

3B:31-1 to 3B:31-84 LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2015 **CHAPTER:** 276
NJSA: 3B:31-1 to 3B:31-84 ("Uniform Trust Code")
BILL NO: A2915 (Substituted for S2035)

SPONSOR(S) Lagana and others

DATE INTRODUCED: March 13, 2014

COMMITTEE: **ASSEMBLY:** Judiciary
 SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 11, 2016
 SENATE: January 7, 2016

DATE OF APPROVAL: January 19, 2016

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted)

A2915

SPONSOR'S STATEMENT: (Begins on page 35 of introduced bill)	Yes	
COMMITTEE STATEMENT:	ASSEMBLY:	Yes Judiciary
	SENATE:	Yes Judiciary

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL ESTIMATE:	No

S2035

SPONSOR'S STATEMENT: (Begins on page 35 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: No
	SENATE: Yes
FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL ESTIMATE:	No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

OTHER: Yes

Uniform Trust Code referenced in sponsor's statement: <http://www.uniformlaws.org/Default.aspx>

LAW/RWH

Title 3B.
Chapter 31.
"Uniform Trust
Code"
§1 –
N.J.S.3B:31-1 to
N.J.S.3B:31-84
§3 - Repealer
§4 - Note

P.L.2015, CHAPTER 276, *approved January 19, 2016*
Assembly, No. 2915 (*Second Reprint*)

1 AN ACT concerning trusts, supplementing Title 3B of the New
2 Jersey Statutes, enacting additional chapter 31, Uniform Trust
3 Code, amending N.J.S.3B:14-37, and repealing N.J.S.3B:11-5,
4 N.J.S.3B:11-6, N.J.S.3B:11-7, and P.L.2001, c.144.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. An additional chapter, Chapter 31, is added to Title 3B of the
10 New Jersey Statutes as follows:

11
12 CHAPTER 31
13 UNIFORM TRUST CODE
14
15 TABLE OF CONTENTS
16
17 ARTICLE 1
18 GENERAL PROVISIONS AND DEFINITIONS
19
20 3B:31-1. Short Title.
21 3B:31-2. Scope.
22 3B:31-3. Definitions.
23 3B:31-4. Knowledge.
24 3B:31-5. Default and Mandatory Rules.
25 3B:31-6. Common Law of Trusts; Principles of Equity.
26 3B:31-7. Governing Law.
27 3B:31-8. Principal Place of Administration.
28 3B:31-9. Methods and Waiver of Notice.
29 3B:31-10. Others Treated as Qualified Beneficiaries.
30 3B:31-11. Nonjudicial Settlement Agreements.
31 3B:31-12. Rules of Construction.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted September 22, 2014.

²Senate SJU committee amendments adopted December 17, 2015.

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ARTICLE 2
REPRESENTATION

- 3B:31-13. Representation: Basic Effect.
- 3B:31-14. Representation by Holder of General Testamentary Power of Appointment.
- 3B:31-15. Representation by Fiduciaries and Parents.
- 3B:31-16. Representation by Person Having Substantially Identical Interest.
- 3B:31-17. Appointment of Representative.

ARTICLE 3
CREATION, VALIDITY, MODIFICATION AND TERMINATION
OF TRUST

- 3B:31-18. Methods of Creating Trust.
- 3B:31-19. Requirements for Creation.
- 3B:31-20. Written Trusts Created in Other Jurisdictions.
- 3B:31-21. Trust Purposes.
- 3B:31-22. Charitable Purposes; Enforcement.
- 3B:31-23. Creation of Trust Induced by Fraud, Duress or Undue Influence.
- 3B:31-24. Trust for Care of Animal.
- 3B:31-25. Noncharitable Trust Without Ascertainable Beneficiary.
- 3B:31-26. Modification or Termination of Trust; Proceedings for Approval or Disapproval.
- 3B:31-27. Modification or Termination of Noncharitable Irrevocable Trust by Consent.
- 3B:31-28. Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively.
- 3B:31-29. Modification or Termination of Charitable Trust (Cy Pres).
- 3B:31-30. Modification or Termination of Uneconomic Trust.
- 3B:31-31. Reformation to Correct Mistakes.
- 3B:31-32. Construction to Conform Trust Terms to Probable Intent of Settlor.
- 3B:31-33. Modification to Achieve Settlor's Tax Objectives.
- 3B:31-34. Combination and Division of Trusts.

ARTICLE 4
CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY
TRUSTS

- 3B:31-35. Rights of Beneficiary's Creditor or Assignee.
- 3B:31-36. Spendthrift Provision.
- 3B:31-37. ²**【Exceptions to Spendthrift Provision】** Special Needs Trusts².

1 3B:31-38. Discretionary Trusts; Effect of Standard.

2 3B:31-39. Creditor's Claim Against Settlor.

3 3B:31-40. Overdue Distribution.

4 3B:31-41. Personal Obligations of Trustee

5

6

ARTICLE 5

7

REVOCABLE TRUSTS

8

9 3B:31-42. Capacity of Settlor of Revocable Trust.

10 3B:31-43. Revocation or Amendment of Revocable Trust.

11 3B:31-44. Settlor's Powers ²【; Powers of Withdrawal】².

12 3B:31-45. Limitation on Action Contesting Validity of Revocable
13 Trust; Distribution of Trust Property.

14

15

ARTICLE 6

16

OFFICE OF TRUSTEE

17

18 3B:31-46. Accepting or Declining Trusteeship.

19 3B:31-47. Trustee's Bond.

20 3B:31-48. ²【Cotrustees】 Co-trustees².

21 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

22 3B:31-50. Resignation of Trustee.

23 3B:31-51. Removal of Trustee.

24 3B:31-52. Delivery of Property by Former Trustee.

25 3B:31-53. Reimbursement of Expenses.

26

27

ARTICLE 7

28

DUTIES AND POWERS OF TRUSTEE

29

30 3B:31-54. Duty to Administer Trust.

31 3B:31-55. Duty of Loyalty.

32 3B:31-56. Duty of Impartiality.

33 3B:31-57. Duty of Prudent Administration.

34 3B:31-58. Costs of Administration.

35 3B:31-59. Duty to Use Special Skills.

36 3B:31-60. Delegation by Trustee.

37 3B:31-61. Powers to Direct.

38 3B:31-62. ²Powers to Direct Investment Functions.

39 3B:31-63.² Control and Protection of Trust Property.

40 ²【3B:31-63】 3B:31-64². Recordkeeping and Identification of Trust
41 Property.

42 ²【3B:31-64】 3B:31-65². Duty to Enforce and Defend Claims

43 ²【3B:31-65】 3B:31-66². Duty to Collect Trust Property and
44 Redress Breaches of Trust.

45 ²【3B:31-66】 3B:31-67². Duty to Disclose and Discretion to
46 Periodically Report.

47 ²【3B:31-67】 3B:31-68². Discretionary Powers.

1 ²[3B:31-68] 3B:31-69². General Powers of Trustee.

2 ²[3B:31-69] 3B:31-70². Distribution Upon Termination.

3

4

ARTICLE 8

5

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

6

DEALING WITH TRUSTEE

7

8 ²[3B:31-70] 3B:31-71². Remedies for Breach of Trust.

9 ²[3B:31-71] 3B:31-72². Damages for Breach of Trust.

10 ²[3B:31-72] 3B:31-73². Damages in Absence of Breach.

11 ²[3B:31-73] 3B:31-74². Limitation of Action Against Trustee.

12 ²[3B:31-74] 3B:31-75². Reliance on Trust Instrument.

13 ²[3B:31-75] 3B:31-76². Event Affecting Administration or
14 Distribution.

15 ²[3B:31-76] 3B:31-77². Exculpation of Trustee.

16 ²[3B:31-77] 3B:31-78². Beneficiary's Consent, Release, or
17 Ratification.

18 ²[3B:31-78] 3B:31-79². Limitation on Personal Liability of Trustee.

19 ²[3B:31-79] 3B:31-80². Interest as General Partner.

20 ²[3B:31-80] 3B:31-81². Certification of Trust.

21

22

ARTICLE 9

23

MISCELLANEOUS PROVISIONS

24

25 ²[3B:31-81] 3B:31-82². Electronic Records and Signatures.

26 ²[3B:31-82] 3B:31-83². Severability Clause.

27 ²[3B:31-83] 3B:31-84². Application to Existing Relationships.

28

29

ARTICLE 1

30

GENERAL PROVISIONS AND DEFINITIONS

31

32 3B:31-1. Short Title.

33 This act shall be known and may be cited as the "Uniform Trust
34 Code."

35

36 3B:31-2. Scope.

37 This act applies to express trusts, charitable or noncharitable, and
38 trusts created pursuant to a statute, judgment, or decree that requires
39 the trust to be administered in the manner of an express trust.

40

41 3B:31-3. Definitions.

42 As used in this act:

43 "Action," with respect to an act of a trustee, includes a failure to
44 act.

45 ²"Beneficiary," as it relates to trust beneficiaries, includes a
46 person:

- 1 (1) who has any present or future interest, vested or contingent;
2 (2) who, in a capacity other than that of trustee, holds a power of
3 appointment over trust property;
4 (3) who is the owner of an interest by assignment or other transfer;
5 and
6 (4) as it relates to a charitable trust, any person who is entitled to
7 enforce the trust.²

8 "Charitable trust" means a trust, or portion of a trust, created for a
9 charitable purpose described in subsection a. of N.J.S.3B:31-22.

10 "Environmental law" means a federal, State, or local law, rule,
11 regulation, or ordinance relating to protection of the environment.

12 "Interests of the beneficiaries" means the beneficial interests
13 provided in the terms of the trust.

14 "Jurisdiction," with respect to a geographic area, includes a state or
15 country.

16 "Power of withdrawal" means a presently exercisable general
17 power of appointment other than a power exercisable only upon
18 consent of the trustee or a person holding an adverse interest.

19 "Property" means anything that may be the subject of ownership,
20 whether real or personal, legal or equitable, or any interest therein.

21 "Qualified beneficiary" means a beneficiary who, on the date the
22 beneficiary's qualification is determined:

23 (1) is a distributee or permissible distributee of trust income or
24 principal;

25 (2) would be a distributee or permissible distributee of trust
26 income or principal if the interests of the distributees described in
27 paragraph (1) terminated on that date; or

28 (3) would be a distributee or permissible distributee of trust
29 income or principal if the trust terminated on that date.

30 "Revocable," as applied to a trust, means revocable by the settlor
31 without the consent of the trustee or a person holding an adverse
32 interest.

33 "Settlor" means a person, including a testator, who creates, or
34 contributes property to, a trust. If more than one person creates or
35 contributes property to a trust, each person is a settlor of the portion of
36 the trust property attributable to that person's contribution except to the
37 extent another person has the power to revoke or withdraw that
38 portion.

39 "Spendthrift provision" means a term of a trust which restrains
40 both voluntary and involuntary transfer of a beneficiary's interest.

41 "State" means a State of the United States, the District of
42 Columbia, ²Commonwealth of² Puerto Rico, the United States Virgin
43 Islands, or any territory or insular possession subject to the jurisdiction
44 of the United States. The term includes an Indian tribe or band
45 recognized by federal law or formally acknowledged by a state.

46 "Terms of a trust" means the manifestation of the settlor's intent
47 regarding a trust's provisions as expressed in the trust instrument or as

1 may be established by other evidence that would be admissible in a
2 judicial proceeding.

3 "Trust instrument" means an instrument executed by the settlor
4 that contains terms of the trust, including any amendments thereto.

5 "Trustee^{2,2}" ²**[includes an original, additional, and successor**
6 **trustee, and a cotrustee]** in addition to the definition contained in
7 N.J.S.3B:1-2, includes a corporate entity in its capacity as trustee and a
8 co-trustee where two or more are appointed².

9

10 3B:31-4. Knowledge.

11 a. Subject to subsection b. of this section, a person has knowledge
12 of a fact if the person:

13 (1) has actual knowledge of it;

14 (2) has received a notice or notification of it; or

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

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

30

31 3B:31-5. Default and Mandatory Rules.

32 a. Except as otherwise provided in the terms of the trust, this act
33 governs the duties and powers of a trustee, relations among trustees,
34 and the rights and interests of a beneficiary.

35 b. The terms of a trust prevail over any provision of this act
36 except:

37 (1) the requirements for creating a trust;

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

40 (3) the requirement that a trust and its terms be for the benefit of
41 its beneficiaries, and that the trust have a purpose that is lawful, not
42 contrary to public policy, and possible to achieve;

43 (4) the power of the court to modify or terminate a trust under
44 N.J.S.3B:31-26 through ¹N.J.S.¹3B:31-33;

45 (5) the effect of a spendthrift provision and the rights of certain
46 creditors and assignees to reach a trust as provided in article 4 of this
47 act;

1 (6) the power of the court under N.J.S.3B:31-47 to require,
2 dispense with, or modify or terminate a bond;

3 (7) the duty under subsections a. and b. of ²**[N.J.S.3B:31-66]**
4 N.J.S.3B:31-67² to respond to the request of a qualified beneficiary of
5 an irrevocable trust who has attained the age of 35 years for a copy of
6 the trust instrument or for other information reasonably related to the
7 administration of the trust;

8 (8) the effect of an exculpatory term under ²**[N.J.S.3B:31-76]**
9 N.J.S.3B:31-77²;

10 (9) the rights under ²**[N.J.S.3B:31-78]** N.J.S.3B:31-79² through
11 ²**[N.J.S.3B:31-80]** N.J.S.3B:31-81² of a person other than a trustee or
12 beneficiary;

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

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

17
18 3B:31-6. Common Law of Trusts; Principles of Equity.

19 The common law of trusts and principles of equity supplement this
20 act, except to the extent modified by this act or another statute of this
21 State.

22
23 3B:31-7. Governing Law.

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

25 a. the law of the jurisdiction designated in the terms unless the
26 designation of that jurisdiction's law is contrary to a strong public
27 policy of the jurisdiction having the most significant relationship to the
28 matter at issue; or

29 b. in the absence of a controlling designation in the terms of the
30 trust, the law of the jurisdiction having the most significant
31 relationship to the matter at issue.

32
33 3B:31-8. Principal Place of Administration.

34 a. Without precluding other means for establishing a sufficient
35 connection with the designated jurisdiction, terms of a trust
36 designating the principal place of administration are valid and
37 controlling if:

38 (1) a trustee maintains a place of business located in or a trustee is
39 a resident of the designated jurisdiction; or

40 (2) all or part of the administration occurs in the designated
41 jurisdiction.

42 In the absence of terms of a trust designating the principal place of
43 administration, the initial principal place of administration of a
44 nontestamentary trust shall be this State if the trust is governed by the
45 law of this State, and the principal place of administration of a
46 testamentary trust shall be the jurisdiction in which the decedent was
47 domiciled at the time of death.

1 b. A trustee is under a continuing duty to administer the trust at a
2 place appropriate to its purposes, its administration, and the interests of
3 the beneficiaries.

4 c. The trustee, in furtherance of the duty prescribed by subsection
5 b. of this section, may transfer the trust's principal place of
6 administration to another State or to a jurisdiction outside of the
7 United States.

8 d. The trustee shall notify the qualified beneficiaries of a
9 proposed transfer of a trust's principal place of administration not less
10 than 60 days before initiating the transfer. The notice of proposed
11 transfer shall include:

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

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

16 (3) the date on which the proposed transfer is anticipated to occur;
17 and

18 (4) the date, not less than 60 days after the giving of the notice, by
19 which the qualified beneficiary is required to notify the trustee of an
20 objection to the proposed transfer.

21 e. The authority of a trustee under this section to transfer a trust's
22 principal place of administration terminates if a qualified beneficiary
23 notifies the trustee of an objection to the proposed transfer on or before
24 the date specified in the notice, unless the trustee secures judicial
25 approval for the transfer ²【pursuant to N.J.S.3B:21-2 through
26 N.J.S.3B:21-4】².

27 f. In connection with a transfer of the trust's principal place of
28 administration, the trustee may transfer some or all of the trust
29 property to a successor trustee designated in the terms of the trust or
30 appointed pursuant to N.J.S.3B:31-49.

31

32 3B:31-9. Methods and Waiver of Notice.

33 a. Notice to a person under this act or the sending of a document
34 to a person under this act shall be accomplished in a manner
35 reasonably suitable under the circumstances and likely to result in
36 receipt of the notice or document. Permissible methods of notice or
37 for sending a document include first-class mail, personal delivery,
38 delivery to the person's last known place of residence or place of
39 business, or a properly directed textual electronic message.

40 b. Notice otherwise required under this act or a document
41 otherwise required to be sent under this act need not be provided to a
42 person whose identity or location is unknown to and not reasonably
43 ascertainable by the trustee.

44 c. Notice under this act or the sending of a document under this
45 act may be waived by the person to be notified or sent the document.

46 d. Notice of a judicial proceeding shall be given as provided in
47 the applicable ²【rules of civil procedure】 New Jersey Rules of Court².

1 3B:31-10. Others Treated as Qualified Beneficiaries.

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

5 b. A charitable organization expressly designated to receive
6 distributions under the terms of a charitable trust or a person appointed
7 to enforce a trust created for the care of an animal or another
8 noncharitable purpose as provided in N.J.S.3B:31-24 or N.J.S.3B:31-
9 25 has the rights of a qualified beneficiary under this act.

10 c. The ²~~attorney general~~ Attorney General² of this State has the
11 rights of a qualified beneficiary with respect to a charitable trust
12 having its principal place of administration in this State.

13

14 3B:31-11. Nonjudicial Settlement Agreements.

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

18 b. Except as otherwise provided in subsection c. of this section or
19 any other provision of this chapter, interested persons may enter into a
20 binding nonjudicial settlement agreement with respect to any matter
21 involving a trust.

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

26 d. Matters that may be resolved by a nonjudicial settlement
27 agreement include:

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

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

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

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

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

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

36 e. Any interested person may request the court to approve a
37 nonjudicial settlement agreement, to determine whether the
38 representation as provided in article 2 was adequate, and to determine
39 whether the agreement contains terms and conditions the court could
40 have properly approved.

41 ²f. A nonjudicial settlement may not be used to produce a result
42 that is contrary to other sections of Title 3B of the New Jersey
43 Statutes, including, but not limited to, terminating or modifying a trust
44 in an impermissible manner.²

45

46 3B:31-12. Rules of Construction.

47 The rules of construction that apply in this State to the
48 interpretation of and disposition of property by will also apply as

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

3

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ARTICLE 2
REPRESENTATION

5

6

7 3B:31-13. Representation: Basic Effect.

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

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

15 c. Except as otherwise provided in ²N.J.S.3B:31-27 and²
16 N.J.S.3B:31-43, a person who under this article may represent a settlor
17 who lacks capacity may receive notice and give a binding consent on
18 the settlor's behalf.

19 ²d. A settlor may not represent and bind a beneficiary under this
20 article with respect to the termination or modification of a trust under
21 subsection a. of N.J.S.3B:31-27.²

22

23 3B:31-14. Representation by Holder of General Testamentary
24 Power of Appointment.

25 a. To the extent there is no conflict of interest between the holder
26 of a general testamentary power of appointment and the persons
27 represented with respect to the particular question or dispute, the
28 holder may represent and bind persons whose interests, as permissible
29 appointees, takers in default, or otherwise, are subject to the power.

30 b. A holder of a general power of appointment in favor of the
31 holder or holder's estate shall not be deemed to have a conflict with
32 permissible appointees and takers in default.

33

34 3B:31-15. Representation by Fiduciaries and Parents.

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

38 a. a guardian of the property may represent and bind the estate
39 that the guardian of the property controls;

40 b. a guardian of the person may represent and bind the ward if
41 ²**[a]** no² guardian of the property has ²**[not]**² been appointed;

42 c. an agent having authority to act with respect to the particular
43 question or dispute may represent and bind the principal;

44 d. a trustee may represent and bind the beneficiaries of the trust;

45 e. a personal representative of a decedent's estate may represent
46 and bind persons interested in the estate; and

47 f. a parent may represent and bind the parent's minor or unborn
48 child if a guardian for the child has not been appointed.

1 3B:31-16. Representation by Person Having Substantially Identical
2 Interest.

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

9
10 3B:31-17. Appointment of Representative.

11 a. If the court determines that an interest is not represented under
12 this article or that the otherwise available representation might be
13 inadequate, the court may appoint a guardian ad litem or other
14 representative to receive notice, give consent, and otherwise represent,
15 bind, and act on behalf of a minor, incapacitated, or unborn individual,
16 or a person whose identity or location is unknown. A guardian ad
17 litem or other representative may be appointed to represent several
18 persons or interests.

