [PL 2021, c. 235, §1 (NEW).]

D. A rule of construction or presumption provided in the Act applies to a trust instrument executed prior to October 1, 2021 unless there is a clear indication of a contrary intent in the terms of the instrument. [PL 2021, c. 235, §1 (NEW).]

[RR 2021, c. 2, Pt. A, §37 (COR).]

3. Action before effective date of Act. Except as otherwise provided in subsection 2, an action done before October 1, 2021 is not affected by the Act.

[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW). RR 2021, c. 2, Pt. A, §37 (COR).

§1206. Reasonable reliance

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this Act, a law of this State other than this Act or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance. [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1207. Notice; exercise of decanting power

1. Notice period. For purposes of this section, a notice period begins on the day notice is given under subsection 3 and ends 59 days after the day notice is given.

[PL 2021, c. 235, §1 (NEW).]

2. Exercise without consent or approval. Except as otherwise provided in this Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

[PL 2021, c. 235, §1 (NEW).]

3. Notice. Except as otherwise provided in subsection 4 or 6, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

A. Each settlor of the first trust, if living or then in existence; [PL 2021, c. 235, §1 (NEW).]

B. Each qualified beneficiary of the first trust; [PL 2021, c. 235, §1 (NEW).]

C. Each holder of a presently exercisable power of appointment over any part or all of the first trust; [PL 2021, c. 235, §1 (NEW).]

D. Each person that currently has the right to remove or replace the authorized fiduciary; [PL 2021, c. 235, §1 (NEW).]

E. Each other fiduciary of the first trust; [PL 2021, c. 235, §1 (NEW).]

F. Each fiduciary of the 2nd trust; and [PL 2021, c. 235, §1 (NEW).]

G. The Attorney General, if section 1213, subsection 2 applies. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

4. Notice not required. An authorized fiduciary is not required to give notice under subsection 3 to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

[PL 2021, c. 235, §1 (NEW).]

5. Requirements of notice. A notice under subsection 3 must:

A. Specify the manner in which the authorized fiduciary intends to exercise the decanting power; [PL 2021, c. 235, §1 (NEW).]

B. Specify the proposed effective date for exercise of the decanting power; [PL 2021, c. 235, §1 (NEW).]

C. Include a copy of the first-trust instrument; and [PL 2021, c. 235, §1 (NEW).]

D. Include a copy of all 2nd-trust instruments. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

6. Waiver of notice period. The decanting power may be exercised before expiration of the notice period under subsection 1 if all persons entitled to receive notice waive the notice period in a signed record.
[PL 2021, c. 235, §1 (NEW).]

7. Right to file application. The receipt of notice, waiver of the notice period or expiration of the notice period does not affect the right of a person to file an application under section 1208 asserting that:

A. An attempted exercise of the decanting power is ineffective because the exercise did not comply with this Act or was an abuse of discretion or breach of fiduciary duty; or [PL 2021, c. 235, §1 (NEW).]

B. Section 1221 applies to the exercise of the decanting power. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

8. Failure to give notice; reasonable care. An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection 3 if the authorized fiduciary acted with reasonable care to comply with subsection 3.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1208. Court involvement

1. Application to court. On application of an authorized fiduciary, a person entitled to notice under section 1207, subsection 3, a beneficiary or, with respect to a charitable interest, the Attorney General, the court may:

A. Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this Act and consistent with the fiduciary duties of the authorized fiduciary; [PL 2021, c. 235, §1 (NEW).]

B. Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this Act and to exercise the decanting power; [PL 2021, c. 235, §1 (NEW).]

C. Approve an exercise of the decanting power; [PL 2021, c. 235, §1 (NEW).]

D. Determine that a proposed or attempted exercise of the decanting power is ineffective because:

(1) After applying section 1221, the proposed or attempted exercise does not or did not comply with this Act; or

(2) The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty; [PL 2021, c. 235, §1 (NEW).]

E. Determine the extent to which section 1221 applies to a prior exercise of the decanting power; [PL 2021, c. 235, §1 (NEW).]