19 b. A guardian ad litem or other representative may act on behalf
20 of the individual or person represented with respect to any matter
21 arising under this act, whether or not a judicial proceeding concerning
22 the trust is pending.

23 c. A guardian ad litem or other representative may consider the
24 benefit accruing to the living members of the individual's family.

25
26 ARTICLE 3
27 CREATION, VALIDITY, MODIFICATION AND TERMINATION
28 OF TRUST

29
30 3B:31-18. Methods of Creating Trust.

31 A trust may be created by:

32 a. transfer of property under a written instrument to another
33 person as trustee during the settlor's lifetime or by will or other written
34 disposition taking effect upon the settlor's death;

35 b. written declaration by the owner of property that the owner
36 holds identifiable property as trustee; or

37 c. written exercise of a power of appointment in favor of a
38 trustee.

39
40 3B:31-19. Requirements for Creation.

41 a. A trust is created only if:

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

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

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

45 (a) a charitable trust;

46 (b) a trust for the care of an animal, as provided in N.J.S.3B:31-24;

47 or

1 (c) a trust for a noncharitable purpose, as provided in N.J.S.3B:31-
2 25;

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

4 (5) the same person is not the sole trustee and sole beneficiary of
5 all beneficial interests.

6 b. A beneficiary is definite if the beneficiary can be ascertained
7 now or in the future, subject to ²the provisions of section 14 of
8 P.L.1999, c.159 (C.46:2F-10) or² any ²other² applicable rule against
9 perpetuities.

10 c. A power in a trustee to select a beneficiary from an indefinite
11 class is valid ²]. If the power is not] if² exercised within a reasonable
12 time ²and is not void as provided in section 14 of P.L.1999, c.159
13 (C.46:2F-10) or any other applicable rule against perpetuities or
14 restraint on alienation. If invalid², the power fails and the property
15 subject to the power passes to the persons who would have taken the
16 property had the power not been conferred.

17 ²d. A written instrument which creates a trust or transfers property
18 to a trust shall not be invalid or ineffective because the transferee is
19 identified as the trust rather than the trustee thereof.²

20

21 3B:31-20. Written Trusts Created in Other Jurisdictions.

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

24 a. the trust instrument was executed;

25 b. at the time the trust was created, the settlor was domiciled, had
26 a place of abode, or was a national;

27 c. at the time the trust was created, a trustee was domiciled or had
28 a place of business; or

29 d. at the time the trust was created, any trust property was located.

30

31 3B:31-21. Trust Purposes.

32 A trust may be enforced only to the extent its purposes are lawful,
33 not contrary to public policy, and possible to achieve. A trust and its
34 terms shall be for the benefit of its beneficiaries.

35

36 3B:31-22. Charitable Purposes; Enforcement.

37 a. A charitable trust is one that is created for the relief of poverty,
38 the advancement of education or religion, the promotion of health,
39 governmental or municipal purposes, or other purpose the achievement
40 of which is beneficial to the community.

41 b. If the terms of a charitable trust do not state a particular
42 charitable purpose or beneficiary, and the trustee or other person
43 authorized to state a particular charitable purpose or name a particular
44 charitable beneficiary fails to make a selection, the court may select
45 one or more charitable purposes or beneficiaries. The selection shall
46 be consistent with the settlor's intention to the extent it can be
47 ascertained.

1 c. A proceeding to enforce a charitable trust may be brought by
2 the settlor, by the Attorney General, by the trust's beneficiaries or by
3 other persons who have standing.

4
5 3B:31-23. Creation of Trust Induced by Fraud, Duress, or Undue
6 Influence.

7 A trust is void to the extent its creation was induced by fraud,
8 duress, or undue influence.

9
10 3B:31-24. Trust for Care of Animal.

11 a. A trust may be created to provide for the care of an animal alive
12 during the settlor's lifetime. The trust terminates upon the death of the
13 animal or, if the trust was created to provide for the care of more than
14 one animal alive during the settlor's lifetime, upon the death of the last
15 surviving animal.

16 b. A trust authorized by this section may be enforced by the settlor
17 or by a person appointed in the terms of the trust or, if no person is so
18 appointed, by a person appointed by the court. A person having an
19 interest in the welfare of the animal may request the court to appoint a
20 person to enforce the trust or to remove a person appointed.

21 c. Property of a trust authorized by this section may be applied
22 only to its intended use, except to the extent the court determines that
23 the value of the trust property exceeds the amount required for the
24 intended use. Except as otherwise provided in the terms of the trust,
25 property not required for the intended use shall be distributed to the
26 settlor, if then living, otherwise to the settlor's estate.

27
28 3B:31-25. Noncharitable Trust Without Ascertainable Beneficiary.

29 Except as otherwise provided in N.J.S.3B:31-24 or by another
30 statute, the following rules apply:

31 a. A trust may be created for a noncharitable but otherwise valid
32 purpose without a definite or definitely ascertainable beneficiary or for
33 a noncharitable but otherwise valid purpose to be selected by the
34 trustee.

35 b. A trust authorized by this section may be enforced by the
36 settlor or by a person appointed in the terms of the trust or, if no
37 person is so appointed, by a person appointed by the court.

38 c. Property of a trust authorized by this section may be applied
39 only to its intended use, except to the extent the court determines that
40 the value of the trust property exceeds the amount required for the
41 intended use. Except as otherwise provided in the terms of the trust,
42 property not required for the intended use shall be distributed to the
43 settlor, if then living, otherwise to the settlor's estate.

44
45 3B:31-26. Modification or Termination of Trust; Proceedings for
46 Approval or Disapproval.

47 a. In addition to the methods of termination prescribed by
48 N.J.S.3B:31-27 through N.J.S.3B:31-33, a trust terminates to the

1 extent the trust is revoked or expires pursuant to its terms, no purpose
2 of the trust remains to be achieved, or the purposes of the trust have
3 become unlawful, contrary to public policy of this State, or impossible
4 to achieve.

5 b. A proceeding to approve or disapprove a proposed
6 modification or termination under N.J.S.3B:31-27 through
7 N.J.S.3B:31-33, or trust combination or division under N.J.S.3B:31-
8 34, may be commenced by a trustee or beneficiary ²[, and a
9 proceeding to approve or disapprove a proposed modification or
10 termination under N.J.S.3B:31-27 may be commenced by the settlor]².
11 The settlor of a charitable trust may maintain a proceeding to modify
12 the trust under N.J.S.3B:31-29.

13

14 3B:31-27. Modification or Termination of Noncharitable
15 Irrevocable Trust by Consent.

16 a. A noncharitable irrevocable trust may be modified or
17 terminated upon consent of the ²[settlor] trustee² and all beneficiaries,
18 ²[even]² if the modification or termination is ²not² inconsistent with a
19 material purpose of the trust. ²[A settlor's power to consent to a trust's
20 modification or termination may be exercised by an agent under a
21 power of attorney only to the extent expressly authorized by the power
22 of attorney or the terms of the trust; or by the settlor's guardian with
23 the approval of the court supervising the guardianship if an agent is not
24 so authorized.]²

25 b. A noncharitable irrevocable trust may be terminated upon
26 consent of all of the beneficiaries if the court concludes that
27 continuance of the trust is not necessary to achieve any material
28 purpose of the trust. A noncharitable irrevocable trust may be
29 modified upon consent of all of the beneficiaries if the court concludes
30 that modification is not inconsistent with a material purpose of the
31 trust.

32 c. A spendthrift provision in the terms of the trust is not presumed
33 to constitute a material purpose of the trust.

34 d. Upon termination of a trust under subsection a. or b. of this
35 section, the trustee shall distribute the trust property as agreed by the
36 beneficiaries.

37 e. If not all of the beneficiaries consent to a proposed
38 modification or termination of the trust under subsection a. or b. of this
39 section, the modification or termination may be approved by the court
40 if the court is satisfied that:

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

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

45

46 3B:31-28. Modification or Termination Because of Unanticipated
47 Circumstances or Inability to Administer Trust Effectively.

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

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

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

12
13 3B:31-29. Modification or Termination of Charitable Trust (Cy
14 Pres).

15 a. Except as otherwise provided in subsection b. of this section, if
16 a particular charitable purpose becomes unlawful, impracticable,
17 impossible to achieve, or wasteful:

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

19 (2) the trust property does not revert to the settlor or the settlor's
20 estate; and

21 (3) the court may modify or terminate the trust by directing that the
22 trust property be applied or distributed, in whole or in part, in a
23 manner consistent with the settlor's charitable purposes.

24 b. A provision in the terms of a charitable trust that would result
25 in distribution of the trust property to a noncharitable beneficiary
26 prevails over the power of the court under subsection a. of this section.

27
28 3B:31-30. Modification or Termination of Uneconomic Trust.

29 a. After notice to the qualified beneficiaries, the trustee of a trust
30 consisting of trust property having a total value less than \$100,000
31 may terminate the trust if the trustee concludes that the value of the
32 trust property is insufficient to justify the cost of administration.

33 b. The court may modify or terminate a trust or remove the
34 trustee and appoint a different trustee if it determines that the value of
35 the trust property is insufficient to justify the cost of administration.

36 c. Upon termination of a trust under this section, the trustee shall
37 distribute the trust property in a manner consistent with the purposes
38 of the trust.

39 d. This section does not apply to an easement for conservation or
40 preservation.

41
42 3B:31-31. Reformation to Correct Mistakes.

43 The court may reform the terms of a trust, even if unambiguous, to
44 conform the terms to the settlor's probable intent if it is proved by clear
45 and convincing evidence that there was a mistake of fact or law,
46 whether in expression or inducement.

1 3B:31-32. Construction to Conform Trust Terms to Probable
2 Intent of Settlor.

3 ²【The】 Nothing in this act shall prevent the² court ²【may
4 construe】 from construing² the terms of a trust, even if unambiguous,
5 to conform to the settlor's probable intent.

6
7 3B:31-33. Modification to Achieve Settlor's Tax Objectives.

8 To achieve the settlor's tax objectives, the court may modify the
9 terms of a trust in a manner that is not contrary to the settlor's probable
10 intent. The court may provide that the modification has retroactive
11 effect.

12
13 3B:31-34. Combination and Division of Trusts.

14 a. Subject to subsection b. of this section,

15 (1) the trustees of two or more trusts or parts of trusts may
16 combine the trusts or parts thereof into a single trust, even if such
17 trusts or parts thereof are created by different settlors or under
18 different instruments, and even if the trusts have different trustees; and

19 (2) the trustees of a single trust may divide the trust into two or
20 more separate trusts, in which case distributions provided by the
21 governing instrument may be made from one or more of the separate
22 trusts.

23 b. A combination or division under this section may be effected
24 only if the result does not impair rights of any beneficiary or adversely
25 affect the achievement of the purposes of the trust.

26

27 ARTICLE 4

28 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY 29 TRUSTS

30

31 3B:31-35. Rights of Beneficiary's Creditor or Assignee.

32 Except as otherwise provided by law, to the extent a beneficiary's
33 interest is not protected by a spendthrift provision, a creditor or
34 assignee of the beneficiary may reach the beneficiary's interest by
35 attachment of present or future distributions to or for the benefit of the
36 beneficiary, subject to ²【N.J.S.2A:17-51 et seq.】 N.J.S.2A:17-50
37 through N.J.S.2A:17-56 and sections 3 and 4 of P.L.1981, c.203
38 (C.2A:17-56.1a and C.2A:17-56.6)² or other applicable law. The court
39 may limit the award to such relief as is appropriate under the
40 circumstances.

41

42 3B:31-36. Spendthrift Provision.

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

45 b. A term of the trust providing that the interest of a beneficiary is
46 held subject to a "spendthrift trust," or words of similar import, is
47 sufficient to restrain both voluntary and involuntary transfer of the
48 beneficiary's interest.

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

6 d. A spendthrift provision is valid even though a beneficiary is
7 named as the sole trustee or as a co-trustee of the trust.

8 ²e. A valid spendthrift provision does not prevent the appointment
9 of interests through the exercise of a power of appointment.²

10 3B:31-37. ²**[Exceptions to Spendthrift Provision]** Special Needs
11 Trusts².

12 Even if a trust contains a spendthrift provision, the following shall
13 apply:

14 a. Special Needs

15 (1) "Protected person" means a person who is:

16 (a) an aged, blind, or disabled individual as defined at 42 U.S.C.
17 s.1382c;

18 (b) developmentally disabled as defined in section 2 of P.L.1979,
19 c.105 (C.30:1AA-2); or

20 (c) under age 18, or over age 18 and a full-time student, with
21 serious disabilities that reasonably may prevent the individual from
22 being self sufficient as an adult.

23 (2) "Special needs trust" means an OBRA '93 trust, as defined in
24 subsection a. of section 3 of P.L.2000, c.96 (C.3B:11-37), or trust
25 governed by a written instrument which:

26 (a) grants a trustee ²**[full]** broad² discretion to determine whether
27 and when to distribute;

28 (b) limits distributions during the trust term to distributions to
29 benefit one or more protected persons, although ²**[others may realize**
30 **incidental benefits]** the trust shall have at least one protected person as
31 beneficiary²;

32 (c) provides that the trustee does not have any obligation to pay
33 the protected person's obligations or fund ²**[their]** his² support;

34 (d) does not give the protected person any right to require the
35 trustee to distribute at a specific time or for a particular purpose or to
36 assign or encumber interests in the trust; and

37 (e) evidences the grantor's intent to supplement rather than replace
38 or impair government assistance that the protected person receives or
39 for which ²**[they]** he² otherwise may be eligible.

40 b. Notwithstanding any other provision of this act or other law

41 (1) trustees of a special needs trust ²**[are not required to distribute**
42 **for any particular purpose or at any particular time during the trust**
43 **term]** have broad discretion over distributions²;

44 (2) ²**[all creditors, including, but not limited to, spendthrift**
45 **exception creditors,]** no creditor² of a protected person may ²**[not]²**
46 reach or attach a protected person's interest in a special needs trust and

1 ²~~neither creditors nor a court~~ no creditor² may require the trustees to
2 distribute to satisfy a protected person's creditor's claim; ²and²

3 (3) ²~~a special needs trust shall not be required to repay~~
4 government aid provided to a protected person unless the aid was
5 provided on the basis that the special needs trust would repay the aid
6 when the protected person dies, or the special needs trust sooner
7 terminates, and the special needs trust instrument expressly calls for
8 such repayment; and

9 (4)² a special needs trust shall terminate at such time as provided
10 in its governing instrument.

11 c. ²A special needs trust shall not be required to repay
12 government aid provided to a protected person unless the aid was
13 provided on the basis that the special needs trust would repay the aid
14 when the protected person dies, or the special needs trust terminates
15 sooner and the special needs trust instrument expressly calls for such
16 repayment. This provision does not apply to a first-party, self-settled
17 OBRA '93 trust as defined in subsection a. of section 3 of P.L.2000,
18 c.96 (C.3B:11-37).

19 d.² Notwithstanding N.J.S.3B:31-35 and N.J.S.3B:31-36, trustees
20 of a special needs trust shall exercise their discretion in good faith to
21 further trust purposes and courts may exercise their equity authority to
22 remedy trustee abuses of discretion.

23

24 3B:31-38. Discretionary Trusts; Effect of Standard.

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

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

30 (2) The trustee has abused the discretion.

31 b. This section does not limit the right of a beneficiary to
32 maintain a judicial proceeding against a trustee for an abuse of
33 discretion or failure to comply with a standard for distribution.

34 c. With respect to the powers set forth in section 1 of P.L.1996,
35 c.41 (C.3B:11-4.1), the provisions of this section shall apply even
36 though the beneficiary is the sole trustee or a co-trustee of the trust.

37

38 3B:31-39. Creditor's Claim Against Settlor.

39 a. Whether or not the terms of a trust contain a spendthrift
40 provision, the following rules apply:

41 (1) During the lifetime of the settlor, the property of a revocable
42 trust is subject to claims of the settlor's creditors.

43 (2) With respect to an irrevocable trust, a creditor or assignee of
44 the settlor may reach the maximum amount that can be distributed to
45 or for the settlor's benefit. If a trust has more than one settlor, the
46 amount the creditor or assignee of a particular settlor may reach may
47 not exceed the settlor's interest in the portion of the trust attributable to

1 that settlor's contribution. ²【Provided, however, the assets of an
2 irrevocable trust are not subject to the claims of a creditor of the settlor
3 solely because of the existence of the trustee's discretionary power to
4 pay directly to the taxing authorities or to reimburse the settlor for any
5 income tax payable by the settlor on trust income or principal.】²

6 (3) After the death of a settlor, and subject to the settlor's right to
7 direct the source from which liabilities will be paid, the property of a
8 trust that was revocable at the settlor's death is subject to claims of the
9 settlor's creditors, costs of administration of the settlor's estate, the
10 expenses of the settlor's funeral and disposal of remains, and to a
11 surviving spouse ¹or partner in a civil union¹ and children to the extent
12 the settlor's probate estate is inadequate to satisfy those claims, costs,
13 expenses.

14 b. For purposes of this section:

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

18 (2) upon the lapse, release, or waiver of the power, the holder is
19 treated as the settlor of the trust only to the extent the value of the
20 property affected by the lapse, release, or waiver exceeds the greater of
21 the amount specified in section 2041(b)(2) or 2514(e) of the federal
22 Internal Revenue Code of 1986 (26 U.S.C. s.2041(b)(2) or 26 U.S.C.
23 s.2514(e)), or section 2503(b) of the federal Internal Revenue Code of
24 1986 (26 U.S.C. s.2503(b)), in each case as in effect on the effective
25 date of this act, or as later amended.

26
27 3B:31-40. Overdue Distribution.

28 a. For the purposes of this section, "mandatory distribution"
29 means a distribution of income or principal that the trustee is required
30 to make to a beneficiary under the terms of the trust, including a
31 distribution upon termination of the trust. The term excludes a
32 distribution subject to the exercise of the trustee's discretion,
33 regardless of whether the terms of the trust (1) include a support or
34 other standard to guide the trustee in making distribution decisions, or

35 (2) provide that the trustee "may" or "shall" make discretionary
36 distributions, including distributions pursuant to a support or other
37 standard.

38 b. Except as otherwise provided in section 1 of P.L.1996, c.41
39 (C.3B:11-4.1), whether or not a trust contains a spendthrift provision, a
40 creditor or assignee of a beneficiary may reach a mandatory
41 distribution of income or principal, including a distribution upon
42 termination of the trust, if the trustee has not made the distribution to
43 the beneficiary within a reasonable time after the mandated
44 distribution date.

45
46 3B:31-41. Personal Obligations of Trustee

47 Trust property is not subject to personal obligations of the trustee,
48 even if the trustee becomes insolvent.

ARTICLE 5
REVOCABLE TRUSTS

3B:31-42. 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.

3B:31-43. Revocation or Amendment of Revocable Trust.

a. Unless the terms of a trust expressly provide that the trust is irrevocable, or that it is proved by clear and convincing evidence that the settlor intended for it to be irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this act.

b. If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse ¹or partner in a civil union¹ acting alone but may be amended only by joint action of both spouses ¹or partners¹; and

(2) 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.

c. The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

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

(a) executing 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

(b) any other ²**[method]** writing² manifesting clear and convincing evidence of the settlor's intent.

d. Upon revocation of a revocable trust, the trustee shall deliver the trust property to the settlor as the settlor directs.

e. 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 and the power.

f. A guardian of the ²property of the² settlor ²**[or]**² 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 guardianship.

g. 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.

1 3B:31-44. Settlor's Powers ²**【; Powers of Withdrawal】**².

2 While a trust is revocable, rights of the beneficiaries are subject to
3 the control of, and the duties of the trustee are owed exclusively to, the
4 settlor.

5
6 3B:31-45. Limitation on Action Contesting Validity of Revocable
7 Trust; Distribution of Trust Property.

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

11 (1) ¹**【3】** Three¹ years after the settlor's death; or

12 (2) ¹**【4】** Four¹ months, in the case of a resident, or ¹**【6】** six¹
13 months, in the case of a nonresident, after the trustee sent the person a
14 copy of the trust instrument and a notice informing the person of the
15 trust's existence, of the trustee's name and address, and of the time
16 allowed for commencing a proceeding.

17 b. Upon the death of the settlor of a trust that was revocable at the
18 settlor's death, the trustee may proceed to distribute the trust property
19 in accordance with the terms of the trust. The trustee is not subject to
20 liability for doing so unless:

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

23 (2) a potential contestant has notified the trustee in writing of a
24 possible judicial proceeding to contest the validity of the trust and the
25 trustee has received written notice of a judicial proceeding commenced
26 within 90 days after the contestant sent the notification.

27 c. A beneficiary of a trust that is determined to have been invalid
28 is liable to return any distribution received.

29

30

ARTICLE 6

31

OFFICE OF TRUSTEE

32

33 3B:31-46. Accepting or Declining Trusteeship.

34 a. Except as otherwise provided in subsection c. of this section, a
35 person designated as trustee accepts the trusteeship:

36 (1) in the case of a testamentary trustee or substituted testamentary
37 trustee, as provided in N.J.S.3B:11-2, and

38 (2) in the case of any other trustee,

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

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

45 b. A person designated as trustee who has not yet accepted the
46 trusteeship may renounce the trusteeship. A designated trustee who
47 does not accept the trusteeship within a reasonable time after knowing
48 of the designation is deemed to have renounced the trusteeship.

1 c. A person designated as trustee, without accepting the
2 trusteeship, may:

3 (1) act to preserve the trust property if, within a reasonable time
4 after acting, the person sends a renunciation of the trusteeship to the
5 settlor or, if the settlor is dead or lacks capacity, to the qualified
6 beneficiaries and to any designated successor trustee; and

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

9

10 3B:31-47. Trustee's Bond.

11 a. A trustee shall give bond to secure performance of the trustee's
12 duties as prescribed by N.J.S.3B:15-1 et seq. if the court ²[or
13 surrogate]² finds that a bond is needed to protect the interests of the
14 beneficiaries or is required by the terms of the trust and the court has
15 not dispensed with that requirement.

16 b. Unless otherwise directed by the court, the cost of the bond is
17 an expense of the trust.

18

19 3B:31-48. ²[Cotrustees] Co-trustees².

20 a. ²[Cotrustees] Co-trustees² who are unable to reach a
21 unanimous decision may act by majority decision. A dissenting
22 trustee who joins in carrying out a decision of the majority but
23 expresses his dissent in writing promptly to his ²[cotrustees] co-
24 trustees² shall not be liable for the act of the majority.

25 b. If a vacancy occurs in a ²[cotrusteeship] co-trusteeship², the
26 remaining ²[cotrustees] co-trustees² shall act for the trust unless the
27 trust instrument provides otherwise.

28 c. A ²[cotrustee] co-trustee² shall participate in the performance
29 of a trustee's function unless the ²[cotrustee] co-trustee² is unavailable
30 to perform the function because of absence, illness, disqualification
31 under other law, or other temporary incapacity or the ²[cotrustee] co-
32 trustee² has properly delegated the performance of the function to
33 another trustee.

34 d. If a ²[cotrustee] co-trustee² is unavailable to perform duties
35 because of absence, illness, disqualification under other law, other
36 temporary incapacity, or a vacancy remains unfilled and prompt action
37 is necessary to achieve the purposes of the trust or to avoid injury to
38 the trust property, the remaining ²[cotrustee] co-trustee² or a majority
39 of the remaining ²[cotrustees] co-trustees² shall act for the trust.

40 e. A trustee may not delegate to a ²[cotrustee] co-trustee² the
41 performance of a function the settlor reasonably expected the trustees
42 to perform jointly. Unless a delegation was irrevocable, a trustee may
43 revoke a delegation previously made.

44 f. A trustee who does not join in an action of a ²[cotrustee] co-
45 trustee² or ²[cotrustees] co-trustees² because of absence, illness,

1 disqualification or other temporary incapacity shall not be liable for
2 that action.

3 g. Notwithstanding subsection a. or f. of this section, every trustee
4 shall exercise reasonable care to:

5 (1) prevent a ²**[cotrustee]** co-trustee² from committing a breach of
6 trust; and

7 (2) compel a ²**[cotrustee]** co-trustee² to redress a breach of trust.

8 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

9 a. A vacancy in a trusteeship occurs if:

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

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

13 (3) a trustee resigns or is discharged;

14 (4) a trustee is disqualified or removed;

15 (5) a trustee dies; or

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

18 b. If one or more ²**[cotrustees]** co-trustees² remain in office, a
19 vacancy in a trusteeship need not be filled unless the trust instrument
20 provides otherwise. A vacancy in a trusteeship shall be filled if the
21 trust has no remaining trustee.

22 c. A vacancy in a trusteeship of a noncharitable trust that is
23 required to be filled shall be filled in the following order of priority:

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

26 (2) by a ²procedure established pursuant to the terms of the trust to
27 appoint a successor trustee;

28 (3) by a ²person appointed by unanimous agreement of the
29 qualified beneficiaries; or

30 ²**[(3)]** ²(4)² by a person appointed by the court.

31 d. A vacancy in a trusteeship of a charitable trust that is required
32 to be filled shall be filled in the following order of priority:

33 (1) by a person designated pursuant to the terms of the trust to act
34 as successor trustee; or

35 (2) by a person appointed by the court.

36 e. Whether or not a vacancy in a trusteeship exists or is required
37 to be filled, the court may appoint an additional trustee or special
38 fiduciary whenever the court considers the appointment desirable for
39 the administration of the trust.

40 f. A person appointed to fill a vacancy in a trusteeship shall have
41 all the powers and discretions of the original trustee.

42

43 3B:31-50. Resignation of Trustee.

44 a. A trustee may resign:

45 (1) upon at least 30 days' notice to the qualified beneficiaries, the
46 settlor, if living, all ²**[cotrustees]** co-trustees², and the trustee or

1 trustees, if any, designated pursuant to the terms of the trust to succeed
2 the resigning trustee; or

3 (2) with the approval of the court.

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

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

10

11 3B:31-51. Removal of Trustee.

12 a. The settlor, a ²**[cotrustee]** co-trustee², or a beneficiary may
13 request the court to remove a trustee, or a trustee may be removed by
14 the court on its own initiative.

15 b. The court may remove a trustee for any of the reasons stated in
16 N.J.S.3B:14-21.

17 c. Pending a final decision on a request to remove a trustee, or in
18 lieu of or in addition to removing a trustee, the court may order such
19 appropriate relief as may be necessary to protect the trust property or
20 the interests of the beneficiaries.

21

22 3B:31-52. Delivery of Property by Former Trustee.

23 a. Unless a ²**[cotrustee]** co-trustee² remains in office or the court
24 otherwise orders, and until the trust property is delivered to a successor
25 trustee or other person entitled to it, a trustee who has resigned or been
26 removed has the duties of a trustee and the powers necessary to protect
27 the trust property.

28 b. A trustee who has resigned or been removed shall proceed
29 expeditiously to deliver the trust property within the trustee's
30 possession to the ²**[cotrustee]** co-trustee², successor trustee, or other
31 person entitled to it, but a resigning trustee may retain a reasonable
32 reserve for the costs of finalizing that trustee's administration of the
33 trust.

34

35 3B:31-53. Reimbursement of Expenses.

36 a. In addition to the compensation allowed by N.J.S.3B:18-2 et
37 seq., a trustee is entitled to be reimbursed out of the trust property for:

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

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

43 b. An advance by a trustee of money or other property for the
44 protection of the trust gives rise to a lien against trust property to
45 secure reimbursement.

ARTICLE 7

DUTIES AND POWERS OF TRUSTEE

3B:31-54. 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 act and other applicable law.

3B:31-55. Duty of Loyalty.

a. A trustee shall administer the trust with undivided loyalty to and solely in the best interests of the beneficiaries.

b. Subject to the rights of persons dealing with or assisting the trustee as provided in N.J.S.3B:14-37, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

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

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by ²~~【N.J.S.3B:31-73】~~ N.J.S.3B:31-74²;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with ²~~【N.J.S.3B:31-77】~~ N.J.S.3B:31-78²; or

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

c. 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:

(1) the trustee's spouse or partner in a civil union;

(2) the trustee's parents, parents' descendants, or the spouse or partner in a civil union of any of the foregoing;

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

(4) 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 judgment.

d. 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 attributable to the existence of the trust is voidable by the beneficiary if the beneficiary establishes that the transaction was unfair to the beneficiary.

e. 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.

1 f. In voting shares of stock of a corporation or in exercising
2 powers of control over similar interests in other forms of enterprise,
3 the trustee shall act in the best interests of the beneficiaries and shall
4 vote to elect or appoint directors or other managers who will manage
5 the corporation or enterprise in the best interests of the beneficiaries.

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

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

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

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

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

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

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

22
23 3B:31-56. Duty of Impartiality.

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

27
28 3B:31-57. Duty of Prudent Administration.

29 A trustee shall administer the trust as a prudent person would, by
30 considering the purposes, terms, distributional requirements, and other
31 circumstances of the trust. In satisfying this standard, the trustee shall
32 exercise reasonable care, skill, and caution.

33
34 3B:31-58. Costs of Administration.

35 In administering a trust, the trustee may incur only costs that are
36 appropriate and reasonable in relation to the trust property, the
37 purposes of the trust, and the skills of the trustee.

38
39 3B:31-59. Duty to Use Special Skills.

40 A trustee who has special skills or expertise, or is named trustee in
41 reliance upon the trustee's representation that the trustee has special
42 skills or expertise, has a duty to use those special skills or expertise.

43
44 3B:31-60. Delegation by Trustee.

45 a. A trustee may delegate ministerial, administrative and
46 management duties and powers that a prudent trustee of comparable
47 skills could properly delegate under the circumstances.

48 b. The trustee shall exercise reasonable care, skill, and caution in:

- 1 (1) selecting an agent;
- 2 (2) establishing in writing the scope and terms of the delegation,
3 consistent with the purposes and terms of the trust; and
- 4 (3) periodically reviewing the agent's actions in order to monitor
5 the agent's performance and compliance with the terms of the
6 delegation.
- 7 c. A trustee shall provide reasonable written notice to the
8 qualified beneficiaries on each occasion upon which the trustee
9 delegates duties pursuant to this section, including the identity of the
10 agent.
- 11 d. A trustee who complies with subsections b. and c. of this
12 section is not liable to the beneficiaries or to the trust for an action of
13 the agent to whom the function was delegated.
- 14 e. In performing a delegated function, the agent shall owe to the
15 trustee and the beneficiaries the same duties as the fiduciary and shall
16 be held to the same standards as the fiduciary.
- 17 f. By accepting a delegation of powers or duties from the trustee
18 of a trust that is subject to the law of this State, an agent submits to the
19 jurisdiction of the courts of this State, even if the delegation agreement
20 provides otherwise.

21

22 3B:31-61. Powers to Direct.

- 23 a. While a trust is revocable, the trustee may follow a direction of
24 the settlor that is contrary to the terms of the trust.
- 25 b. If the terms of a trust confer upon a person other than the
26 settlor of a revocable trust the power to direct certain actions of the
27 trustee, the trustee shall act in accordance with a written exercise of
28 the power unless the attempted exercise is contrary to the terms of the
29 trust or the trustee knows the attempted exercise would constitute a
30 breach of a fiduciary duty that the person holding the power owes to
31 the beneficiaries of the trust.
- 32 c. The terms of a trust may confer upon a trustee or other person a
33 power to direct the modification or termination of the trust.
- 34 d. A person, other than a beneficiary, who holds a power to direct
35 is required to act in good faith with regard to the purposes of the trust
36 and the interests of the beneficiaries. The holder of a power to direct
37 is liable for any loss that results from the holder's failure to act in good
38 faith.

39

40 3B:31-62. 2Powers to Direct Investment Functions.

- 41 a. When one or more persons are given authority by the terms of a
42 governing instrument to direct, consent to or disapprove a fiduciary's
43 actual or proposed investment decisions, such persons shall be
44 considered to be investment advisers and fiduciaries when exercising
45 such authority unless the governing instrument otherwise provides.
- 46 b. If a governing instrument provides that a fiduciary is to follow
47 the direction of an investment adviser, and the fiduciary acts in
48 accordance with such a direction, then except in cases of willful

1 misconduct or gross negligence on the part of the fiduciary so directed,
2 the fiduciary shall not be liable for any loss resulting directly or
3 indirectly from any such act.

4 c. If a governing instrument provides that a fiduciary is to make
5 decisions with the consent of an investment adviser, then except in
6 cases of willful misconduct or gross negligence on the part of the
7 fiduciary, the fiduciary shall not be liable for any loss resulting directly
8 or indirectly from any act taken or omitted as a result of such
9 investment adviser's failure to provide such consent after having been
10 requested to do so by the fiduciary.

11 d. For purposes of this section, "investment decision" means with
12 respect to any investment, the retention, purchase, sale, exchange,
13 tender or other transaction affecting the ownership thereof or rights
14 therein and with respect to nonpublicly traded investments, the
15 valuation thereof, and an adviser with authority with respect to such
16 decisions is an investment adviser.

17 e. Whenever a governing instrument provides that a fiduciary is to
18 follow the direction of an investment adviser with respect to
19 investment decisions, then, except to the extent that the governing
20 instrument provides otherwise, the fiduciary shall have no duty to:

21 (1) Monitor the conduct of the investment adviser;

22 (2) Provide advice to the investment adviser or consult with the
23 investment adviser; or

24 (3) Communicate with or warn or apprise any beneficiary or third
25 party concerning instances in which the fiduciary would or might have
26 exercised the fiduciary's own discretion in a manner different from the
27 manner directed by the investment adviser.

28 Absent clear and convincing evidence to the contrary, the actions
29 of the fiduciary pertaining to matters within the scope of the
30 investment adviser's authority, such as confirming that the investment
31 adviser's directions have been carried out and recording and reporting
32 actions taken at the investment adviser's direction, shall be presumed
33 to be administrative actions taken by the fiduciary solely to allow the
34 fiduciary to perform those duties assigned to the fiduciary under the
35 governing instrument. Such administrative actions shall not be deemed
36 to constitute an undertaking by the fiduciary to monitor the investment
37 adviser or otherwise participate in actions within the scope of the
38 investment adviser's authority.

39

40 3B:31-63.² Control and Protection of Trust Property.

41 A trustee shall take reasonable steps to take control of and protect
42 the trust property.

43

44 ²[3B:31-63] 3B:31-64². Recordkeeping and Identification of Trust
45 Property.

46 a. A trustee shall keep adequate records of the administration of
47 the trust.

1 b. A trustee shall keep trust property separate from the trustee's
2 own property.

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

7 d. If the trustee maintains records clearly indicating the respective
8 interests, a trustee may invest as a whole the property of the trust with
9 other fiduciary accounts maintained by the trustee.

10

11 ²**[3B:31-64]** 3B:31-65². Duty to Enforce and Defend Claims.

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

14

15 ²**[3B:31-65]** 3B:31-66². Duty to Collect Trust Property and
16 Redress Breaches of Trust.

17 a. A trustee shall take reasonable steps to compel a former trustee
18 or other person to deliver trust property to the trustee.

19 b. A trustee shall take reasonable steps to redress a breach of trust
20 known to the trustee to have been committed by a former trustee.

21

22 ²**[3B:31-66]** 3B:31-67². Duty to Disclose and Discretion to
23 Periodically Report.

24 a. ²A trustee shall keep the qualified beneficiaries of the trust
25 reasonably informed about the administration of the trust and of the
26 material facts necessary for them to protect their interests.² Unless
27 unreasonable under the circumstances, a trustee shall promptly
28 respond to a beneficiary's request for information related to the
29 administration of a trust.

30 b. A trustee, upon request of a beneficiary, shall promptly furnish
31 to the beneficiary a copy of the trust instrument.

32 c. A trustee seeking the protection of ²**[N.J.S.3B:31-73]**
33 N.J.S.3B:31-74² may provide the beneficiaries with a report of the
34 trust property, liabilities, receipts, and disbursements, including the
35 source and amount of the trustee's compensation, a listing of the trust
36 assets, and, if feasible, their respective market values.

37

38 ²**[3B:31-67]** 3B:31-68². Discretionary Powers.

39 Notwithstanding the breadth of discretion granted to a trustee in
40 the terms of the trust, including the use of such terms as "absolute,"
41 "sole," or "uncontrolled," the trustee shall exercise a discretionary
42 power in good faith and in accordance with the terms and purposes of
43 the trust and the interests of the beneficiaries.

44

45 ²**[3B:31-68]** 3B:31-69². General Powers of Trustee.

1 a. Except as limited by section 1 of P.L.1996, c.41 (C.3B:11-4.1)
2 and other express statutory restrictions, a trustee, without authorization
3 by the court, may exercise:

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

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

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

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

10 (c) any other powers conferred by this act and by Title 3B ¹of the
11 New Jersey Statutes¹.

12 b. The exercise of a power is subject to the fiduciary duties
13 prescribed by this act and by Title 3B ¹of the New Jersey Statutes¹.

14
15 ²~~3B:31-69~~ 3B:31-70². Distribution Upon Termination.

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

21 b. Upon termination or partial termination of a trust, the trustee
22 may mail or deliver a proposal for distribution to all persons who have
23 a right to object to the proposed distribution. The proposal shall notify
24 all persons who have a right to object to the proposal of their right to
25 object and that their objection is required to be in writing and received
26 by the trustee within 30 days after the mailing or delivery of the
27 proposal. The right of any person to object to the proposed
28 distribution on the basis of the kind or value of asset he ²~~or she~~²
29 or another beneficiary is to receive, if not waived earlier in writing,
30 terminates if he ²~~or she~~² fails to object in writing received by the
31 trustee within 30 days after mailing or delivery of the proposal.

32 33 ARTICLE 8

34 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS 35 DEALING WITH TRUSTEE

36
37 ²~~3B:31-70~~ 3B:31-71². Remedies for Breach of Trust.

38 a. A violation by a trustee of a duty the trustee owes to a
39 beneficiary is a breach of trust.

40 b. To remedy a breach of trust that has occurred or may occur, the
41 court may:

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

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

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

46 (4) order a trustee to account;

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

3 (6) suspend the trustee;

4 (7) remove the trustee as provided in N.J.S.3B:31-51;

5 (8) reduce or deny compensation to the trustee;

6 (9) subject to N.J.S.3B:14-37, void an act of the trustee, impose a
7 lien or a constructive trust on trust property, or trace trust property
8 wrongfully disposed of and recover the property or its proceeds; or

9 (10) order any other appropriate relief.

10

11 ²**[3B:31-71]** 3B:31-72². Damages for Breach of Trust.

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

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

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

18 b. Except as otherwise provided in this subsection, if more than
19 one trustee is liable to the beneficiaries for a breach of trust, a trustee
20 is entitled to contribution from the other trustee or trustees based on
21 the comparative degree of culpability for the breach. However, a
22 trustee who committed the breach in bad faith or with reckless
23 indifference to the purposes of the trust or the interests of the
24 beneficiaries is not entitled to contribution from a trustee who was not
25 guilty of such conduct. A trustee who received a benefit from the
26 breach of trust is not entitled to contribution from another trustee to the
27 extent of the benefit received.

28

29 ²**[3B:31-72]** 3B:31-73². Damages in Absence of Breach.

30 a. A trustee is accountable to an affected beneficiary for any
31 profit made by the trustee arising from the administration of the trust,
32 even absent a breach of trust, except where the interest in the
33 transaction involved is fully disclosed to the beneficiary and consent is
34 freely given.

35 b. Absent a breach of trust, a trustee is not liable to a beneficiary
36 for a loss or depreciation in the value of trust property or for not
37 having made a profit.

38

39 ²**[3B:31-73]** 3B:31-74². Limitation of Action Against Trustee.

40 a. A beneficiary may not commence a proceeding against a
41 trustee for breach of trust more than six months after the date the
42 beneficiary or a representative of the beneficiary was sent a report that
43 adequately disclosed the existence of a potential claim for breach of
44 trust and informed the beneficiary of the time allowed for commencing
45 a proceeding.

46 b. A report adequately discloses the existence of a potential claim
47 for breach of trust if it provides sufficient information so that the

1 beneficiary or representative knows of the potential claim or should
2 have inquired into its existence.

3 c. If subsection a. of this section does not apply, a judicial
4 proceeding by a beneficiary against a trustee for breach of trust may be
5 commenced only within five years after the first to occur of:

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

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

8 (3) the termination of the trust.

9 ²Notwithstanding the foregoing, this subsection shall not operate to
10 bar any proceeding by a beneficiary until five years after such
11 beneficiary: (a) has attained majority; (b) has knowledge of the
12 existence of the trust; and (c) has knowledge that such beneficiary is or
13 was a beneficiary of the trust.²

14 d. For purposes of subsection a. of this section, a beneficiary is
15 deemed to have been sent a report if:

16 (1) in the case of a beneficiary having capacity, it is sent to the
17 beneficiary; or

18 (2) in the case of a beneficiary who under article 2 of this act may
19 be represented and bound by another person, if it is received by his
20 representative.

21 e. This section does not preclude an action to recover for fraud or
22 misrepresentation related to the report.

23

24 ²**[3B:31-74]** 3B:31-75². Reliance on Trust Instrument.