F. Provide instructions to the trustee regarding the application of section 1221 to a prior exercise of the decanting power; or [PL 2021, c. 235, §1 (NEW).]

G. Order other relief to carry out the purposes of this Act. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

2. Court approval. On application of an authorized fiduciary, the court may approve:

A. An increase in the fiduciary's compensation under section 1215; or [PL 2021, c. 235, §1 (NEW).]

B. A modification under section 1217 of a provision granting a person the right to remove or replace the fiduciary. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1209. Formalities

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by section 1207, identify the first trust and the 2nd trust or trusts and state the property of the first trust being distributed to each 2nd trust and the property, if any, that remains in the first trust. [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1210. Decanting power under expanded distributive discretion

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. "Noncontingent right" does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate. [PL 2021, c. 235, §1 (NEW).]

B. "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary. [PL 2021, c. 235, §1 (NEW).]

C. "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. "Successor beneficiary" does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment. [PL 2021, c. 235, §1 (NEW).]

D. "Vested interest" means:

(1) A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(2) A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount or a percentage of value of some or all of the trust property;

(3) A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount or a percentage of value of some or all of the trust property;

(4) A general power of appointment that is a presently exercisable general power of appointment; or

(5) A right, which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur, to receive an ascertainable part of the trust property on the trust's termination. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

2. Expanded distributive discretion over principal. Subject to subsection 3 and section 1213, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

[PL 2021, c. 235, §1 (NEW).]

3. Restrictions on 2nd trust. Subject to section 1212, in an exercise of the decanting power under this section, a 2nd trust may not:

A. Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection 4; [PL 2021, c. 235, §1 (NEW).]

B. Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary or successor beneficiary of the first trust, except as otherwise provided in subsection 4; or [PL 2021, c. 235, §1 (NEW).]

C. Reduce or eliminate a vested interest. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

4. Permitted 2nd trust. Subject to subsection 3, paragraph C and section 1213, in an exercise of the decanting power under this section, a 2nd trust may be a trust created or administered under the law of any jurisdiction and may:

A. Retain a power of appointment granted in the first trust; [PL 2021, c. 235, §1 (NEW).]

B. Omit a power of appointment granted in the first trust, other than a general power of appointment that is a presently exercisable power of appointment; [PL 2021, c. 235, §1 (NEW).]

C. Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and [PL 2021, c. 235, §1 (NEW).]

D. Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power of appointment may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

5. Power of appointment; permissible appointees. A power of appointment described in subsection 4, paragraphs A to D may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the class of beneficiaries of the first trust.

[PL 2021, c. 235, §1 (NEW).]

6. Expanded distributive discretion over part of principal. If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1211. Decanting power under limited distributive discretion

1. Limited distributive discretion defined. For purposes of this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.
[PL 2021, c. 235, §1 (NEW).]

2. Limited distributive discretion over principal. An authorized fiduciary that has limited distributive discretion over the principal of the first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.
[PL 2021, c. 235, §1 (NEW).]

3. Creation of 2nd trust; similar beneficial interests. Under this section and subject to section 1213, a 2nd trust may be created or administered under the law of any jurisdiction. Under this section, the 2nd trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.
[PL 2021, c. 235, §1 (NEW).]

4. Distribution for benefit of beneficiary. A power to make a distribution under a 2nd trust created pursuant to this section for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is deemed to be for the benefit of a beneficiary if:

A. The distribution is applied for the benefit of the beneficiary; [PL 2021, c. 235, §1 (NEW).]

B. The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated and if the distribution is made as permitted under this Part; or [PL 2021, c. 235, §1 (NEW).]

C. The distribution is made as permitted under the terms of the first-trust instrument and the 2nd-trust instrument for the benefit of the beneficiary. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

5. Limited distributive discretion over part of principal. If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1212. Trust for beneficiary with disability

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who is subject to a guardianship, a conservatorship or a protective arrangement. [PL 2021, c. 235, §1 (NEW).]

B. "Governmental benefits" means financial aid or services from a state, federal or other public agency. [PL 2021, c. 235, §1 (NEW).]