25 A trustee who acts in reasonable reliance on the terms of the trust
26 as expressed in the trust instrument is not liable to a beneficiary for a
27 breach of trust to the extent the breach resulted from the reliance.

28

29 ²**[3B:31-75]** 3B:31-76². Event Affecting Administration or
30 Distribution.

31 If the happening of an event, including marriage, divorce,
32 performance of educational requirements, or death, affects the
33 administration or distribution of a trust, a trustee who has exercised
34 reasonable care to ascertain the happening of the event is not liable for
35 a loss resulting from the trustee's lack of knowledge.

36

37 ²**[3B:31-76]** 3B:31-77². Exculpation of Trustee.

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

40 (1) relieves the trustee of liability for breach of trust committed in
41 bad faith or with reckless indifference to the purposes of the trust or
42 the interests of the beneficiaries; or

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

45 b. An exculpatory term drafted or caused to be drafted by the
46 trustee is invalid as an abuse of a fiduciary or confidential relationship
47 unless the trustee proves that the exculpatory term is fair under the

1 circumstances and that its existence and contents were adequately
2 communicated to the settlor.

3

4 ²**[3B:31-77]** 3B:31-78². Beneficiary's Consent, Release, or
5 Ratification.

6 A trustee is not liable to a beneficiary for breach of trust if the
7 beneficiary, while having capacity, consented to the conduct
8 constituting the breach, released the trustee from liability for the
9 breach, or ratified the transaction constituting the breach, unless:

10 a. the consent, release, or ratification of the beneficiary was
11 induced by improper conduct of the trustee; or

12 b. at the time of the consent, release, or ratification, the beneficiary
13 did not know of the beneficiary's rights or of the material facts relating
14 to the breach.

15

16 ²**[3B:31-78]** 3B:31-79². Limitation on Personal Liability of
17 Trustee.

18 a. Except as otherwise provided in the contract, a trustee is not
19 personally liable on a contract properly entered into in the trustee's
20 fiduciary capacity in the course of administering the trust if the trustee
21 in the contract disclosed the fiduciary capacity.

22 b. A trustee is personally liable for torts committed in the course
23 of administering a trust, or for obligations arising from ownership or
24 control of trust property, including liability for violation of
25 environmental law, only if the trustee is personally at fault.

26 c. A claim based on a contract entered into by a trustee in the
27 trustee's fiduciary capacity, on an obligation arising from ownership or
28 control of trust property, or on a tort committed in the course of
29 administering a trust, may be asserted in a judicial proceeding against
30 the trustee in the trustee's fiduciary capacity, whether or not the trustee
31 is personally liable for the claim.

32

33 ²**[3B:31-79]** 3B:31-80². Interest as General Partner.

34 a. Except as otherwise provided in subsection c. of this section or
35 unless personal liability is imposed in the contract, a trustee who
36 holds an interest as a general partner in a general or limited
37 partnership is not personally liable on a contract entered into by the
38 partnership after the trust's acquisition of the interest if the fiduciary
39 capacity was disclosed in the contract or in a statement previously
40 filed pursuant to the "Uniform Partnership Act (1996)," P.L.2000,
41 c.161 (C.42:1A-1 et seq.) or the "Uniform Limited Partnership Law
42 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.).

43 b. Except as otherwise provided in subsection c. of this section, a
44 trustee who holds an interest as a general partner is not personally
45 liable for torts committed by the partnership or for obligations arising
46 from ownership or control of the interest unless the trustee is
47 personally at fault.

1 c. The immunity provided by this section does not apply if an
2 interest in the partnership is held by the trustee in a capacity other than
3 that of trustee or is held by the trustee's spouse ¹or partner in a civil
4 union¹ or one or more of the trustee's descendants, siblings, or parents,
5 or the spouse ¹or partner in a civil union¹ of any of them.

6 d. If the trustee of a revocable trust holds an interest as a general
7 partner, the settlor is personally liable for contracts and other
8 obligations of the partnership as if the settlor were a general partner.

9
10 ²**[3B:31-80]** 3B:31-81². Certification of Trust.

11 a. Instead of furnishing a copy of the trust instrument to a person
12 other than a beneficiary, the trustee may furnish to the person a
13 certification of trust containing the following information:

14 (1) that the trust exists and the date the trust instrument was
15 executed;

16 (2) the identity of the settlor;

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

18 (4) the powers of the trustee;

19 (5) the revocability or irrevocability of the trust and the identity of
20 any person holding a power to revoke the trust;

21 (6) the authority of ²**[cotrustees]** co-trustees² to sign and whether
22 all or less than all are required in order to exercise powers of the
23 trustee; and

24 (7) the name in which title to trust property may be taken.

25 b. A certification of trust shall be signed by all persons identified
26 as currently acting as trustee.

27 c. A certification of trust shall state that the trust has not been
28 revoked, modified, or amended in any manner that would cause the
29 representations contained in the certification of trust to be incorrect.

30 d. A certification of trust need not contain the dispositive terms of
31 a trust.

32 e. A recipient of a certification of trust may require the trustee to
33 furnish copies of those excerpts from the original trust instrument and
34 later amendments which designate the trustee and confer upon the
35 trustee the power to act in the pending transaction.

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

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

1 h. This section does not limit the right of a person to obtain a
2 copy of the trust instrument in a judicial proceeding concerning the
3 trust.

4
5 ARTICLE 9
6 MISCELLANEOUS PROVISIONS
7

8 ²~~3B:31-81~~ 3B:31-82². Electronic Records and Signatures.

9 The provisions of this act governing the legal effect, validity, or
10 enforceability of electronic records or electronic signatures, and of
11 contracts formed or performed with the use of such records or
12 signatures, conform to the requirements of section 102 of the
13 “Electronic Signatures in Global and National Commerce Act” (15
14 U.S.C. s.7002), and supersede, modify, and limit the requirements of
15 that act.

16
17 ²~~3B:31-82~~ 3B:31-83². Severability Clause.

18 If any provision of this act or its application to any person or
19 circumstances is held invalid, the invalidity does not affect other
20 provisions or applications of this act which can be given effect without
21 the invalid provision or application, and to this end the provisions of
22 this act are severable.

23
24 ²~~3B:31-83~~ 3B:31-84². Application to Existing Relationships.

25 a. Except as otherwise provided in this act:

26 (1) this act applies to all trusts created before, on, or after its
27 effective date;

28 (2) this act applies to all judicial proceedings concerning trusts
29 commenced on or after its effective date;

30 (3) this act applies to judicial proceedings concerning trusts
31 commenced before its effective date unless the court finds that
32 application of a particular provision of this act would substantially
33 interfere with the effective conduct of the judicial proceedings or
34 prejudice the rights of the parties, in which case the particular
35 provision of this act does not apply and the superseded law applies;

36 (4) any rule of construction or presumption provided in this act
37 applies to trust instruments executed before the effective date of the
38 act unless there is clear indication of a contrary intent in the terms of
39 the trust; and

40 (5) an act done before the effective date is not affected by this act.

41 b. If a right is acquired, extinguished, or barred upon expiration of
42 a prescribed period that has commenced to run under any other statute
43 before the effective date of the act, that statute continues to apply to
44 the right even if that statute has been repealed or superseded by this
45 act.

1 2. N.J.S.3B:14-37 is amended to read as follows:

2 3B:14-37. Protection of persons assisting or dealing with
3 fiduciary.

4 a. A person other than a beneficiary who in good faith either
5 assists a fiduciary or deals with him for value is protected as if the
6 fiduciary properly exercised his power.

7 b. The fact that a person knowingly deals with a fiduciary does
8 not alone require the person to inquire into the existence of a power
9 or the propriety of its exercise.

10 c. Except as to real property specifically devised by will, no
11 provision in any will, trust or order of court purporting to limit the
12 power of a fiduciary is effective except as to persons with actual
13 knowledge thereof.

14 d. A person who in good faith pays, transfers or delivers to a
15 fiduciary money or other property is not responsible for the proper
16 application thereof by the fiduciary; and any right or title acquired
17 from the fiduciary in consideration of the payment, transfer or
18 delivery is not invalid in consequence of a misapplication by the
19 fiduciary.

20 e. A person other than a beneficiary who in good faith assists a
21 former trustee, or who in good faith and for value deals with a
22 former trustee, without knowledge that the trusteeship has
23 terminated is protected from liability as if the former trustee were
24 still a trustee.

25 f. The protection here expressed extends to instances in which
26 some procedural irregularity or jurisdictional defect occurred in
27 proceedings leading to the issuance of letters, including a case in
28 which the alleged decedent is found to be alive.

29 g. The protection here expressed is in addition to that provided
30 by comparable provisions of the laws relating to commercial
31 transactions and laws simplifying transfers of securities by
32 fiduciaries.

33 (cf: N.J.S.3B:14-37)

34

35 ²[¹3. (New section) Powers to Direct Investment Functions.

36 a. Where one or more persons are given authority by the terms
37 of a governing instrument to direct, consent to or disapprove a
38 fiduciary's actual or proposed investment decisions, such persons
39 shall be considered to be investment advisers and fiduciaries when
40 exercising such authority unless the governing instrument otherwise
41 provides.

42 b. If a governing instrument provides that a fiduciary is to
43 follow the direction of an investment adviser, and the fiduciary acts
44 in accordance with such a direction, then except in cases of wilful
45 misconduct or gross negligence on the part of the fiduciary so
46 directed, the fiduciary shall not be liable for any loss resulting
47 directly or indirectly from any such act.

1 c. If a governing instrument provides that a fiduciary is to
 2 make decisions with the consent of an investment adviser, then
 3 except in cases of wilful misconduct or gross negligence on the part
 4 of the fiduciary, the fiduciary shall not be liable for any loss
 5 resulting directly or indirectly from any act taken or omitted as a
 6 result of such investment adviser's failure to provide such consent
 7 after having been requested to do so by the fiduciary.

8 d. For purposes of this section, "investment decision" means
 9 with respect to any investment, the retention, purchase, sale,
 10 exchange, tender or other transaction affecting the ownership
 11 thereof or rights therein and with respect to nonpublicly traded
 12 investments, the valuation thereof, and an adviser with authority
 13 with respect to such decisions is an investment adviser.

14 e. Whenever a governing instrument provides that a fiduciary
 15 is to follow the direction of an investment adviser with respect to
 16 investment decisions, then, except to the extent that the governing
 17 instrument provides otherwise, the fiduciary shall have no duty to:

18 (1) Monitor the conduct of the investment adviser;

19 (2) Provide advice to the investment adviser or consult with the
 20 investment adviser; or

21 (3) Communicate with or warn or apprise any beneficiary or
 22 third party concerning instances in which the fiduciary would or
 23 might have exercised the fiduciary's own discretion in a manner
 24 different from the manner directed by the investment adviser.

25 Absent clear and convincing evidence to the contrary, the actions
 26 of the fiduciary pertaining to matters within the scope of the
 27 investment adviser's authority, such as confirming that the
 28 investment adviser's directions have been carried out and recording
 29 and reporting actions taken at the investment adviser's direction,
 30 shall be presumed to be administrative actions taken by the
 31 fiduciary solely to allow the fiduciary to perform those duties
 32 assigned to the fiduciary under the governing instrument. Such
 33 administrative actions shall not be deemed to constitute an
 34 undertaking by the fiduciary to monitor the investment adviser or
 35 otherwise participate in actions within the scope of the investment
 36 adviser's authority.¹²

37
 38 ¹~~[3.]~~²~~[4.]~~ 3.² The following sections are repealed:

39 N.J.S.3B:11-5;

40 N.J.S.3B:11-6;

41 N.J.S.3B:11-7; and

42 Section 1 of P.L.2001, c.144 (C.3B:11-38).

43
 44 ¹~~[4.]~~²~~[5.]~~ 4.² This act shall take effect on the 180th day
 45 following enactment.

46 _____
 47
 48 "Uniform Trust Code."

ASSEMBLY, No. 2915

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 13, 2014

Sponsored by:

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman JACK M. CIATTARELLI

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

“Uniform Trust Code.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/28/2014)

1 AN ACT concerning trusts, supplementing Title 3B of the New
2 Jersey Statutes, enacting additional chapter 31, Uniform Trust
3 Code, amending N.J.S.3B:14-37, and repealing N.J.S.3B:11-5,
4 N.J.S.3B:11-6, N.J.S.3B:11-7, and P.L.2001, c.144.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. An additional chapter, Chapter 31, is added to Title 3B of
10 the New Jersey Statutes as follows:

11
12 CHAPTER 31
13 UNIFORM TRUST CODE

14
15 TABLE OF CONTENTS

16
17 ARTICLE 1
18 GENERAL PROVISIONS AND DEFINITIONS

- 19
20 3B:31-1. Short Title.
21 3B:31-2. Scope.
22 3B:31-3. Definitions.
23 3B:31-4. Knowledge.
24 3B:31-5. Default and Mandatory Rules.
25 3B:31-6. Common Law of Trusts; Principles of Equity.
26 3B:31-7. Governing Law.
27 3B:31-8. Principal Place of Administration.
28 3B:31-9. Methods and Waiver of Notice.
29 3B:31-10. Others Treated as Qualified Beneficiaries.
30 3B:31-11. Nonjudicial Settlement Agreements.
31 3B:31-12. Rules of Construction.

32
33 ARTICLE 2
34 REPRESENTATION

- 35
36 3B:31-13. Representation: Basic Effect.
37 3B:31-14. Representation by Holder of General Testamentary
38 Power of Appointment.
39 3B:31-15. Representation by Fiduciaries and Parents.
40 3B:31-16. Representation by Person Having Substantially
41 Identical Interest.
42 3B:31-17. Appointment of Representative.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 ARTICLE 3
2 CREATION, VALIDITY, MODIFICATION AND
3 TERMINATION OF TRUST
4
5 3B:31-18. Methods of Creating Trust.
6 3B:31-19. Requirements for Creation.
7 3B:31-20. Written Trusts Created in Other Jurisdictions.
8 3B:31-21. Trust Purposes.
9 3B:31-22. Charitable Purposes; Enforcement.
10 3B:31-23. Creation of Trust Induced by Fraud, Duress or Undue
11 Influence.
12 3B:31-24. Trust for Care of Animal.
13 3B:31-25. Noncharitable Trust Without Ascertainable Beneficiary.
14 3B:31-26. Modification or Termination of Trust; Proceedings for
15 Approval or Disapproval.
16 3B:31-27. Modification or Termination of Noncharitable
17 Irrevocable Trust by Consent.
18 3B:31-28. Modification or Termination Because of Unanticipated
19 Circumstances or Inability to Administer Trust
20 Effectively.
21 3B:31-29. Modification or Termination of Charitable Trust (Cy
22 Pres).
23 3B:31-30. Modification or Termination of Uneconomic Trust.
24 3B:31-31. Reformation to Correct Mistakes.
25 3B:31-32. Construction to Conform Trust Terms to Probable Intent
26 of Settlor.
27 3B:31-33. Modification to Achieve Settlor's Tax Objectives.
28 3B:31-34. Combination and Division of Trusts.

29
30 ARTICLE 4
31 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY
32 TRUSTS

- 33
34 3B:31-35. Rights of Beneficiary's Creditor or Assignee.
35 3B:31-36. Spendthrift Provision.
36 3B:31-37. Exceptions to Spendthrift Provision.
37 3B:31-38. Discretionary Trusts; Effect of Standard.
38 3B:31-39. Creditor's Claim Against Settlor.
39 3B:31-40. Overdue Distribution.
40 3B:31-41. Personal Obligations of Trustee

41
42 ARTICLE 5
43 REVOCABLE TRUSTS

- 44
45 3B:31-42. Capacity of Settlor of Revocable Trust.
46 3B:31-43. Revocation or Amendment of Revocable Trust.
47 3B:31-44. Settlor's Powers; Powers of Withdrawal.
48 3B:31-45. Limitation on Action Contesting Validity of Revocable

1 Trust; Distribution of Trust Property.

2

3

ARTICLE 6

4

OFFICE OF TRUSTEE

5

6 3B:31-46. Accepting or Declining Trusteeship.

7 3B:31-47. Trustee's Bond.

8 3B:31-48. Cotrustees.

9 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

10 3B:31-50. Resignation of Trustee.

11 3B:31-51. Removal of Trustee.

12 3B:31-52. Delivery of Property by Former Trustee.

13 3B:31-53. Reimbursement of Expenses.

14

15

ARTICLE 7

16

DUTIES AND POWERS OF TRUSTEE

17

18 3B:31-54. Duty to Administer Trust.

19 3B:31-55. Duty of Loyalty.

20 3B:31-56. Duty of Impartiality.

21 3B:31-57. Duty of Prudent Administration.

22 3B:31-58. Costs of Administration.

23 3B:31-59. Duty to Use Special Skills.

24 3B:31-60. Delegation by Trustee.

25 3B:31-61. Powers to Direct.

26 3B:31-62. Control and Protection of Trust Property.

27 3B:31-63. Recordkeeping and Identification of Trust Property.

28 3B:31-64. Duty to Enforce and Defend Claims

29 3B:31-65. Duty to Collect Trust Property and Redress Breaches of
30 Trust.

31 3B:31-66. Duty to Disclose and Discretion to Periodically Report.

32 3B:31-67. Discretionary Powers.

33 3B:31-68. General Powers of Trustee.

34 3B:31-69. Distribution Upon Termination.

35

36

ARTICLE 8

37

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

38

DEALING WITH TRUSTEE

39

40 3B:31-70. Remedies for Breach of Trust.

41 3B:31-71. Damages for Breach of Trust.

42 3B:31-72. Damages in Absence of Breach.

43 3B:31-73. Limitation of Action Against Trustee.

44 3B:31-74. Reliance on Trust Instrument.

45 3B:31-75. Event Affecting Administration or Distribution.

46 3B:31-76. Exculpation of Trustee.

47 3B:31-77. Beneficiary's Consent, Release, or Ratification.

48 3B:31-78. Limitation on Personal Liability of Trustee.

1 3B:31-79. Interest as General Partner.

2 3B:31-80. Certification of Trust.

3

4

ARTICLE 9

5

MISCELLANEOUS PROVISIONS

6

7 3B:31-81. Electronic Records and Signatures.

8 3B:31-82. Severability Clause.

9 3B:31-83. Application to Existing Relationships.

10

11

ARTICLE 1

12

GENERAL PROVISIONS AND DEFINITIONS

13

14 3B:31-1. Short Title.

15 This act shall be known and may be cited as the "Uniform Trust
16 Code."

17

18 3B:31-2. Scope.

19 This act applies to express trusts, charitable or noncharitable, and
20 trusts created pursuant to a statute, judgment, or decree that requires
21 the trust to be administered in the manner of an express trust.

22

23 3B:31-3. Definitions.

24 As used in this act:

25 "Action," with respect to an act of a trustee, includes a failure to
26 act.

27 "Charitable trust" means a trust, or portion of a trust, created for
28 a charitable purpose described in subsection a. of N.J.S.3B:31-22.

29 "Environmental law" means a federal, State, or local law, rule,
30 regulation, or ordinance relating to protection of the environment.

31 "Interests of the beneficiaries" means the beneficial interests
32 provided in the terms of the trust.

33 "Jurisdiction," with respect to a geographic area, includes a state
34 or country.

35 "Power of withdrawal" means a presently exercisable general
36 power of appointment other than a power exercisable only upon
37 consent of the trustee or a person holding an adverse interest.

38 "Property" means anything that may be the subject of ownership,
39 whether real or personal, legal or equitable, or any interest therein.

40 "Qualified beneficiary" means a beneficiary who, on the date the
41 beneficiary's qualification is determined:

42 (1) is a distributee or permissible distributee of trust income or
43 principal;

44 (2) would be a distributee or permissible distributee of trust
45 income or principal if the interests of the distributees described in
46 paragraph (1) terminated on that date; or

47 (3) would be a distributee or permissible distributee of trust
48 income or principal if the trust terminated on that date.

1 "Revocable," as applied to a trust, means revocable by the settlor
2 without the consent of the trustee or a person holding an adverse
3 interest.

4 "Settlor" means a person, including a testator, who creates, or
5 contributes property to, a trust. If more than one person creates or
6 contributes property to a trust, each person is a settlor of the portion
7 of the trust property attributable to that person's contribution except
8 to the extent another person has the power to revoke or withdraw
9 that portion.

10 "Spendthrift provision" means a term of a trust which restrains
11 both voluntary and involuntary transfer of a beneficiary's interest.

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

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

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

23 "Trustee" includes an original, additional, and successor trustee,
24 and a cotrustee.

25

26 3B:31-4. Knowledge.

27 a. Subject to subsection b. of this section, a person has
28 knowledge of a fact if the person:

29 (1) has actual knowledge of it;

30 (2) has received a notice or notification of it; or

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

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

47

48 3B:31-5. Default and Mandatory Rules.

- 1 a. Except as otherwise provided in the terms of the trust, this
2 act governs the duties and powers of a trustee, relations among
3 trustees, and the rights and interests of a beneficiary.
- 4 b. The terms of a trust prevail over any provision of this act
5 except:
- 6 (1) the requirements for creating a trust;
7 (2) the duty of a trustee to act in good faith and in accordance
8 with the purposes of the trust;
9 (3) the requirement that a trust and its terms be for the benefit of
10 its beneficiaries, and that the trust have a purpose that is lawful, not
11 contrary to public policy, and possible to achieve;
12 (4) the power of the court to modify or terminate a trust under
13 N.J.S.3B:31-26 through 3B:31-33;
14 (5) the effect of a spendthrift provision and the rights of certain
15 creditors and assignees to reach a trust as provided in article 4 of
16 this act;
17 (6) the power of the court under N.J.S.3B:31-47 to require,
18 dispense with, or modify or terminate a bond;
19 (7) the duty under subsections a. and b. of N.J.S.3B:31-66 to
20 respond to the request of a qualified beneficiary of an irrevocable
21 trust who has attained the age of 35 years for a copy of the trust
22 instrument or for other information reasonably related to the
23 administration of the trust;
24 (8) the effect of an exculpatory term under N.J.S.3B:31-76;
25 (9) the rights under N.J.S.3B:31-78 through N.J.S.3B:31-80 of a
26 person other than a trustee or beneficiary;
27 (10) periods of limitation for commencing a judicial proceeding;
28 and
29 (11) the power of the court to take such action and exercise such
30 jurisdiction as may be necessary in the interests of justice.

31
32 3B:31-6. Common Law of Trusts; Principles of Equity.

33 The common law of trusts and principles of equity supplement
34 this act, except to the extent modified by this act or another statute
35 of this State.

36
37 3B:31-7. Governing Law.

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

- 39 a. the law of the jurisdiction designated in the terms unless the
40 designation of that jurisdiction's law is contrary to a strong public
41 policy of the jurisdiction having the most significant relationship to
42 the matter at issue; or
43 b. in the absence of a controlling designation in the terms of
44 the trust, the law of the jurisdiction having the most significant
45 relationship to the matter at issue.

46
47 3B:31-8. Principal Place of Administration.

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

5 (1) a trustee maintains a place of business located in or a trustee
6 is a resident of the designated jurisdiction; or

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

9 In the absence of terms of a trust designating the principal place
10 of administration, the initial principal place of administration of a
11 nontestamentary trust shall be this State if the trust is governed by
12 the law of this State, and the principal place of administration of a
13 testamentary trust shall be the jurisdiction in which the decedent
14 was domiciled at the time of death.

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

18 c. The trustee, in furtherance of the duty prescribed by
19 subsection b. of this section, may transfer the trust's principal place
20 of administration to another State or to a jurisdiction outside of the
21 United States.

22 d. The trustee shall notify the qualified beneficiaries of a
23 proposed transfer of a trust's principal place of administration not
24 less than 60 days before initiating the transfer. The notice of
25 proposed transfer shall include:

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

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

30 (3) the date on which the proposed transfer is anticipated to
31 occur; and

32 (4) the date, not less than 60 days after the giving of the notice,
33 by which the qualified beneficiary is required to notify the trustee
34 of an objection to the proposed transfer.

35 e. The authority of a trustee under this section to transfer a
36 trust's principal place of administration terminates if a qualified
37 beneficiary notifies the trustee of an objection to the proposed
38 transfer on or before the date specified in the notice, unless the
39 trustee secures judicial approval for the transfer pursuant to
40 N.J.S.3B:21-2 through N.J.S.3B:21-4.

41 f. In connection with a transfer of the trust's principal place of
42 administration, the trustee may transfer some or all of the trust
43 property to a successor trustee designated in the terms of the trust or
44 appointed pursuant to N.J.S.3B:31-49.

45

46 3B:31-9. Methods and Waiver of Notice.

47 a. Notice to a person under this act or the sending of a
48 document to a person under this act shall be accomplished in a

1 manner reasonably suitable under the circumstances and likely to
2 result in receipt of the notice or document. Permissible methods of
3 notice or for sending a document include first-class mail, personal
4 delivery, delivery to the person's last known place of residence or
5 place of business, or a properly directed textual electronic message.

6 b. Notice otherwise required under this act or a document
7 otherwise required to be sent under this act need not be provided to
8 a person whose identity or location is unknown to and not
9 reasonably ascertainable by the trustee.

10 c. Notice under this act or the sending of a document under this
11 act may be waived by the person to be notified or sent the
12 document.

13 d. Notice of a judicial proceeding shall be given as provided in
14 the applicable rules of civil procedure.

15

16 3B:31-10. Others Treated as Qualified Beneficiaries.

17 a. Whenever notice to qualified beneficiaries of a trust is
18 required under this act, the trustee shall also give notice to any other
19 beneficiary who has sent the trustee a request for notice.

20 b. A charitable organization expressly designated to receive
21 distributions under the terms of a charitable trust or a person
22 appointed to enforce a trust created for the care of an animal or
23 another noncharitable purpose as provided in N.J.S.3B:31-24 or
24 N.J.S.3B:31-25 has the rights of a qualified beneficiary under this
25 act.

26 c. The attorney general of this State has the rights of a
27 qualified beneficiary with respect to a charitable trust having its
28 principal place of administration in this State.

29

30 3B:31-11. Nonjudicial Settlement Agreements.

31 a. For purposes of this section, "interested persons" means
32 persons whose consent would be required in order to achieve a
33 binding settlement were the settlement to be approved by the court.

34 b. Except as otherwise provided in subsection c. of this section
35 or any other provision of this chapter, interested persons may enter
36 into a binding nonjudicial settlement agreement with respect to any
37 matter involving a trust.

38 c. A nonjudicial settlement agreement is valid only to the
39 extent it does not violate a material purpose of the trust and
40 includes terms and conditions that could be properly approved by
41 the court under this act or other applicable law.

42 d. Matters that may be resolved by a nonjudicial settlement
43 agreement include:

- 44 (1) the interpretation or construction of the terms of the trust;
45 (2) the approval of a trustee's report or accounting;
46 (3) direction to a trustee to refrain from performing a particular
47 act or the grant to a trustee of any necessary or desirable power;

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

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

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

5 e. Any interested person may request the court to approve a
6 nonjudicial settlement agreement, to determine whether the
7 representation as provided in article 2 was adequate, and to
8 determine whether the agreement contains terms and conditions the
9 court could have properly approved.

10
11 3B:31-12. Rules of Construction.

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

16
17 ARTICLE 2
18 REPRESENTATION
19

20 3B:31-13. Representation: Basic Effect.

21 a. Notice to a person who may represent and bind another
22 person under this article has the same effect as if notice were given
23 directly to the other person.

24 b. The consent of a person who may represent and bind another
25 person under this article is binding on the person represented unless
26 the person represented objects to the representation before the
27 consent would otherwise have become effective.

28 c. Except as otherwise provided in N.J.S.3B:31-43, a person
29 who under this article may represent a settlor who lacks capacity
30 may receive notice and give a binding consent on the settlor's
31 behalf.

32
33 3B:31-14. Representation by Holder of General Testamentary
34 Power of Appointment.

35 a. To the extent there is no conflict of interest between the
36 holder of a general testamentary power of appointment and the
37 persons represented with respect to the particular question or
38 dispute, the holder may represent and bind persons whose interests,
39 as permissible appointees, takers in default, or otherwise, are
40 subject to the power.

41 b. A holder of a general power of appointment in favor of the
42 holder or holder's estate shall not be deemed to have a conflict with
43 permissible appointees and takers in default.

44
45 3B:31-15. Representation by Fiduciaries and Parents.

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

- 1 a. a guardian of the property may represent and bind the estate
2 that the guardian of the property controls;
- 3 b. a guardian of the person may represent and bind the ward if a
4 guardian of the property has not been appointed;
- 5 c. an agent having authority to act with respect to the particular
6 question or dispute may represent and bind the principal;
- 7 d. a trustee may represent and bind the beneficiaries of the trust;
- 8 e. a personal representative of a decedent's estate may represent
9 and bind persons interested in the estate; and
- 10 f. a parent may represent and bind the parent's minor or unborn
11 child if a guardian for the child has not been appointed.

12
13 3B:31-16. Representation by Person Having Substantially
14 Identical Interest.

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

22
23 3B:31-17. Appointment of Representative.

24 a. If the court determines that an interest is not represented
25 under this article or that the otherwise available representation
26 might be inadequate, the court may appoint a guardian ad litem or
27 other representative to receive notice, give consent, and otherwise
28 represent, bind, and act on behalf of a minor, incapacitated, or
29 unborn individual, or a person whose identity or location is
30 unknown. A guardian ad litem or other representative may be
31 appointed to represent several persons or interests.

32 b. A guardian ad litem or other representative may act on
33 behalf of the individual or person represented with respect to any
34 matter arising under this act, whether or not a judicial proceeding
35 concerning the trust is pending.

36 c. A guardian ad litem or other representative may consider the
37 benefit accruing to the living members of the individual's family.

38
39 ARTICLE 3
40 CREATION, VALIDITY, MODIFICATION AND
41 TERMINATION OF TRUST
42

43 3B:31-18. Methods of Creating Trust.

44 A trust may be created by:

- 45 a. transfer of property under a written instrument to another
46 person as trustee during the settlor's lifetime or by will or other
47 written disposition taking effect upon the settlor's death;

1 b. written declaration by the owner of property that the owner
2 holds identifiable property as trustee; or

3 c. written exercise of a power of appointment in favor of a
4 trustee.

5

6 3B:31-19. Requirements for Creation.

7 a. A trust is created only if:

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

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

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

11 (a) a charitable trust;

12 (b) a trust for the care of an animal, as provided in N.J.S.3B:31-
13 24; or

14 (c) a trust for a noncharitable purpose, as provided in
15 N.J.S.3B:31-25;

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

17 (5) the same person is not the sole trustee and sole beneficiary of
18 all beneficial interests.

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

22 c. A power in a trustee to select a beneficiary from an indefinite
23 class is valid. If the power is not exercised within a reasonable
24 time, the power fails and the property subject to the power passes to
25 the persons who would have taken the property had the power not
26 been conferred.

27

28 3B:31-20. Written Trusts Created in Other Jurisdictions.

29 A written trust not created by will is validly created if its
30 creation complies with the law of the jurisdiction in which:

31 a. the trust instrument was executed;

32 b. at the time the trust was created, the settlor was domiciled,
33 had a place of abode, or was a national;

34 c. at the time the trust was created, a trustee was domiciled or
35 had a place of business; or

36 d. at the time the trust was created, any trust property was
37 located.

38

39 3B:31-21. Trust Purposes.

40 A trust may be enforced only to the extent its purposes are
41 lawful, not contrary to public policy, and possible to achieve. A
42 trust and its terms shall be for the benefit of its beneficiaries.

43

44 3B:31-22. Charitable Purposes; Enforcement.

45 a. A charitable trust is one that is created for the relief of
46 poverty, the advancement of education or religion, the promotion of
47 health, governmental or municipal purposes, or other purpose the
48 achievement of which is beneficial to the community.

1 b. If the terms of a charitable trust do not state a particular
2 charitable purpose or beneficiary, and the trustee or other person
3 authorized to state a particular charitable purpose or name a
4 particular charitable beneficiary fails to make a selection, the court
5 may select one or more charitable purposes or beneficiaries. The
6 selection shall be consistent with the settlor's intention to the extent
7 it can be ascertained.

8 c. A proceeding to enforce a charitable trust may be brought by
9 the settlor, by the Attorney General, by the trust's beneficiaries or
10 by other persons who have standing.

11
12 3B:31-23. Creation of Trust Induced by Fraud, Duress, or Undue
13 Influence.

14 A trust is void to the extent its creation was induced by fraud,
15 duress, or undue influence.

16
17 3B:31-24. Trust for Care of Animal.

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

23 b. A trust authorized by this section may be enforced by the
24 settlor or by a person appointed in the terms of the trust or, if no
25 person is so appointed, by a person appointed by the court. A
26 person having an interest in the welfare of the animal may request
27 the court to appoint a person to enforce the trust or to remove a
28 person appointed.

29 c. Property of a trust authorized by this section may be applied
30 only to its intended use, except to the extent the court determines
31 that the value of the trust property exceeds the amount required for
32 the intended use. Except as otherwise provided in the terms of the
33 trust, property not required for the intended use shall be distributed
34 to the settlor, if then living, otherwise to the settlor's estate.

35
36 3B:31-25. Noncharitable Trust Without Ascertainable
37 Beneficiary.

38 Except as otherwise provided in N.J.S.3B:31-24 or by another
39 statute, the following rules apply:

40 a. A trust may be created for a noncharitable but otherwise
41 valid purpose without a definite or definitely ascertainable
42 beneficiary or for a noncharitable but otherwise valid purpose to be
43 selected by the trustee.

44 b. A trust authorized by this section may be enforced by the
45 settlor or by a person appointed in the terms of the trust or, if no
46 person is so appointed, by a person appointed by the court.

47 c. Property of a trust authorized by this section may be applied
48 only to its intended use, except to the extent the court determines

1 that the value of the trust property exceeds the amount required for
2 the intended use. Except as otherwise provided in the terms of the
3 trust, property not required for the intended use shall be distributed
4 to the settlor, if then living, otherwise to the settlor's estate.

5
6 3B:31-26. Modification or Termination of Trust; Proceedings
7 for Approval or Disapproval.

8 a. In addition to the methods of termination prescribed by
9 N.J.S.3B:31-27 through N.J.S.3B:31-33, a trust terminates to the
10 extent the trust is revoked or expires pursuant to its terms, no
11 purpose of the trust remains to be achieved, or the purposes of the
12 trust have become unlawful, contrary to public policy of this State,
13 or impossible to achieve.

14 b. A proceeding to approve or disapprove a proposed
15 modification or termination under N.J.S.3B:31-27 through
16 N.J.S.3B:31-33, or trust combination or division under N.J.S.3B:31-
17 34, may be commenced by a trustee or beneficiary, and a
18 proceeding to approve or disapprove a proposed modification or
19 termination under N.J.S.3B:31-27 may be commenced by the
20 settlor. The settlor of a charitable trust may maintain a proceeding
21 to modify the trust under N.J.S.3B:31-29.

22
23 3B:31-27. Modification or Termination of Noncharitable
24 Irrevocable Trust by Consent.

25 a. A noncharitable irrevocable trust may be modified or
26 terminated upon consent of the settlor and all beneficiaries, even if
27 the modification or termination is inconsistent with a material
28 purpose of the trust. A settlor's power to consent to a trust's
29 modification or termination may be exercised by an agent under a
30 power of attorney only to the extent expressly authorized by the
31 power of attorney or the terms of the trust; or by the settlor's
32 guardian with the approval of the court supervising the guardianship
33 if an agent is not so authorized.

34 b. A noncharitable irrevocable trust may be terminated upon
35 consent of all of the beneficiaries if the court concludes that
36 continuance of the trust is not necessary to achieve any material
37 purpose of the trust. A noncharitable irrevocable trust may be
38 modified upon consent of all of the beneficiaries if the court
39 concludes that modification is not inconsistent with a material
40 purpose of the trust.

41 c. A spendthrift provision in the terms of the trust is not
42 presumed to constitute a material purpose of the trust.

43 d. Upon termination of a trust under subsection a. or b. of this
44 section, the trustee shall distribute the trust property as agreed by
45 the beneficiaries.

46 e. If not all of the beneficiaries consent to a proposed
47 modification or termination of the trust under subsection a. or b. of

1 this section, the modification or termination may be approved by
2 the court if the court is satisfied that:

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

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

7

8 3B:31-28. Modification or Termination Because of
9 Unanticipated Circumstances or Inability to Administer Trust
10 Effectively.

11 a. The court may modify the administrative or dispositive
12 terms of a trust or terminate the trust if, because of circumstances
13 not anticipated by the settlor, modification or termination will
14 further the purposes of the trust. To the extent practicable, the
15 modification shall be made in accordance with the settlor's probable
16 intent.

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

20 c. Upon termination of a trust under this section, the trustee
21 shall distribute the trust property in a manner consistent with the
22 purposes of the trust.

23

24 3B:31-29. Modification or Termination of Charitable Trust (Cy
25 Pres).

26 a. Except as otherwise provided in subsection b. of this section,
27 if a particular charitable purpose becomes unlawful, impracticable,
28 impossible to achieve, or wasteful:

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

30 (2) the trust property does not revert to the settlor or the settlor's
31 estate; and

32 (3) the court may modify or terminate the trust by directing that
33 the trust property be applied or distributed, in whole or in part, in a
34 manner consistent with the settlor's charitable purposes.

35 b. A provision in the terms of a charitable trust that would
36 result in distribution of the trust property to a noncharitable
37 beneficiary prevails over the power of the court under subsection a.
38 of this section.

39

40 3B:31-30. Modification or Termination of Uneconomic Trust.

41 a. After notice to the qualified beneficiaries, the trustee of a
42 trust consisting of trust property having a total value less than
43 \$100,000 may terminate the trust if the trustee concludes that the
44 value of the trust property is insufficient to justify the cost of
45 administration.

46 b. The court may modify or terminate a trust or remove the
47 trustee and appoint a different trustee if it determines that the value

1 of the trust property is insufficient to justify the cost of
2 administration.

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

6 d. This section does not apply to an easement for conservation
7 or preservation.

8

9 3B:31-31. Reformation to Correct Mistakes.

10 The court may reform the terms of a trust, even if unambiguous,
11 to conform the terms to the settlor's probable intent if it is proved
12 by clear and convincing evidence that there was a mistake of fact or
13 law, whether in expression or inducement.

14

15 3B:31-32. Construction to Conform Trust Terms to Probable
16 Intent of Settlor.

17 The court may construe the terms of a trust, even if
18 unambiguous, to conform to the settlor's probable intent.

19

20 3B:31-33. Modification to Achieve Settlor's Tax Objectives.

21 To achieve the settlor's tax objectives, the court may modify the
22 terms of a trust in a manner that is not contrary to the settlor's
23 probable intent. The court may provide that the modification has
24 retroactive effect.

25

26 3B:31-34. Combination and Division of Trusts.

27 a. Subject to subsection b. of this section,

28 (1) the trustees of two or more trusts or parts of trusts may
29 combine the trusts or parts thereof into a single trust, even if such
30 trusts or parts thereof are created by different settlors or under
31 different instruments, and even if the trusts have different trustees;
32 and

33 (2) the trustees of a single trust may divide the trust into two or
34 more separate trusts, in which case distributions provided by the
35 governing instrument may be made from one or more of the
36 separate trusts.

37 b. A combination or division under this section may be effected
38 only if the result does not impair rights of any beneficiary or
39 adversely affect the achievement of the purposes of the trust.

40

41 ARTICLE 4
42 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY
43 TRUSTS
44

45 3B:31-35. Rights of Beneficiary's Creditor or Assignee.

46 Except as otherwise provided by law, to the extent a beneficiary's
47 interest is not protected by a spendthrift provision, a creditor or
48 assignee of the beneficiary may reach the beneficiary's interest by

1 attachment of present or future distributions to or for the benefit of
2 the beneficiary, subject to N.J.S.2A:17-51 et seq. or other
3 applicable law. The court may limit the award to such relief as is
4 appropriate under the circumstances.

5

6 3B:31-36. Spendthrift Provision.

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

9 b. A term of the trust providing that the interest of a
10 beneficiary is held subject to a "spendthrift trust," or words of
11 similar import, is sufficient to restrain both voluntary and
12 involuntary transfer of the beneficiary's interest.

13 c. A beneficiary may not transfer an interest in a trust in
14 violation of a valid spendthrift provision and, except as otherwise
15 provided in this article, a creditor or assignee of the beneficiary
16 may not reach the interest or a distribution by the trustee before its
17 receipt by the beneficiary.

18 d. A spendthrift provision is valid even though a beneficiary is
19 named as the sole trustee or as a co-trustee of the trust.

20

21 3B:31-37. Exceptions to Spendthrift Provision.

22 Even if a trust contains a spendthrift provision, the following
23 shall apply:

24 a. Special Needs

25 (1) "Protected person" means a person who is:

26 (a) an aged, blind, or disabled individual as defined at 42 U.S.C.
27 s.1382c;

28 (b) developmentally disabled as defined in section 2 of P.L.1979,
29 c.105 (C.30:1AA-2); or

30 (c) under age 18, or over age 18 and a full-time student, with
31 serious disabilities that reasonably may prevent the individual from
32 being self sufficient as an adult.