C. "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(1) A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(2) If no trustee or fiduciary has discretion under subparagraph (1), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(3) If no trustee or fiduciary has discretion under subparagraphs (1) and (2), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries. [PL 2021, c. 235, §1 (NEW).]

D. "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

2. Special-needs decanting. A special-needs fiduciary may exercise the decanting power under section 1210 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

A. A 2nd trust is a special-needs trust that benefits the beneficiary with a disability; and [PL 2021, c. 235, §1 (NEW).]

B. The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

3. Beneficiary with a disability. In an exercise of the decanting power under this section, the following apply:

A. Notwithstanding section 1210, subsection 3, paragraph B, the interest in the 2nd trust of a beneficiary with a disability may:

(1) Be a pooled trust as defined under the federal Medicaid program for the benefit of the beneficiary with a disability under 42 United States Code, Section 1396p(d)(4)(C); or

(2) Contain payback provisions complying with reimbursement requirements under the federal Medicaid program under 42 United States Code, Section 1396p(d)(4)(A); [PL 2021, c. 235, §1 (NEW).]

B. Section 1210, subsection 3, paragraph C does not apply to the interests of a beneficiary with a disability; and [PL 2021, c. 235, §1 (NEW).]

C. Except as affected by any change to the interests of a beneficiary with a disability, the 2nd trust or, if there are 2 or more 2nd trusts, the 2nd trusts in the aggregate must grant each other beneficiary of the first trust beneficial interests in the 2nd trusts that are substantially similar to the beneficiary's beneficial interests in the first trust. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1213. Protection of charitable interest

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event or after the passage of a

specified time period and that is unconditional or will be held solely for charitable purposes. [PL 2021, c. 235, §1 (NEW).]

B. "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986 on the date of the distribution, if the charitable organization meets the requirement on the date of determination. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

2. Determinable charitable interest; Attorney General may represent and bind. If a first trust contains a determinable charitable interest, for purposes of this section, the Attorney General has the rights of a qualified beneficiary and may represent and bind the determinable charitable interest.
[PL 2021, c. 235, §1 (NEW).]

3. Limitation on 2nd trusts. If a first trust contains a determinable charitable interest, the 2nd trust or trusts may not:

A. Diminish the determinable charitable interest; [PL 2021, c. 235, §1 (NEW).]

B. Diminish the interest of an identified charitable organization that holds the determinable charitable interest; [PL 2021, c. 235, §1 (NEW).]

C. Alter any charitable purpose stated in the first-trust instrument; or [PL 2021, c. 235, §1 (NEW).]

D. Alter any condition or restriction related to the determinable charitable interest. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

4. Treatment of 2 or more 2nd trusts. If there are 2 or more 2nd trusts, the 2nd trusts must be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the determinable charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection 3.
[PL 2021, c. 235, §1 (NEW).]

5. State law applicable; exceptions. If a first trust contains a determinable charitable interest, a 2nd trust or trusts that include a determinable charitable interest pursuant to subsection 3 must be administered under the law of this State unless:

A. The Attorney General, after receiving notice under section 1207, does not object in a signed record delivered to the authorized fiduciary within the notice period; [PL 2021, c. 235, §1 (NEW).]

B. The Attorney General consents in a signed record to the 2nd trust or trusts being administered under the law of another jurisdiction; or [PL 2021, c. 235, §1 (NEW).]

C. The court approves the exercise of the decanting power. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

6. Attorney General's powers and duties not limited. This Act does not limit the powers and duties of the Attorney General under a law of this State other than this Act.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1214. Trust limitation on decanting

1. Decanting power prohibited. An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

A. The decanting power; or [PL 2021, c. 235, §1 (NEW).]

B. A power granted by state law to the authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

2. Decanting power restricted. Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

A. The decanting power; or [PL 2021, c. 235, §1 (NEW).]

B. A power granted by state law to an authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

3. Decanting power not precluded. A general prohibition on amendment or revocation of a first trust, a spendthrift provision or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.
[PL 2021, c. 235, §1 (NEW).]

4. First trust permits modification or distribution. Subject to subsections 1 and 2, an authorized fiduciary may exercise the decanting power pursuant to this Act even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.
[PL 2021, c. 235, §1 (NEW).]

5. Express prohibition or restriction included in 2nd trust. If a first-trust instrument contains an express prohibition described in subsection 1 or an express restriction described in subsection 2, the provision must be included in the 2nd-trust instrument.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1215. Change in compensation

1. Compensation specified. If a first-trust instrument specifies an authorized fiduciary's compensation, the authorized fiduciary may not exercise the decanting power to increase the authorized fiduciary's compensation above the specified compensation unless:

A. All qualified beneficiaries of the 2nd trust consent to the increase in a signed record; or [PL 2021, c. 235, §1 (NEW).]

B. The increase is approved by the court. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

2. Compensation not specified. If a first-trust instrument does not specify an authorized fiduciary's compensation, the authorized fiduciary may not exercise the decanting power to increase the authorized fiduciary's compensation above the compensation permitted by this Part unless:

A. All qualified beneficiaries of the 2nd trust consent to the increase in a signed record; or [PL 2021, c. 235, §1 (NEW).]

B. The increase is approved by the court. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

3. Change in compensation incidental. A change in an authorized fiduciary's compensation that is incidental to other changes made by the exercise of the decanting power is not an increase in the authorized fiduciary's compensation for purposes of subsections 1 and 2.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1216. Relief from liability and indemnification

1. Liability for breach of trust. Except as otherwise provided in this section, a 2nd-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument does.
[PL 2021, c. 235, §1 (NEW).]

2. Indemnification for claim otherwise payable. A 2nd-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.
[PL 2021, c. 235, §1 (NEW).]

3. No reduction in liability in aggregate. A 2nd-trust instrument may not reduce fiduciary liability in the aggregate.
[PL 2021, c. 235, §1 (NEW).]

4. Division and reallocation of fiduciary powers; relief from fiduciary liability. Subject to subsection 3, a 2nd-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by a law of this State other than this Act.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1217. Removal or replacement of authorized fiduciary

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the authorized fiduciary unless: [PL 2021, c. 235, §1 (NEW).]

1. Person holding power consents. The person holding the power to remove or replace the authorized fiduciary consents to the modification in a signed record and the modification applies only to the person;
[PL 2021, c. 235, §1 (NEW).]

2. Person holding power and qualified beneficiaries consent. The person holding the power to remove or replace the authorized fiduciary and the qualified beneficiaries of the 2nd trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or
[PL 2021, c. 235, §1 (NEW).]

3. Court approves. The court approves the modification and the modification grants a substantially similar power to remove or replace the authorized fiduciary to another person.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1218. Tax-related limitations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 United States Code, Sections 671 to 677 or 26 United States Code, Section 679. [PL 2021, c. 235, §1 (NEW).]

B. "Internal Revenue Code" means the United States Internal Revenue Code of 1986. [PL 2021, c. 235, §1 (NEW).]

C. "Nongrantor trust" means a trust that is not a grantor trust. [PL 2021, c. 235, §1 (NEW).]

D. "Qualified benefits property" means property subject to the minimum distribution requirements of 26 United States Code, Section 401(a)(9), and any applicable regulations, or to any similar requirements that refer to 26 United States Code, Section 401(a)(9) or an applicable regulation. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

2. Limitations on decanting power. An exercise of the decanting power is subject to the following limitations:

A. If a first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate or inheritance tax, the 2nd-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified. [PL 2021, c. 235, §1 (NEW).]

B. If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for a charitable deduction for purposes of the income, gift or estate tax under the Internal Revenue Code or a state income, gift, estate or inheritance tax, the 2nd-trust instrument may not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified. [PL 2021, c. 235, §1 (NEW).]

C. If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for the exclusion from the gift tax described in 26 United States Code, Section 2503(b), the 2nd-trust instrument may not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 United States Code, Section 2503(b). If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for the exclusion from the gift tax described in 26 United States Code, Section 2503(b) by application of 26 United States Code, Section 2503(c), the 2nd-trust instrument may not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 United States Code, Section 2503(c). [PL 2021, c. 235, §1 (NEW).]