33 (2) "Special needs trust" means an OBRA '93 trust, as defined in
34 subsection a. of section 3 of P.L.2000, c.96 (C.3B:11-37), or trust
35 governed by a written instrument which:

36 (a) grants a trustee full discretion to determine whether and when
37 to distribute;

38 (b) limits distributions during the trust term to distributions to
39 benefit one or more protected persons, although others may realize
40 incidental benefits;

41 (c) provides that the trustee does not have any obligation to pay
42 the protected person's obligations or fund their support;

43 (d) does not give the protected person any right to require the
44 trustee to distribute at a specific time or for a particular purpose or
45 to assign or encumber interests in the trust; and

46 (e) evidences the grantor's intent to supplement rather than
47 replace or impair government assistance that the protected person
48 receives or for which they otherwise may be eligible.

1 b. Notwithstanding any other provision of this act or other law
2 (1) trustees of a special needs trust are not required to distribute
3 for any particular purpose or at any particular time during the trust
4 term;

5 (2) all creditors, including, but not limited to, spendthrift
6 exception creditors, of a protected person may not reach or attach a
7 protected person's interest in a special needs trust and neither
8 creditors nor a court may require the trustees to distribute to satisfy
9 a protected person's creditor's claim;

10 (3) a special needs trust shall not be required to repay
11 government aid provided to a protected person unless the aid was
12 provided on the basis that the special needs trust would repay the
13 aid when the protected person dies, or the special needs trust sooner
14 terminates, and the special needs trust instrument expressly calls for
15 such repayment; and

16 (4) a special needs trust shall terminate at such time as provided
17 in its governing instrument.

18 c. Notwithstanding N.J.S.3B:31-35 and N.J.S.3B:31-36,
19 trustees of a special needs trust shall exercise their discretion in
20 good faith to further trust purposes and courts may exercise their
21 equity authority to remedy trustee abuses of discretion.

22

23 3B:31-38. Discretionary Trusts; Effect of Standard.

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

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

29 (2) The trustee has abused the discretion.

30 b. This section does not limit the right of a beneficiary to
31 maintain a judicial proceeding against a trustee for an abuse of
32 discretion or failure to comply with a standard for distribution.

33 c. With respect to the powers set forth in section 1 of P.L.1996,
34 c.41 (C.3B:11-4.1), the provisions of this section shall apply even
35 though the beneficiary is the sole trustee or a co-trustee of the trust.

36

37 3B:31-39. Creditor's Claim Against Settlor.

38 a. Whether or not the terms of a trust contain a spendthrift
39 provision, the following rules apply:

40 (1) During the lifetime of the settlor, the property of a revocable
41 trust is subject to claims of the settlor's creditors.

42 (2) With respect to an irrevocable trust, a creditor or assignee of
43 the settlor may reach the maximum amount that can be distributed
44 to or for the settlor's benefit. If a trust has more than one settlor,
45 the amount the creditor or assignee of a particular settlor may reach
46 may not exceed the settlor's interest in the portion of the trust
47 attributable to that settlor's contribution. Provided, however, the
48 assets of an irrevocable trust are not subject to the claims of a

1 creditor of the settlor solely because of the existence of the trustee's
2 discretionary power to pay directly to the taxing authorities or to
3 reimburse the settlor for any income tax payable by the settlor on
4 trust income or principal.

5 (3) After the death of a settlor, and subject to the settlor's right
6 to direct the source from which liabilities will be paid, the property
7 of a trust that was revocable at the settlor's death is subject to
8 claims of the settlor's creditors, costs of administration of the
9 settlor's estate, the expenses of the settlor's funeral and disposal of
10 remains, and to a surviving spouse and children to the extent the
11 settlor's probate estate is inadequate to satisfy those claims, costs,
12 expenses.

13 b. For purposes of this section:

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

18 (2) upon the lapse, release, or waiver of the power, the holder is
19 treated as the settlor of the trust only to the extent the value of the
20 property affected by the lapse, release, or waiver exceeds the
21 greater of the amount specified in section 2041(b)(2) or 2514(e) of
22 the federal Internal Revenue Code of 1986 (26 U.S.C. s.2041(b)(2)
23 or 26 U.S.C. s.2514(e)), or section 2503(b) of the federal Internal
24 Revenue Code of 1986 (26 U.S.C. s.2503(b)), in each case as in
25 effect on the effective date of this act, or as later amended.

26

27 3B:31-40. Overdue Distribution.

28 a. For the purposes of this section, "mandatory distribution"
29 means a distribution of income or principal that the trustee is
30 required to make to a beneficiary under the terms of the trust,
31 including a distribution upon termination of the trust. The term
32 excludes a distribution subject to the exercise of the trustee's
33 discretion, regardless of whether the terms of the trust (1) include a
34 support or other standard to guide the trustee in making distribution
35 decisions, or (2) provide that the trustee "may" or "shall" make
36 discretionary distributions, including distributions pursuant to a
37 support or other standard.

38 b. Except as otherwise provided in section 1 of P.L.1996, c.41
39 (C.3B:11-4.1), whether or not a trust contains a spendthrift
40 provision, a creditor or assignee of a beneficiary may reach a
41 mandatory distribution of income or principal, including a
42 distribution upon termination of the trust, if the trustee has not
43 made the distribution to the beneficiary within a reasonable time
44 after the mandated distribution date.

45

46 3B:31-41. Personal Obligations of Trustee

47 Trust property is not subject to personal obligations of the
48 trustee, even if the trustee becomes insolvent.

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ARTICLE 5
REVOCABLE TRUSTS

3B:31-42. 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.

3B:31-43. Revocation or Amendment of Revocable Trust.

a. Unless the terms of a trust expressly provide that the trust is irrevocable, or that it is proved by clear and convincing evidence that the settlor intended for it to be irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this act.

b. If a revocable trust is created or funded by more than one settlor:

(1) 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; and

(2) 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.

c. The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

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

(a) executing 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

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

d. Upon revocation of a revocable trust, the trustee shall deliver the trust property to the settlor as the settlor directs.

e. 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 and the power.

f. A guardian of the settlor or 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 guardianship.

g. 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.

1 3B:31-44. Settlor's Powers; Powers of Withdrawal.

2 While a trust is revocable, rights of the beneficiaries are subject
3 to the control of, and the duties of the trustee are owed exclusively
4 to, the settlor.

5

6 3B:31-45. Limitation on Action Contesting Validity of
7 Revocable Trust; Distribution of Trust Property.

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

11 (1) 3 years after the settlor's death; or

12 (2) 4 months, in the case of a resident, or 6 months, in the case of
13 a nonresident, after the trustee sent the person a copy of the trust
14 instrument and a notice informing the person of the trust's
15 existence, of the trustee's name and address, and of the time allowed
16 for commencing a proceeding.

17 b. Upon the death of the settlor of a trust that was revocable at
18 the settlor's death, the trustee may proceed to distribute the trust
19 property in accordance with the terms of the trust. The trustee is
20 not subject to liability for doing so unless:

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

23 (2) a potential contestant has notified the trustee in writing of a
24 possible judicial proceeding to contest the validity of the trust and
25 the trustee has received written notice of a judicial proceeding
26 commenced within 90 days after the contestant sent the notification.

27 c. A beneficiary of a trust that is determined to have been
28 invalid is liable to return any distribution received.

29

30

ARTICLE 6

31

OFFICE OF TRUSTEE

32

33 3B:31-46. Accepting or Declining Trusteeship.

34 a. Except as otherwise provided in subsection c. of this section,
35 a person designated as trustee accepts the trusteeship:

36 (1) in the case of a testamentary trustee or substituted
37 testamentary trustee, as provided in N.J.S.3B:11-2, and

38 (2) in the case of any other trustee,

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

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

46 b. A person designated as trustee who has not yet accepted the
47 trusteeship may renounce the trusteeship. A designated trustee who
48 does not accept the trusteeship within a reasonable time after

1 knowing of the designation is deemed to have renounced the
2 trusteeship.

3 c. A person designated as trustee, without accepting the
4 trusteeship, may:

5 (1) act to preserve the trust property if, within a reasonable time
6 after acting, the person sends a renunciation of the trusteeship to the
7 settlor or, if the settlor is dead or lacks capacity, to the qualified
8 beneficiaries and to any designated successor trustee; and

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

11

12 3B:31-47. Trustee's Bond.

13 a. A trustee shall give bond to secure performance of the
14 trustee's duties as prescribed by N.J.S.3B:15-1 et seq. if the court or
15 surrogate finds that a bond is needed to protect the interests of the
16 beneficiaries or is required by the terms of the trust and the court
17 has not dispensed with that requirement.

18 b. Unless otherwise directed by the court, the cost of the bond
19 is an expense of the trust.

20

21 3B:31-48. Cotrustees.

22 a. Cotrustees who are unable to reach a unanimous decision
23 may act by majority decision. A dissenting trustee who joins in
24 carrying out a decision of the majority but expresses his dissent in
25 writing promptly to his cotrustees shall not be liable for the act of
26 the majority.

27 b. If a vacancy occurs in a cotrusteeship, the remaining
28 cotrustees shall act for the trust unless the trust instrument provides
29 otherwise.

30 c. A cotrustee shall participate in the performance of a trustee's
31 function unless the cotrustee is unavailable to perform the function
32 because of absence, illness, disqualification under other law, or
33 other temporary incapacity or the cotrustee has properly delegated
34 the performance of the function to another trustee.

35 d. If a cotrustee is unavailable to perform duties because of
36 absence, illness, disqualification under other law, other temporary
37 incapacity, or a vacancy remains unfilled and prompt action is
38 necessary to achieve the purposes of the trust or to avoid injury to
39 the trust property, the remaining cotrustee or a majority of the
40 remaining cotrustees shall act for the trust.

41 e. A trustee may not delegate to a cotrustee the performance of
42 a function the settlor reasonably expected the trustees to perform
43 jointly. Unless a delegation was irrevocable, a trustee may revoke a
44 delegation previously made.

45 f. A trustee who does not join in an action of a cotrustee or
46 cotrustees because of absence, illness, disqualification or other
47 temporary incapacity shall not be liable for that action.

1 g. Notwithstanding subsection a. or f. of this section, every
2 trustee shall exercise reasonable care to:

- 3 (1) prevent a cotrustee from committing a breach of trust; and
4 (2) compel a cotrustee to redress a breach of trust.

5

6 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

7 a. A vacancy in a trusteeship occurs if:

- 8 (1) a person designated as trustee renounces the trusteeship;
9 (2) a person designated as trustee cannot be identified or does
10 not exist;
11 (3) a trustee resigns or is discharged;
12 (4) a trustee is disqualified or removed;
13 (5) a trustee dies; or
14 (6) a guardian or conservator is appointed for an individual
15 serving as trustee.

16 b. If one or more cotrustees remain in office, a vacancy in a
17 trusteeship need not be filled unless the trust instrument provides
18 otherwise. A vacancy in a trusteeship shall be filled if the trust has
19 no remaining trustee.

20 c. A vacancy in a trusteeship of a noncharitable trust that is
21 required to be filled shall be filled in the following order of priority:

- 22 (1) by a person designated pursuant to the terms of the trust to
23 act as successor trustee;
24 (2) by a person appointed by unanimous agreement of the
25 qualified beneficiaries; or
26 (3) by a person appointed by the court.

27 d. A vacancy in a trusteeship of a charitable trust that is
28 required to be filled shall be filled in the following order of priority:

- 29 (1) by a person designated pursuant to the terms of the trust to
30 act as successor trustee; or
31 (2) by a person appointed by the court.

32 e. Whether or not a vacancy in a trusteeship exists or is
33 required to be filled, the court may appoint an additional trustee or
34 special fiduciary whenever the court considers the appointment
35 desirable for the administration of the trust.

36 f. A person appointed to fill a vacancy in a trusteeship shall
37 have all the powers and discretions of the original trustee.

38

39 3B:31-50. Resignation of Trustee.

40 a. A trustee may resign:

- 41 (1) upon at least 30 days' notice to the qualified beneficiaries, the
42 settlor, if living, all cotrustees, and the trustee or trustees, if any,
43 designated pursuant to the terms of the trust to succeed the
44 resigning trustee; or
45 (2) with the approval of the court.

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

1 c. Any liability of a resigning trustee or of any sureties on the
2 trustee's bond for acts or omissions of the trustee is not discharged
3 or affected by the trustee's resignation.
4

5 3B:31-51. Removal of Trustee.

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

9 b. The court may remove a trustee for any of the reasons stated
10 in N.J.S.3B:14-21.

11 c. Pending a final decision on a request to remove a trustee, or
12 in lieu of or in addition to removing a trustee, the court may order
13 such appropriate relief as may be necessary to protect the trust
14 property or the interests of the beneficiaries.
15

16 3B:31-52. Delivery of Property by Former Trustee.

17 a. Unless a cotrustee remains in office or the court otherwise
18 orders, and until the trust property is delivered to a successor trustee
19 or other person entitled to it, a trustee who has resigned or been
20 removed has the duties of a trustee and the powers necessary to
21 protect the trust property.

22 b. A trustee who has resigned or been removed shall proceed
23 expeditiously to deliver the trust property within the trustee's
24 possession to the cotrustee, successor trustee, or other person
25 entitled to it, but a resigning trustee may retain a reasonable reserve
26 for the costs of finalizing that trustee's administration of the trust.
27

28 3B:31-53. Reimbursement of Expenses.

29 a. In addition to the compensation allowed by N.J.S.3B:18-2 et
30 seq., a trustee is entitled to be reimbursed out of the trust property
31 for:

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

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

37 b. An advance by a trustee of money or other property for the
38 protection of the trust gives rise to a lien against trust property to
39 secure reimbursement.
40

41 ARTICLE 7

42 DUTIES AND POWERS OF TRUSTEE

43
44 3B:31-54. Duty to Administer Trust.

45 Upon acceptance of a trusteeship, the trustee shall administer the
46 trust in good faith, in accordance with its terms and purposes and
47 the interests of the beneficiaries, and in accordance with this act and
48 other applicable law.

1 3B:31-55. Duty of Loyalty.

2 a. A trustee shall administer the trust with undivided loyalty to
3 and solely in the best interests of the beneficiaries.

4 b. Subject to the rights of persons dealing with or assisting the
5 trustee as provided in N.J.S.3B:14-37, a sale, encumbrance, or other
6 transaction involving the investment or management of trust
7 property entered into by the trustee for the trustee's own personal
8 account or which is otherwise affected by a conflict between the
9 trustee's fiduciary and personal interests is voidable by a beneficiary
10 affected by the transaction unless:

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

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

13 (3) the beneficiary did not commence a judicial proceeding
14 within the time allowed by N.J.S.3B:31-73;

15 (4) the beneficiary consented to the trustee's conduct, ratified the
16 transaction, or released the trustee in compliance with N.J.S.3B:31-
17 77; or

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

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

24 (1) the trustee's spouse or partner in a civil union;

25 (2) the trustee's parents, parents' descendants, or the spouse or
26 partner in a civil union of any of the foregoing;

27 (3) an agent, accountant, or attorney of the trustee; or

28 (4) a corporation or other person or enterprise in which the
29 trustee, or a person that owns a significant interest in the trustee,
30 has an interest that might affect the trustee's judgment.

31 d. A transaction between a trustee and a beneficiary that does
32 not concern trust property but that occurs during the existence of
33 the trust or while the trustee retains significant influence over the
34 beneficiary and from which the trustee obtains an advantage
35 attributable to the existence of the trust is voidable by the
36 beneficiary if the beneficiary establishes that the transaction was
37 unfair to the beneficiary.

38 e. A transaction not concerning trust property in which the
39 trustee engages in the trustee's individual capacity involves a
40 conflict between personal and fiduciary interests if the transaction
41 concerns an opportunity properly belonging to the trust.

42 f. In voting shares of stock of a corporation or in exercising
43 powers of control over similar interests in other forms of enterprise,
44 the trustee shall act in the best interests of the beneficiaries and
45 shall vote to elect or appoint directors or other managers who will
46 manage the corporation or enterprise in the best interests of the
47 beneficiaries.

1 g. This section does not preclude the following transactions, if
2 fair to the beneficiaries:

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

5 (2) payment of reasonable compensation to the trustee;

6 (3) a transaction between the trust and another trust, decedent's
7 estate, guardianship, conservatorship, or other fiduciary relationship
8 of which the trustee is a fiduciary or in which a beneficiary has an
9 interest;

10 (4) a deposit of trust money in a regulated financial-service
11 institution operated by or affiliated with the trustee; or

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

14 h. The court may appoint a special fiduciary to make decisions
15 with respect to any proposed transaction that might violate this
16 section if entered into by the trustee.

17

18 3B:31-56. Duty of Impartiality.

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

22

23 3B:31-57. Duty of Prudent Administration.

24 A trustee shall administer the trust as a prudent person would, by
25 considering the purposes, terms, distributional requirements, and
26 other circumstances of the trust. In satisfying this standard, the
27 trustee shall exercise reasonable care, skill, and caution.

28

29 3B:31-58. Costs of Administration.

30 In administering a trust, the trustee may incur only costs that are
31 appropriate and reasonable in relation to the trust property, the
32 purposes of the trust, and the skills of the trustee.

33

34 3B:31-59. Duty to Use Special Skills.

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

39

40 3B:31-60. Delegation by Trustee.

41 a. A trustee may delegate ministerial, administrative and
42 management duties and powers that a prudent trustee of comparable
43 skills could properly delegate under the circumstances.

44 b. The trustee shall exercise reasonable care, skill, and caution
45 in:

46 (1) selecting an agent;

47 (2) establishing in writing the scope and terms of the delegation,
48 consistent with the purposes and terms of the trust; and

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

4 c. A trustee shall provide reasonable written notice to the
5 qualified beneficiaries on each occasion upon which the trustee
6 delegates duties pursuant to this section, including the identity of
7 the agent.

8 d. A trustee who complies with subsections b. and c. of this
9 section is not liable to the beneficiaries or to the trust for an action
10 of the agent to whom the function was delegated.

11 e. In performing a delegated function, the agent shall owe to
12 the trustee and the beneficiaries the same duties as the fiduciary and
13 shall be held to the same standards as the fiduciary.

14 f. By accepting a delegation of powers or duties from the
15 trustee of a trust that is subject to the law of this State, an agent
16 submits to the jurisdiction of the courts of this State, even if the
17 delegation agreement provides otherwise.

18

19 3B:31-61. Powers to Direct.

20 a. While a trust is revocable, the trustee may follow a direction
21 of the settlor that is contrary to the terms of the trust.

22 b. If the terms of a trust confer upon a person other than the
23 settlor of a revocable trust the power to direct certain actions of the
24 trustee, the trustee shall act in accordance with a written exercise of
25 the power unless the attempted exercise is contrary to the terms of
26 the trust or the trustee knows the attempted exercise would
27 constitute a breach of a fiduciary duty that the person holding the
28 power owes to the beneficiaries of the trust.

29 c. The terms of a trust may confer upon a trustee or other
30 person a power to direct the modification or termination of the trust.

31 d. A person, other than a beneficiary, who holds a power to
32 direct is required to act in good faith with regard to the purposes of
33 the trust and the interests of the beneficiaries. The holder of a
34 power to direct is liable for any loss that results from the holder's
35 failure to act in good faith.

36

37 3B:31-62. Control and Protection of Trust Property.

38 A trustee shall take reasonable steps to take control of and
39 protect the trust property.

40

41 3B:31-63. Recordkeeping and Identification of Trust Property.

42 a. A trustee shall keep adequate records of the administration
43 of the trust.

44 b. A trustee shall keep trust property separate from the trustee's
45 own property.

46 c. Except as otherwise provided in subsection d. of this section,
47 a trustee shall cause the trust property to be designated so that the

1 interest of the trust, to the extent feasible, appears in records
2 maintained by a party other than a trustee or beneficiary.

3 d. If the trustee maintains records clearly indicating the
4 respective interests, a trustee may invest as a whole the property of
5 the trust with other fiduciary accounts maintained by the trustee.

6

7 3B:31-64. Duty to Enforce and Defend Claims.

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

10

11 3B:31-65. Duty to Collect Trust Property and Redress Breaches
12 of Trust.

13 a. A trustee shall take reasonable steps to compel a former
14 trustee or other person to deliver trust property to the trustee.

15 b. A trustee shall take reasonable steps to redress a breach of
16 trust known to the trustee to have been committed by a former
17 trustee.

18

19 3B:31-66. Duty to Disclose and Discretion to Periodically
20 Report.