D. If the property of the first trust includes shares of stock in an S corporation, as defined in 26 United States Code, Section 1361 and the first trust is, or but for provisions of this Act other than

this section would be, a permitted shareholder under any provision of 26 United States Code, Section 1361, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any 2nd trust receiving the stock is a permitted shareholder under 26 United States Code, Section 1361(c)(2). If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this Act other than this section would be, a qualified subchapter S trust within the meaning of 26 United States Code, Section 1361(d), the 2nd-trust instrument may not include or omit a term that, if included or omitted, would have the effect of preventing the 2nd trust from qualifying as a qualified subchapter S trust. [PL 2021, c. 235, §1 (NEW).]

E. If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for an inclusion ratio of zero for purposes of the generation-skipping transfer tax under 26 United States Code, Section 2642(c), the 2nd-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for an inclusion ratio of zero under 26 United States Code, Section 2642(c). [PL 2021, c. 235, §1 (NEW).]

F. If the first trust is directly or indirectly the beneficiary of qualified benefits property, the 2nd-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 United States Code, Section 401(a)(9) and any applicable regulations, or any similar requirements that refer to 26 United States Code, Section 401(a)(9) or an applicable regulation. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and section 1221 applies to the separate share. [PL 2021, c. 235, §1 (NEW).]

G. If the first trust qualifies as a grantor trust because of the application of 26 United States Code, Section 672(f)(2)(A), the 2nd trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 United States Code, Section 672(f)(2)(A). [PL 2021, c. 235, §1 (NEW).]

H. Subject to paragraph I, a 2nd-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(1) The first-trust instrument expressly indicates an intent to qualify for the tax benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the tax benefit; and

(2) The transfer of property held by the first trust, or the first trust, qualified, or but for provisions of this Act other than this section would have qualified, for the tax benefit.

For the purposes of this paragraph, "tax benefit" means a federal or state tax deduction, exemption, exclusion or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. [PL 2021, c. 235, §1 (NEW).]

I. Subject to paragraph D:

(1) Except as otherwise provided in paragraph H, the 2nd trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(2) Except as otherwise provided in paragraph J, the 2nd trust may be a grantor trust, even if the first trust is a nongrantor trust. [PL 2021, c. 235, §1 (NEW).]

J. An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the authorized fiduciary within the notice period under section 1207 and:

(1) The first trust and a 2nd trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust and the 2nd trust does not grant an equivalent power to the settlor or other person; or

(2) The first trust is a nongrantor trust and a 2nd trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(a) The settlor has the power at all times to cause the 2nd trust to cease to be a grantor trust; or

(b) The first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the 2nd-trust instrument contains the same provision. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1219. Duration of 2nd trust

1. Duration. Subject to subsection 2, a 2nd trust may have a duration that is the same as or different from the duration of the first trust.
[PL 2021, c. 235, §1 (NEW).]

2. Rules applicable to property. To the extent that property of a 2nd trust is attributable to property of the first trust, the property of the 2nd trust is subject to any rules governing maximum perpetuity, accumulation or suspension of the power of alienation that apply to property of the first trust.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1220. Need to distribute not required

An authorized fiduciary may exercise the decanting power whether or not, under the first trust's discretionary distribution standard, the authorized fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise. [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1221. Savings provision

1. Second-trust instrument in part not in compliance. If exercise of the decanting power would be effective under this Act except for the 2nd-trust instrument's partial noncompliance with this Act, the exercise of the decanting power is effective and the following applies with respect to the principal of the 2nd trust attributable to the exercise of the decanting power:

A. A provision in the 2nd-trust instrument that is not permitted under this Act is void to the extent necessary to comply with this Act; and [PL 2021, c. 235, §1 (NEW).]

B. A provision required by this Act to be in the 2nd-trust instrument that is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this Act. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

2. Fiduciary action. If a trustee or other fiduciary of a 2nd trust determines that subsection 1 applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1222. Trust for care of animal

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals. [PL 2021, c. 235, §1 (NEW).]

B. "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

2. Consent of protector. The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this Act if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.
[PL 2021, c. 235, §1 (NEW).]

3. Rights of qualified beneficiary. A protector for an animal has the rights under this Act of a qualified beneficiary.
[PL 2021, c. 235, §1 (NEW).]

4. Time period first trust benefited animal. Notwithstanding any provision of this Act to the contrary, if a first trust is an animal trust, in an exercise of the decanting power, the 2nd trust must provide that trust property may be applied only for its intended purpose for the time period the first trust benefited the animal.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1223. Terms of 2nd trust

A reference in this Title to a trust instrument or terms of the trust includes a 2nd-trust instrument and the terms of the 2nd trust. [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1224. Settlor

1. Settlor of first trust is settlor of 2nd trust. For purposes of the law of this State other than this Act and subject to subsection 2, a settlor of a first trust is deemed to be the settlor of the 2nd trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.
[PL 2021, c. 235, §1 (NEW).]

2. Consideration of intent. In determining settlor intent with respect to a 2nd trust, the intent of a settlor of the first trust, a settlor of the 2nd trust and the authorized fiduciary may be considered.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1225. Later-discovered property

1. Distribution of all principal of first trust. Except as otherwise provided in subsection 3, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more 2nd trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the decanting power is part of the trust estate of the 2nd trust or trusts.
[PL 2021, c. 235, §1 (NEW).]

2. Distribution of less than all principal of first trust. Except as otherwise provided in subsection 3, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more 2nd trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the decanting power remains part of the trust estate of the first trust.
[PL 2021, c. 235, §1 (NEW).]

3. Disposition by fiduciary. An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a 2nd trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after the exercise of the decanting power.
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1226. Obligations

A debt, liability or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the 2nd trust after exercise of the decanting power. [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1227. Uniformity of application and construction

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1228. Relation to Electronic Signatures in Global and National Commerce Act

This Act modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b). [PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

§1229. Effective date

This Act takes effect October 1, 2021. [PL 2021, c. 235, §1 (NEW).]

REVISOR'S NOTE: Notwithstanding the stated effective date of October 1, 2021 set forth in this section, PL 2021, chapter 235, which enacted this chapter, took effect on October 18, 2021, 90 days after the adjournment of the First Special Session of the 130th Legislature.

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

PART 2

MAINE UNIFORM DIRECTED TRUST ACT

CHAPTER 21

MAINE UNIFORM DIRECTED TRUST ACT

§2101. Short title

This Part may be known and cited as "the Maine Uniform Directed Trust Act." [PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2102. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [PL 2019, c. 301, §8 (NEW).]

1. Act. "Act" means the Maine Uniform Directed Trust Act.
[PL 2019, c. 301, §8 (NEW).]

2. Breach of trust. "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this Act or law of this State other than this Act pertaining to trusts.
[PL 2019, c. 301, §8 (NEW).]

3. Directed trust. "Directed trust" means a trust for which the terms of the trust grant a power of direction.
[PL 2019, c. 301, §8 (NEW).]

4. Directed trustee. "Directed trustee" means a trustee that is subject to a trust director's power of direction.
[PL 2019, c. 301, §8 (NEW).]

5. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.
[PL 2019, c. 301, §8 (NEW).]

6. Power of direction. "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. "Power of direction" includes a power over the investment, management or distribution of trust property or other matters of trust administration. "Power of direction" excludes the powers described in section 2105, subsection 2.
[PL 2019, c. 301, §8 (NEW).]

7. Settlor. "Settlor" has the same meaning as in section 103, subsection 14.

[PL 2019, c. 301, §8 (NEW).]

8. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.
[PL 2019, c. 301, §8 (NEW).]

9. Terms of a trust. "Terms of a trust" means:

A. Except as otherwise provided in paragraph B, the manifestation of the settlor's intent regarding a trust's provisions as:

(1) Expressed in the trust instrument; or

(2) Established by other evidence that would be admissible in a judicial proceeding; or [PL 2019, c. 301, §8 (NEW).]