21 a. Unless unreasonable under the circumstances, a trustee shall
22 promptly respond to a beneficiary's request for information related
23 to the administration of a trust.

24 b. A trustee, upon request of a beneficiary, shall promptly
25 furnish to the beneficiary a copy of the trust instrument.

26 c. A trustee seeking the protection of N.J.S.3B:31-73 may
27 provide the beneficiaries with a report of the trust property,
28 liabilities, receipts, and disbursements, including the source and
29 amount of the trustee's compensation, a listing of the trust assets,
30 and, if feasible, their respective market values.

31

32 3B:31-67. Discretionary Powers.

33 Notwithstanding the breadth of discretion granted to a trustee in
34 the terms of the trust, including the use of such terms as "absolute,"
35 "sole," or "uncontrolled," the trustee shall exercise a discretionary
36 power in good faith and in accordance with the terms and purposes
37 of the trust and the interests of the beneficiaries.

38

39 3B:31-68. General Powers of Trustee.

40 a. Except as limited by section 1 of P.L.1996, c.41 (C.3B:11-4.1)
41 and other express statutory restrictions, a trustee, without
42 authorization by the court, may exercise:

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

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

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

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

- 1 (c) any other powers conferred by this act and by Title 3B.
2 b. The exercise of a power is subject to the fiduciary duties
3 prescribed by this act and by Title 3B.

4
5 3B:31-69. Distribution Upon Termination.

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

11 b. Upon termination or partial termination of a trust, the trustee
12 may mail or deliver a proposal for distribution to all persons who
13 have a right to object to the proposed distribution. The proposal
14 shall notify all persons who have a right to object to the proposal of
15 their right to object and that their objection is required to be in
16 writing and received by the trustee within 30 days after the mailing
17 or delivery of the proposal. The right of any person to object to the
18 proposed distribution on the basis of the kind or value of asset he or
19 she or another beneficiary is to receive, if not waived earlier in
20 writing, terminates if he or she fails to object in writing received by
21 the trustee within 30 days after mailing or delivery of the proposal.

22

23 ARTICLE 8

24 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

25 DEALING WITH TRUSTEE

26

27 3B:31-70. Remedies for Breach of Trust.

28 a. A violation by a trustee of a duty the trustee owes to a
29 beneficiary is a breach of trust.

30 b. To remedy a breach of trust that has occurred or may occur,
31 the court may:

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

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

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

36 (4) order a trustee to account;

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

39 (6) suspend the trustee;

40 (7) remove the trustee as provided in N.J.S.3B:31-51;

41 (8) reduce or deny compensation to the trustee;

42 (9) subject to N.J.S.3B:14-37, void an act of the trustee, impose a
43 lien or a constructive trust on trust property, or trace trust property
44 wrongfully disposed of and recover the property or its proceeds; or

45 (10) order any other appropriate relief.

46

47 3B:31-71. Damages for Breach of Trust.

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

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

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

7 b. Except as otherwise provided in this subsection, if more than
8 one trustee is liable to the beneficiaries for a breach of trust, a
9 trustee is entitled to contribution from the other trustee or trustees
10 based on the comparative degree of culpability for the breach.
11 However, a trustee who committed the breach in bad faith or with
12 reckless indifference to the purposes of the trust or the interests of
13 the beneficiaries is not entitled to contribution from a trustee who
14 was not guilty of such conduct. A trustee who received a benefit
15 from the breach of trust is not entitled to contribution from another
16 trustee to the extent of the benefit received.

17

18 3B:31-72. Damages in Absence of Breach.

19 a. A trustee is accountable to an affected beneficiary for any
20 profit made by the trustee arising from the administration of the
21 trust, even absent a breach of trust, except where the interest in the
22 transaction involved is fully disclosed to the beneficiary and
23 consent is freely given.

24 b. Absent a breach of trust, a trustee is not liable to a
25 beneficiary for a loss or depreciation in the value of trust property
26 or for not having made a profit.

27

28 3B:31-73. Limitation of Action Against Trustee.

29 a. A beneficiary may not commence a proceeding against a
30 trustee for breach of trust more than six months after the date the
31 beneficiary or a representative of the beneficiary was sent a report
32 that adequately disclosed the existence of a potential claim for
33 breach of trust and informed the beneficiary of the time allowed for
34 commencing a proceeding.

35 b. A report adequately discloses the existence of a potential
36 claim for breach of trust if it provides sufficient information so that
37 the beneficiary or representative knows of the potential claim or
38 should have inquired into its existence.

39 c. If subsection a. of this section does not apply, a judicial
40 proceeding by a beneficiary against a trustee for breach of trust may
41 be commenced only within five years after the first to occur of:

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

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

44 (3) the termination of the trust.

45 d. For purposes of subsection a. of this section, a beneficiary is
46 deemed to have been sent a report if:

47 (1) in the case of a beneficiary having capacity, it is sent to the
48 beneficiary; or

1 (2) in the case of a beneficiary who under article 2 of this act
2 may be represented and bound by another person, if it is received by
3 his representative.

4 e. This section does not preclude an action to recover for fraud
5 or misrepresentation related to the report.

6
7 3B:31-74. Reliance on Trust Instrument.

8 A trustee who acts in reasonable reliance on the terms of the
9 trust as expressed in the trust instrument is not liable to a
10 beneficiary for a breach of trust to the extent the breach resulted
11 from the reliance.

12
13 3B:31-75. Event Affecting Administration or Distribution.

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

19
20 3B:31-76. Exculpation of Trustee.

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

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

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

28 b. An exculpatory term drafted or caused to be drafted by the
29 trustee is invalid as an abuse of a fiduciary or confidential
30 relationship unless the trustee proves that the exculpatory term is
31 fair under the circumstances and that its existence and contents
32 were adequately communicated to the settlor.

33
34 3B:31-77. Beneficiary's Consent, Release, or Ratification.

35 A trustee is not liable to a beneficiary for breach of trust if the
36 beneficiary, while having capacity, consented to the conduct
37 constituting the breach, released the trustee from liability for the
38 breach, or ratified the transaction constituting the breach, unless:

39 a. the consent, release, or ratification of the beneficiary was
40 induced by improper conduct of the trustee; or

41 b. at the time of the consent, release, or ratification, the
42 beneficiary did not know of the beneficiary's rights or of the
43 material facts relating to the breach.

44
45 3B:31-78. Limitation on Personal Liability of Trustee.

46 a. Except as otherwise provided in the contract, a trustee is not
47 personally liable on a contract properly entered into in the trustee's

1 fiduciary capacity in the course of administering the trust if the
2 trustee in the contract disclosed the fiduciary capacity.

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

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

14

15 3B:31-79. Interest as General Partner.

16 a. Except as otherwise provided in subsection c. of this section
17 or unless personal liability is imposed in the contract, a trustee who
18 holds an interest as a general partner in a general or limited
19 partnership is not personally liable on a contract entered into by the
20 partnership after the trust's acquisition of the interest if the fiduciary
21 capacity was disclosed in the contract or in a statement previously
22 filed pursuant to the "Uniform Partnership Act (1996)," P.L.2000,
23 c.161 (C.42:1A-1 et seq.) or the "Uniform Limited Partnership Law
24 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.).

25 b. Except as otherwise provided in subsection c. of this section,
26 a trustee who holds an interest as a general partner is not personally
27 liable for torts committed by the partnership or for obligations
28 arising from ownership or control of the interest unless the trustee is
29 personally at fault.

30 c. The immunity provided by this section does not apply if an
31 interest in the partnership is held by the trustee in a capacity other
32 than that of trustee or is held by the trustee's spouse or one or more
33 of the trustee's descendants, siblings, or parents, or the spouse of
34 any of them.

35 d. If the trustee of a revocable trust holds an interest as a
36 general partner, the settlor is personally liable for contracts and
37 other obligations of the partnership as if the settlor were a general
38 partner.

39

40 3B:31-80. Certification of Trust.

41 a. Instead of furnishing a copy of the trust instrument to a
42 person other than a beneficiary, the trustee may furnish to the
43 person a certification of trust containing the following information:

44 (1) that the trust exists and the date the trust instrument was
45 executed;

46 (2) the identity of the settlor;

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

48 (4) the powers of the trustee;

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

3 (6) the authority of cotrustees to sign and whether all or less than
4 all are required in order to exercise powers of the trustee; and

5 (7) the name in which title to trust property may be taken.

6 b. A certification of trust shall be signed by all persons
7 identified as currently acting as trustee.

8 c. A certification of trust shall state that the trust has not been
9 revoked, modified, or amended in any manner that would cause the
10 representations contained in the certification of trust to be incorrect.

11 d. A certification of trust need not contain the dispositive terms
12 of a trust.

13 e. A recipient of a certification of trust may require the trustee
14 to furnish copies of those excerpts from the original trust instrument
15 and later amendments which designate the trustee and confer upon
16 the trustee the power to act in the pending transaction.

17 f. A person who acts in reliance upon a certification of trust
18 without knowledge that the representations contained therein are
19 incorrect is not liable to any person for so acting and may assume
20 without inquiry the existence of the facts contained in the
21 certification. Knowledge of the terms of the trust may not be
22 inferred solely from the fact that a copy of all or part of the trust
23 instrument is held by the person relying upon the certification.

24 g. A person making a demand for the trust instrument in
25 addition to a certification of trust or excerpts is liable for damages if
26 the court determines that the person did not act in good faith in
27 demanding the trust instrument.

28 h. This section does not limit the right of a person to obtain a
29 copy of the trust instrument in a judicial proceeding concerning the
30 trust.

31

32

ARTICLE 9

33

MISCELLANEOUS PROVISIONS

34

35 3B:31-81. Electronic Records and Signatures.

36 The provisions of this act governing the legal effect, validity, or
37 enforceability of electronic records or electronic signatures, and of
38 contracts formed or performed with the use of such records or
39 signatures, conform to the requirements of section 102 of the
40 “Electronic Signatures in Global and National Commerce Act” (15
41 U.S.C. s.7002), and supersede, modify, and limit the requirements
42 of that act.

43

44 3B:31-82. Severability Clause.

45 If any provision of this act or its application to any person or
46 circumstances is held invalid, the invalidity does not affect other
47 provisions or applications of this act which can be given effect

1 without the invalid provision or application, and to this end the
2 provisions of this act are severable.

3

4 3B:31-83. Application to Existing Relationships.

5 a. Except as otherwise provided in this act:

6 (1) this act applies to all trusts created before, on, or after its
7 effective date;

8 (2) this act applies to all judicial proceedings concerning trusts
9 commenced on or after its effective date;

10 (3) this act applies to judicial proceedings concerning trusts
11 commenced before its effective date unless the court finds that
12 application of a particular provision of this act would substantially
13 interfere with the effective conduct of the judicial proceedings or
14 prejudice the rights of the parties, in which case the particular
15 provision of this act does not apply and the superseded law applies;

16 (4) any rule of construction or presumption provided in this act
17 applies to trust instruments executed before the effective date of the
18 act unless there is clear indication of a contrary intent in the terms
19 of the trust; and

20 (5) an act done before the effective date is not affected by this
21 act.

22 b. If a right is acquired, extinguished, or barred upon expiration
23 of a prescribed period that has commenced to run under any other
24 statute before the effective date of the act, that statute continues to
25 apply to the right even if that statute has been repealed or
26 superseded by this act.

27

28 2. N.J.S.3B:14-37 is amended to read as follows:

29 3B:14-37. Protection of persons assisting or dealing with
30 fiduciary.

31 a. A person other than a beneficiary who in good faith either
32 assists a fiduciary or deals with him for value is protected as if the
33 fiduciary properly exercised his power.

34 b. The fact that a person knowingly deals with a fiduciary does
35 not alone require the person to inquire into the existence of a power
36 or the propriety of its exercise.

37 c. Except as to real property specifically devised by will, no
38 provision in any will, trust or order of court purporting to limit the
39 power of a fiduciary is effective except as to persons with actual
40 knowledge thereof.

41 d. A person who in good faith pays, transfers or delivers to a
42 fiduciary money or other property is not responsible for the proper
43 application thereof by the fiduciary; and any right or title acquired
44 from the fiduciary in consideration of the payment, transfer or
45 delivery is not invalid in consequence of a misapplication by the
46 fiduciary.

47 e. A person other than a beneficiary who in good faith assists a
48 former trustee, or who in good faith and for value deals with a

1 former trustee, without knowledge that the trusteeship has
2 terminated is protected from liability as if the former trustee were
3 still a trustee.

4 f. The protection here expressed extends to instances in which
5 some procedural irregularity or jurisdictional defect occurred in
6 proceedings leading to the issuance of letters, including a case in
7 which the alleged decedent is found to be alive.

8 g. The protection here expressed is in addition to that provided
9 by comparable provisions of the laws relating to commercial
10 transactions and laws simplifying transfers of securities by
11 fiduciaries.

12 (cf: N.J.S.3B:14-37)

13

14 3. The following sections are repealed:

15 N.J.S.3B:11-5;

16 N.J.S.3B:11-6;

17 N.J.S.3B:11-7; and

18 Section 1 of P.L.2001, c.144 (C.3B:11-38).

19

20 4. This act shall take effect on the 180th day following
21 enactment.

22

23

24

STATEMENT

25

26 This bill would supplement and revise the State's existing laws
27 concerning trusts. In 2000, the National Conference of
28 Commissioners on Uniform State Laws (now known as the Uniform
29 Law Commission) promulgated the first national codification of the
30 law of trusts: the Uniform Trust Code. The purpose of the code is
31 to provide states with a model uniform trust act that would allow for
32 precise, comprehensive, and easily accessible guidance on trust law
33 questions. Most of the provisions of the model act, which has been
34 revised by the commission several times, are default rules that
35 apply only if the terms of the trust instrument fail to address or
36 insufficiently cover a particular issue. The model act also includes
37 several innovative provisions, which have been incorporated into
38 this bill, including: specification of the rules of trust that are not
39 subject to override in the trust's terms, comprehensive rules on
40 representation of beneficiaries, rules on trust modification and
41 termination that will enhance flexibility, and the inclusion of an
42 article collecting the special rules pertaining to revocable trusts.
43 While this bill is modeled on the commission's Uniform Trust
44 Code, it has been changed and adapted to fit within New Jersey's
45 existing trust law.

46 Article 1 of the bill contains definitions and general provisions.
47 The provisions of this article include: section 3B:31-3, which
48 defines certain terms used in the bill; section 3B:31-5, which

1 enumerates certain rules that cannot be waived in the terms of the
2 trust; section 3B:31-7, which establishes rules regarding the
3 governing law of a trust; section 3B:31-8, which sets forth a
4 procedure for changing the situs (principal place of administration)
5 of a trust; and section 3B:31-11, which provides statutory authority
6 for the nonjudicial settlement of a trustee's accounts and other
7 matters related to trust administration.

8 Article 2 of the bill concerns representation of beneficiaries,
9 including what is known as virtual representation. Section 3B:31-
10 13 is the introductory section, laying out the scope of the article.
11 Sections 3B:31-14 through 3B:31-17 cover the different types of
12 representation. 3B:31-14 deals with representation by the holder of
13 a general testamentary power of appointment. Section 3B:31-15
14 deals with representation by a fiduciary, whether of an estate, trust,
15 conservatorship, or guardianship. The section also allows a parent
16 without a conflict of interest to represent and bind a minor or
17 unborn child. Section 3B:31-16 is the virtual representation
18 provision, providing for representation of and the giving of a
19 binding consent by another person having a substantially identical
20 interest with respect to the particular issue. Section 3B:31-17
21 authorizes the court to appoint a representative to represent the
22 interests of unrepresented persons for whom the court concludes the
23 other available representation might be inadequate.

24 Article 3 of the bill deals with how a trust is validly created,
25 modified and terminated. Sections 3B:31-18 through 3B:31-25 deal
26 with the creation of a trust and the purposes for a trust. Sections
27 3B:31-18 and 3B:31-19 state the method and requirements for
28 creation of a trust, including the requirement that the same person
29 not be the sole trustee and the sole beneficiary. Section 3B:31-20
30 recognizes the validity of trusts created in other jurisdictions
31 provided certain requirements are met, including the requirement
32 that the trust be in writing. The requirement that the trust be in
33 writing is a deviation from the Uniform Trust Code, which allows
34 for trusts to be created orally. Section 3B:31-21 concerns the
35 purposes of a trust and states that a trust generally may be enforced
36 if its purposes are lawful, not contrary to public policy, and possible
37 to achieve. Under section 3B:31-23, a trust induced by fraud or
38 duress is not valid. Section 3B:31-24 adopts a broader provision
39 concerning trusts for the care of animals and section 3B:31-25
40 addresses situations where non-charitable trusts without
41 ascertainable beneficiaries are valid.

42 Sections 3B:31-26 through 3B:31-33 deal with the modification
43 and termination of a trust. These provisions deal with the purposes
44 and procedures for modification and termination. The general
45 provision is contained in section 3B:31-26, which summarizes the
46 grounds on which a trust may be terminated and specifies which
47 persons may bring an action to terminate a trust. Section 3B:31-27
48 describes the circumstances when a non-charitable trust may be

1 compelled by the beneficiaries, with or without the consent of the
2 settlor. Under section 3B:31-28, a court may modify the
3 administrative or dispositive terms of a trust if doing so will further
4 the purposes of the trust. Section 3B:31-29 addresses modification
5 or termination of a charitable trust and section 3B:31-30 addresses
6 modification or termination of an uneconomical trust. Section
7 3B:31-31 provides for the reformation of a trust to conform to a
8 settlor's probable intent and is designed to be consistent with New
9 Jersey's probable intent doctrine as it applies to trusts under
10 subsection b. of section 28 of P.L.2004, c.132 (C.3B:3-33.1).
11 Section 3B:31-33 permits modification to achieve a settlor's tax
12 objectives, consistent with existing New Jersey law. Section 3B:31-
13 34 provides for the combination of two or more trusts into a single
14 trust and the division of a single trust into two or more trusts,
15 provided the requirements of the section are met. This provision is
16 similar to existing New Jersey law under subsection r. of
17 N.J.S.3B:14-23.

18 Article 4 deals with spendthrift provisions in trusts. This article
19 was heavily edited by the ad hoc committee of New Jersey lawyers
20 to preserve certain aspects of current New Jersey law. For example,
21 the phrase "except as otherwise provided by law" was added to
22 section 3B:31-35 to clarify that the changes are not intended to
23 effect other existing provisions of statutory law including: R.S.25:2-
24 1 et seq. (protection from attachment in the case of a self-settled
25 trust that is a qualified retirement account); N.J.S.17B:24-6 (the
26 inability of a creditor to attach proceeds of life insurance policies);
27 N.J.S.17B:24-7 (the inability of creditors to attach annuity
28 proceeds); N.J.S.17B:24-8 (the inability of creditors to attach health
29 and disability insurance benefits); and, N.J.S.17B:24-9 (the inability
30 of creditors to attach proceeds of group insurance policies).

31 Section 3B:31-37, concerning exceptions to spendthrift
32 provisions, was revised and is not similar to the comparable
33 provision of the Uniform Trust Code. The Uniform Trust Code
34 provides that there are certain creditors, known as "exception
35 creditors," that can attach a trust with a spendthrift provision. Other
36 "exception creditors" in the Uniform Trust Code would be (i) child
37 support; (ii) a spouse; (iii) a former spouse who has a judgment for
38 support or maintenance; (iv) a judgment creditor who has provided
39 services for the protection of a beneficiary's interest; and (v)
40 governmental claims. In New Jersey there are certain recognized
41 creditors that are "excepted" from the application of the spendthrift
42 clause, thus additional provisions are unnecessary. Adding
43 additional classes of exception creditors, as the Uniform Trust Code
44 proposes, has drawn national criticism. The committee of ad hoc
45 lawyers who developed this bill elected not to include this
46 provision. Instead, section 3B:31-37 creates a type of trust for the
47 young or disabled, known as a "special needs trust," which would
48 have certain special protections from creditors.

1 Sections 3B:31-39 through -41 codify certain rules already in
2 place for trusts and make certain changes necessary to implement
3 the provisions of section 3B:31-37 concerning special needs trusts.

4 Article 5 addresses the use of revocable trusts as alternatives to
5 wills and seeks to clarify certain issues in connection with the use
6 of revocable trusts. Section 3B:31-42 provides that the capacity
7 required to create, amend or revoke a trust is the same as that
8 required to execute a will. Section 3B:31-43 provides that a trust is
9 revocable unless the terms of a trust expressly provide that it is
10 irrevocable, or unless there is clear and convincing evidence that it
11 is irrevocable and sets forth the circumstances in which a settlor, a
12 settlor's attorney in fact, or guardian may revoke or amend a
13 revocable trust. Section 3B:31-44 provides that the trustee of a
14 revocable trust is responsible only to the settlor of the trust. Section
15 3B:31-45 establishes time limits on contesting the validity of a
16 revocable trust after the death of the settlor, which generally
17 conform to the time limits for contesting the probate of a will.
18 Section 3B:31-45 also protects a trustee who makes distributions
19 from the trust after the settlor's death unless the trustee knows of a
20 pending or possible contest.