B. The trust's provisions as established, determined or amended by:

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

(2) Court order; or

(3) A nonjudicial settlement agreement under the Maine Uniform Trust Code. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

10. Trust director. "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.
[PL 2019, c. 301, §8 (NEW).]

11. Trustee. "Trustee" includes an original, additional and successor trustee and a cotrustee.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2103. Application; principal place of administration

1. Application. This Act applies to a trust, whenever created, that has its principal place of administration in this State, subject to the following rules:

A. If the trust was created before January 1, 2020, this Act applies only to a decision or action occurring on or after January 1, 2020. [PL 2019, c. 301, §8 (NEW).]

B. If the principal place of administration of the trust is changed to this State on or after January 1, 2020, this Act applies only to a decision or action occurring on or after the date of the change. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

2. Principal place of administration. Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust that designate the principal place of administration of the trust are valid and controlling if:

A. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; [PL 2019, c. 301, §8 (NEW).]

B. A trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or [PL 2019, c. 301, §8 (NEW).]

C. All or part of the administration occurs in the designated jurisdiction. [PL 2019, c. 301, §8 (NEW).]

[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2104. Common law and principles of equity

The common law and principles of equity supplement this Act, except to the extent modified by this Act or law of this State other than this Act. [PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2105. Exclusions

1. Power of appointment. In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

[PL 2019, c. 301, §8 (NEW).]

2. Exclusions. This Act does not apply to a:

A. Power of appointment; [PL 2019, c. 301, §8 (NEW).]

B. Power to appoint or remove a trustee or trust director; [PL 2019, c. 301, §8 (NEW).]

C. Power of a settlor over a trust to the extent the settlor has a power to revoke the trust; [PL 2019, c. 301, §8 (NEW).]

D. Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(1) The beneficiary; or

(2) Another beneficiary represented by the beneficiary under the Maine Uniform Trust Code, sections 301 to 305 with respect to the exercise or nonexercise of the power; or [PL 2019, c. 301, §8 (NEW).]

E. Power over a trust if:

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

(2) The power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986 and amendments to that Code as of December 31, 2017. [PL 2019, c. 301, §8 (NEW).]

[PL 2019, c. 301, §8 (NEW).]

3. Power of direction. Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property that is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2106. Powers of trust director

1. Power of direction. Subject to section 2107, the terms of a trust may grant a power of direction to a trust director.

[PL 2019, c. 301, §8 (NEW).]

2. Powers of trust director. Unless the terms of a trust provide otherwise:

A. A trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection 1; and [PL 2019, c. 301, §8 (NEW).]

B. Trust directors with joint powers shall act by majority decision. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2107. Limitations on trust director

A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under section 2106, subsection 2, paragraph A regarding: [PL 2019, c. 301, §8 (NEW).]

1. Medicaid payback provision. A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the federal Social Security Act, 42 United States Code, Section 1396p(d)(4)(A); and
[PL 2019, c. 301, §8 (NEW).]

2. Charitable interest. A charitable interest in the trust, including notice regarding the interest to the Attorney General.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2108. Duty and liability of trust director

1. Duties and liabilities. Subject to subsection 2, with respect to a power of direction or further power under section 2106, subsection 2, paragraph A:

A. A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(1) If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(2) If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and [PL 2019, c. 301, §8 (NEW).]

B. The terms of the trust may vary a trust director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

2. Health care provider. 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 Act to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this Act.
[PL 2019, c. 301, §8 (NEW).]

3. Additional duties and liabilities. 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.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2109. Duty and liability of directed trustee

1. Reasonable action to comply. Subject to subsection 2, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under section 2106, subsection 2, paragraph A, and the trustee is not liable for the action.
[PL 2019, c. 301, §8 (NEW).]

2. No compliance if willful misconduct. A directed trustee may not comply with a trust director's exercise or nonexercise of a power of direction or further power under section 2106, subsection 2, paragraph A to the extent that by complying the trustee would engage in willful misconduct.
[PL 2019, c. 301, §8 (NEW).]

3. Release from liability not effective. An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

A. The breach involved the trustee's or other director's willful misconduct; [PL 2019, c. 301, §8 (NEW).]

B. The release was induced by improper conduct of the trustee or other director in procuring the release; or [PL 2019, c. 301, §8 (NEW).]

C. At the time of the release, the director did not know the material facts relating to the breach. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

4. Petition court for instructions. A directed trustee that has reasonable doubt about its duty under this section may petition the Probate Court or the Superior Court for instructions.
[PL 2019, c. 301, §8 (NEW).]

5. Additional duty or liability. The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2110. Duty to provide information to trust director or trustee

1. Trustee's duty to provide information. Subject to section 2111, a trustee shall provide information to a trust director to the extent the information is reasonably related to both:

A. The powers or duties of the trustee; and [PL 2019, c. 301, §8 (NEW).]

B. The powers or duties of the director. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

2. Trust director's duty to provide information. Subject to section 2111, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related to both:

A. The powers or duties of the director; and [PL 2019, c. 301, §8 (NEW).]

B. The powers or duties of the trustee or other director. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

3. Trustee acts in reliance. A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

[PL 2019, c. 301, §8 (NEW).]

4. Trust director acts in reliance. A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2111. No duty to monitor, inform or advise

1. Trustee. Unless the terms of a trust provide otherwise:

A. A trustee does not have a duty to:

(1) Monitor a trust director; or

(2) Inform or give advice to a settlor, beneficiary, trustee or trust director concerning an instance in which the trustee might have acted differently than the director; and [PL 2019, c. 301, §8 (NEW).]

B. By taking an action described in paragraph A, a trustee does not assume the duty excluded by paragraph A. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

2. Trust director. Unless the terms of a trust provide otherwise:

A. A trust director does not have a duty to:

(1) Monitor a trustee or another trust director; or

(2) Inform or give advice to a settlor, beneficiary, trustee or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and [PL 2019, c. 301, §8 (NEW).]

B. By taking an action described in paragraph A, a trust director does not assume the duty excluded by paragraph A. [PL 2019, c. 301, §8 (NEW).]
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2112. Application to cotrustee

The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 2109 to 2111. [PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2113. Limitation of action against trust director

1. Action for breach of trust. An action against a trust director for breach of trust must be commenced within the same limitation period as in the Maine Uniform Trust Code, section 1005 for an action for breach of trust against a trustee in a like position and under similar circumstances.
[PL 2019, c. 301, §8 (NEW).]

2. Report or accounting. A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under the

Maine Uniform Trust Code, section 1005 in an action for breach of trust against a trustee in a like position and under similar circumstances.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2114. Defenses in action against trust director

In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee. [PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2115. Jurisdiction over trust director

1. Personal jurisdiction. By accepting appointment as a trust director of a trust subject to this Act, the director submits to personal jurisdiction of the courts of this State regarding any matter related to a power or duty of the director.
[PL 2019, c. 301, §8 (NEW).]

2. Other methods not excluded. This section does not preclude other methods of obtaining jurisdiction over a trust director.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2116. Office of trust director

Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters: [PL 2019, c. 301, §8 (NEW).]

1. Acceptance. Acceptance under the Maine Uniform Trust Code, section 701;
[PL 2019, c. 301, §8 (NEW).]

2. Bond to secure performance. Giving of bond to secure performance under the Maine Uniform Trust Code, section 702;
[PL 2019, c. 301, §8 (NEW).]

3. Reasonable compensation. Reasonable compensation under the Maine Uniform Trust Code, section 708;
[PL 2019, c. 301, §8 (NEW).]

4. Resignation. Resignation under the Maine Uniform Trust Code, section 705;
[PL 2019, c. 301, §8 (NEW).]

5. Removal. Removal under the Maine Uniform Trust Code, section 706; and
[PL 2019, c. 301, §8 (NEW).]

6. Successor. Vacancy and appointment of successor under the Maine Uniform Trust Code, section 704.
[PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2117. Uniformity of application and construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2118. Relation to Electronic Signatures in Global and National Commerce Act

This Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b). [PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

§2119. Effective date

This Act takes effect January 1, 2020. [PL 2019, c. 301, §8 (NEW).]

SECTION HISTORY

PL 2019, c. 301, §8 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 132nd Maine Legislature and is current through October 1, 2026. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.