21 Article 6 of the bill contains a series of default rules dealing with
22 the office of trustee, many of which are already dealt with and
23 firmly established in chapters 11, 14 and 18 of Title 3B of the New
24 Jersey Statutes, New Jersey Rules of Court, and New Jersey case
25 law. Except for the court's authority to issue letters of testamentary
26 trusteeship and to order bond, all of the provisions of Article 6 are
27 subject to modification by the express terms of the governing trust
28 instrument.

29 Sections 3B:31-46 and 3B:31-47 address the process of
30 qualifying a trustee, including procedures for accepting or declining
31 the office of trustee and bonding the trustee. Section 3B:31-48
32 addresses the duties and responsibilities of and other issues that
33 may arise between or among co-trustees. For example, this section
34 permits co-trustees to act by majority action and specifies how and
35 what happens when one of several trustees dissents from a course of
36 action and the extent to which the others shall act when one is
37 unable or has properly delegated performance of a function.

38 3B:31-49 through 3B:31-52 address changes in the office of
39 trustee including: when and how a vacancy is filled, the procedure
40 for resignation, grounds for removal and the duties and obligations
41 of a resigning or removed trustee. Certain provisions of the
42 comparable article of the Uniform Trust Code were deemed
43 redundant and thus not included in this bill.

44 Section 3B:31-53 prescribes standards for reimbursement for
45 expenses advanced by the trustee. Since the matter of trustee
46 compensation is addressed comprehensively in chapter 18 of Title
47 3B of the New Jersey Statutes, the provision in the Uniform Trust

1 Code concerning trustee compensation has not been included in the
2 bill.

3 Article 7 sets forth the basic duties and powers of trustees. This
4 article embraces and expands on the authorization in the “Prudent
5 Investor Act,” P.L.1997, c.26 (C.3B:20-11.1 et seq.), to delegate
6 managerial functions. All of the provisions in this article may be
7 modified or overridden by the express terms of the governing
8 instrument, except for the fundamental obligations to act in good
9 faith for the benefit of the beneficiaries and in accordance with the
10 terms of the governing instrument creating the trust.

11 Article 8 addresses liability of trustees and trustee dealings with
12 persons other than beneficiaries. With respect to the rights of
13 beneficiaries: 3B:31-70 lists the remedies for breach of trust;
14 3B:31-71 specifies how money damages are to be determined; and
15 3B:31-73 and 3B:31-76 specify certain trustee defenses, including
16 the addition of a statute of limitations for claims alleging breach of
17 trust (3B:31-73) and a provision on enforcing exculpatory clauses
18 (3B:31-76). The provision in the Uniform Trust Code concerning
19 attorney’s fees in suits against trustees is not included in the bill.

20 Article 9 of the bill contains miscellaneous administrative
21 provisions. Section 3B:31-81 clarifies the status of the bill’s
22 provisions under the federal statutory law regarding electronic
23 records and signatures. Section 3B:31-82 is a severability clause.
24 Section 3B:31-83 states that the provisions of the trust code
25 generally apply to trusts created before, on or after the effective
26 date.

27 The bill repeals three sections of existing law that are
28 unnecessary or are inconsistent with its provisions: N.J.S.3B:11-5,
29 N.J.S.3B:11-6, N.J.S.3B:11-7, and section 1 of P.L.2001, c.144
30 (C.3B:11-38).

31 The Uniform Trust Code contained two additional articles which
32 have not been included in this bill. Article 2 of the Uniform Trust
33 Code concerned the jurisdiction of the court. In New Jersey, these
34 matters are controlled by court rule. Article 9 of the Uniform Trust
35 Code is the “Prudent Investor Act,” which has already been enacted
36 in this State by P.L.1997, c.26 (C.3B:20-11.1 et seq.).

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2915

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 22, 2014

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2915.

This bill would supplement and revise the State's existing laws concerning trusts. In 2000, the National Conference of Commissioners on Uniform State Laws (now known as the Uniform Law Commission) promulgated the first national codification of the law of trusts: the Uniform Trust Code. The purpose of the code is to provide states with a model uniform trust act that would allow for precise, comprehensive, and easily accessible guidance on trust law questions. Most of the provisions of the model act, which has been revised by the commission several times, are default rules that apply only if the terms of the trust instrument fail to address or insufficiently cover a particular issue. The model act also includes several innovative provisions, which have been incorporated into this bill, including: specification of the rules of trust that are not subject to override in the trust's terms, comprehensive rules on representation of beneficiaries, rules on trust modification and termination that will enhance flexibility, and the inclusion of an article collecting the special rules pertaining to revocable trusts. While this bill is modeled on the commission's Uniform Trust Code, it has been changed and adapted to fit within New Jersey's existing trust law.

Article 1 of the bill contains definitions and general provisions. The provisions of this article include: section 3B:31-3, which defines certain terms used in the bill; section 3B:31-5, which enumerates certain rules that cannot be waived in the terms of the trust; section 3B:31-7, which establishes rules regarding the governing law of a trust; section 3B:31-8, which sets forth a procedure for changing the situs (principal place of administration) of a trust; and section 3B:31-11, which provides statutory authority for the nonjudicial settlement of a trustee's accounts and other matters related to trust administration.

Article 2 of the bill concerns representation of beneficiaries, including what is known as virtual representation. Section 3B:31-13 is the introductory section, laying out the scope of the article. Sections 3B:31-14 through 3B:31-17 cover the different types of representation. 3B:31-14 deals with representation by the holder of a general

testamentary power of appointment. Section 3B:31-15 deals with representation by a fiduciary, whether of an estate, trust, conservatorship, or guardianship. The section also allows a parent without a conflict of interest to represent and bind a minor or unborn child. Section 3B:31-16 is the virtual representation provision, providing for representation of and the giving of a binding consent by another person having a substantially identical interest with respect to the particular issue. Section 3B:31-17 authorizes the court to appoint a representative to represent the interests of unrepresented persons for whom the court concludes the other available representation might be inadequate.

Article 3 of the bill deals with how a trust is validly created, modified and terminated. Sections 3B:31-18 through 3B:31-25 deal with the creation of a trust and the purposes for a trust. Sections 3B:31-18 and 3B:31-19 state the method and requirements for creation of a trust, including the requirement that the same person not be the sole trustee and the sole beneficiary. Section 3B:31-20 recognizes the validity of trusts created in other jurisdictions provided certain requirements are met, including the requirement that the trust be in writing. The requirement that the trust be in writing is a deviation from the Uniform Trust Code, which allows for trusts to be created orally. Section 3B:31-21 concerns the purposes of a trust and states that a trust generally may be enforced if its purposes are lawful, not contrary to public policy, and possible to achieve. Under section 3B:31-23, a trust induced by fraud or duress is not valid. Section 3B:31-24 adopts a broader provision concerning trusts for the care of animals and section 3B:31-25 addresses situations where non-charitable trusts without ascertainable beneficiaries are valid.

Sections 3B:31-26 through 3B:31-33 deal with the modification and termination of a trust. These provisions deal with the purposes and procedures for modification and termination. The general provision is contained in section 3B:31-26, which summarizes the grounds on which a trust may be terminated and specifies which persons may bring an action to terminate a trust. Section 3B:31-27 describes the circumstances when a non-charitable trust may be compelled by the beneficiaries, with or without the consent of the settlor. Under section 3B:31-28, a court may modify the administrative or dispositive terms of a trust if doing so will further the purposes of the trust. Section 3B:31-29 addresses modification or termination of a charitable trust and section 3B:31-30 addresses modification or termination of an uneconomical trust. Section 3B:31-31 provides for the reformation of a trust to conform to a settlor's probable intent and is designed to be consistent with New Jersey's probable intent doctrine as it applies to trusts under subsection b. of section 28 of P.L.2004, c.132 (C.3B:3-33.1). Section 3B:31-33 permits modification to achieve a settlor's tax objectives, consistent with existing New Jersey law. Section 3B:31-34 provides for the

combination of two or more trusts into a single trust and the division of a single trust into two or more trusts, provided the requirements of the section are met. This provision is similar to existing New Jersey law under subsection r. of N.J.S.3B:14-23.

Article 4 deals with spendthrift provisions in trusts. This article was modified to preserve certain aspects of current New Jersey law. For example, the phrase “except as otherwise provided by law” was added to section 3B:31-35 to clarify that the changes are not intended to effect other existing provisions of statutory law including: R.S.25:2-1 et seq. (protection from attachment in the case of a self-settled trust that is a qualified retirement account); N.J.S.17B:24-6 (the inability of a creditor to attach proceeds of life insurance policies); N.J.S.17B:24-7 (the inability of creditors to attach annuity proceeds); N.J.S.17B:24-8 (the inability of creditors to attach health and disability insurance benefits); and, N.J.S.17B:24-9 (the inability of creditors to attach proceeds of group insurance policies).

Section 3B:31-37, concerning exceptions to spendthrift provisions, was revised and is not similar to the comparable provision of the Uniform Trust Code. The Uniform Trust Code provides that there are certain creditors, known as “exception creditors,” that can attach a trust with a spendthrift provision. Other “exception creditors” in the Uniform Trust Code would be (i) child support; (ii) a spouse; (iii) a former spouse who has a judgment for support or maintenance; (iv) a judgment creditor who has provided services for the protection of a beneficiary’s interest; and (v) governmental claims. In New Jersey there are certain recognized creditors that are “excepted” from the application of the spendthrift clause, thus making additional provisions unnecessary. Adding additional classes of exception creditors, as the Uniform Trust Code proposes, has drawn national criticism. This provision is not included in the bill. Instead, section 3B:31-37 creates a type of trust for the young or disabled, known as a “special needs trust,” which would have certain special protections from creditors.

Sections 3B:31-39 through 3B:31-41 codify certain rules already in place for trusts and make certain changes necessary to implement the provisions of section 3B:31-37 concerning special needs trusts.

Article 5 addresses the use of revocable trusts as alternatives to wills and seeks to clarify certain issues in connection with the use of revocable trusts. Section 3B:31-42 provides that the capacity required to create, amend or revoke a trust is the same as that required to execute a will. Section 3B:31-43 provides that a trust is revocable unless the terms of a trust expressly provide that it is irrevocable, or unless there is clear and convincing evidence that it is irrevocable and sets forth the circumstances in which a settlor, a settlor’s attorney in fact, or guardian may revoke or amend a revocable trust. Section 3B:31-44 provides that the trustee of a revocable trust is responsible only to the settlor of the trust. Section 3B:31-45 establishes time limits on contesting the validity of a revocable trust after the death of

the settlor, which generally conform to the time limits for contesting the probate of a will. Section 3B:31-45 also protects a trustee who makes distributions from the trust after the settlor's death unless the trustee knows of a pending or possible contest.

Article 6 of the bill contains a series of default rules dealing with the office of trustee, many of which are already dealt with and firmly established in chapters 11, 14 and 18 of Title 3B of the New Jersey Statutes, New Jersey Rules of Court, and New Jersey case law. Except for the court's authority to issue letters of testamentary trusteeship and to order bond, all of the provisions of Article 6 are subject to modification by the express terms of the governing trust instrument.

Sections 3B:31-46 and 3B:31-47 address the process of qualifying a trustee, including procedures for accepting or declining the office of trustee and bonding the trustee. Section 3B:31-48 addresses the duties and responsibilities of and other issues that may arise between or among co-trustees. For example, this section permits co-trustees to act by majority action and specifies how and what happens when one of several trustees dissents from a course of action and the extent to which the others shall act when one is unable or has properly delegated performance of a function.

Sections 3B:31-49 through 3B:31-52 address changes in the office of trustee including: when and how a vacancy is filled, the procedure for resignation, grounds for removal, and the duties and obligations of a resigning or removed trustee. Certain provisions of the comparable article of the Uniform Trust Code were deemed redundant and thus not included in this bill.

Section 3B:31-53 prescribes standards for reimbursement for expenses advanced by the trustee. Since the matter of trustee compensation is addressed comprehensively in chapter 18 of Title 3B of the New Jersey Statutes, the provision in the Uniform Trust Code concerning trustee compensation has not been included in the bill.

Article 7 sets forth the basic duties and powers of trustees. This article expands on the authorization in the "Prudent Investor Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.), to delegate managerial functions. All of the provisions in this article may be modified or overridden by the express terms of the governing instrument, except for the fundamental obligations to act in good faith for the benefit of the beneficiaries and in accordance with the terms of the governing instrument creating the trust.

Article 8 addresses liability of trustees and trustee dealings with persons other than beneficiaries. With respect to the rights of beneficiaries: 3B:31-70 lists the remedies for breach of trust; 3B:31-71 specifies how money damages are to be determined; and 3B:31-73 and 3B:31-76 specify certain trustee defenses, including the addition of a statute of limitations for claims alleging breach of trust (3B:31-73) and a provision on enforcing exculpatory clauses (3B:31-76). The

provision in the Uniform Trust Code concerning attorney's fees in suits against trustees is not included in the bill.

Article 9 of the bill contains miscellaneous administrative provisions. Section 3B:31-81 clarifies the status of the bill's provisions under the federal statutory law regarding electronic records and signatures. Section 3B:31-82 is a severability clause. Section 3B:31-83 states that the provisions of the trust code generally apply to trusts created before, on, or after the effective date.

The bill repeals three sections of existing law that are unnecessary or are inconsistent with its provisions: N.J.S.3B:11-5, N.J.S.3B:11-6, N.J.S.3B:11-7, and section 1 of P.L.2001, c.144 (C.3B:11-38).

The Uniform Trust Code contained two additional articles which have not been included in this bill. Article 2 of the Uniform Trust Code concerned the jurisdiction of the court. In New Jersey, these matters are controlled by court rule. Article 9 of the Uniform Trust Code is the "Prudent Investor Act," which has already been enacted in this State by P.L.1997, c.26 (C.3B:20-11.1 et seq.).

The committee amendments add additional provisions, not contained in the Uniform Trust Code, concerning the investment functions of fiduciaries. Under the amendments, where a governing instrument gives authority to one or more persons to direct, consent to or disapprove a fiduciary's actual or proposed investment decisions, such persons would be considered to be investment advisers and fiduciaries when exercising such authority unless the governing instrument otherwise provides. The amendments provide that if a governing instrument provides that a fiduciary is to follow the direction of an investment adviser, and the fiduciary acts in accordance with such a direction, then except in cases of wilful misconduct or gross negligence the fiduciary would not be liable for any loss resulting directly or indirectly from any such act.

The committee amendments further provide that if a governing instrument provides that a fiduciary is to make decisions with the consent of an investment adviser, then except in cases of wilful misconduct or gross negligence on the part of the fiduciary, the fiduciary would not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such investment adviser's failure to provide such consent after having been requested to do so by the fiduciary.

The amendments provide that an "investment decision" means, with respect to any investment, the retention, purchase, sale, exchange, tender or other transaction affecting the ownership thereof or rights therein and with respect to nonpublicly traded investments, the valuation thereof, and an adviser with authority with respect to such decisions is an investment adviser.

Under the amendments, whenever a governing instrument provides that a fiduciary is to follow the direction of an investment adviser with respect to investment decisions, then, except to the extent that the

governing instrument provides otherwise, the fiduciary would have no duty to:

- (1) Monitor the conduct of the investment adviser;
- (2) Provide advice to the investment adviser or consult with the investment adviser; or
- (3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the fiduciary would or might have exercised the fiduciary's own discretion in a manner different from the manner directed by the investment adviser.

Absent clear and convincing evidence to the contrary, the actions of the fiduciary pertaining to matters within the scope of the investment adviser's authority, such as confirming that the investment adviser's directions have been carried out and recording and reporting actions taken at the investment adviser's direction, would be presumed to be administrative actions taken by the fiduciary solely to allow the fiduciary to perform those duties assigned to the fiduciary under the governing instrument. Such administrative actions would not be deemed to constitute an undertaking by the fiduciary to monitor the investment adviser or otherwise participate in actions within the scope of the investment adviser's authority.

The committee amendments also corrected several references in the bill to the term "spouse," replacing it with "spouse or partner in a civil union" in accordance with the provisions of P.L.2006, c.103, which established civil unions in this State.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2915

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 2015

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2915 (1R).

This bill, as amended, titled the “Uniform Trust Code,” would supplement and revise the State’s existing laws concerning trusts. The bill is largely based upon model legislation prepared by the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws), with some parts modified or altogether not included in order to better fit within New Jersey’s existing scheme on trust law. Most significantly, the model code contained two articles which have not been included in this bill: Article 2 concerning the jurisdiction of the court, as these matters are controlled by court rule and not statutory law; and Article 9 concerning prudent investor standards, as such standards are already part of the statutory law in this State, known as the “Prudent Investor Act,” P.L.1997, c.26 (C.3B:20-11.1 et seq.).

ARTICLE 1 (3B:31-1 THROUGH 3B:31-12): This article provides the definitions and general provisions to be used throughout the bill, which would largely comprise a new chapter in Title 3B of the New Jersey Statutes. Among the provisions of general applicability are those detailing mandatory requirements for the creation and operation of trusts that cannot be modified or eliminated by the agreed upon terms of a trust; these would include the duty of a trustee to act in good faith, the rights of certain creditors and assignees to reach a beneficiary’s trust interest, and the periods of limitation for commencing judicial proceedings. The article also covers the means for determining which jurisdiction’s law governs a trust, as well as determining the location of a trust’s principal place of administration. Additionally, the article would permit the nonjudicial settlement of a trustee’s accounts and other matters related to trust administration, so long as any such settlement does not produce a result contrary to what is allowed in trust law, including, but not limited to, the modification or termination of a trust in an impermissible manner.

ARTICLE 2 (3B:31-13 THROUGH 3B:31-17). Article 2 sets out guidelines with regard to the representation of a trust in a transaction or proceeding. Representation may be provided by the holder of general testamentary power of appointment, by a fiduciary or a parent, or by virtual representation. Virtual representation allows a minor, incapacitated person, unborn individual, or a person whose identity or location is unknown to be represented by another having a substantially identical interest concerning a particular question or dispute. If a court determines that an interest is not represented or that available representation might not be adequate, the court may appoint a guardian ad litem or other representative for a minor, incapacitated person, unborn individual, or person whose identity or location is unknown.

ARTICLE 3 (3B:31-18 THROUGH 3B:31-34). This article details the methods and requirements for the creation, modification, and termination of a trust.

The methods to create a trust would be: (1) the transfer of property to a trustee under a written instrument during the life of a settlor (a person who creates or contributes property to a trust), or by will or disposition upon the settlor's death; (2) a written declaration by the owner of property that the owner holds identifiable property as trustee; or (3) a written power of appointment in favor of a trustee. A trust would only be created if there is a definite beneficiary for the trust, or the trust is a charitable trust, a trust for the care of an animal, or a trust for a noncharitable purpose. The written instrument creating a trust or transferring property to a trust would not be invalid or ineffective because the transferee is identified as the trust rather than the trustee thereof.

A trust may generally be enforced if its purposes are lawful, not contrary to public policy, and possible to achieve. Any trust, to the extent its creation was induced by fraud, duress, or undue influence, would be void to such extent.

As to the modification and termination of a trust, the article sets forth the means by which a trustee or beneficiary may commence proceedings to approve or disapprove a proposed trust modification or termination. Additionally, a trust is subject to termination to the extent it is revoked or expires pursuant to its own 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.

A trustee for a trust consisting of property valued at less than \$100,000 may, after notice to qualified beneficiaries, terminate the trust if that trustee concludes that the value of the trust property is insufficient to justify the costs of administration.

A 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 would further the purposes of the trust. To the extent practicable, any such modification should be

made in accordance with the settlor's probable intent. The court may also reform a trust, even if unambiguous, to conform the terms to the settlor's probable intent if it is proved by clear and convincing evidence that there was a mistake of fact or law, whether in expression or inducement.

Provisions in the article further provide that the court may modify the terms of a trust to achieve a settlor's tax objectives, so long as done in a manner that is not contrary to the settlor's probable intent.

ARTICLE 4 (3B:31-35 THROUGH 3B:31-41). This article establishes guidelines concerning creditor's claims, and spendthrift and discretionary trusts.

A spendthrift provision restricts a beneficiary's creditor from attaching the beneficiary's interest in the trust until there is a distribution to the beneficiary. A spendthrift provision is created by a reference to a "spendthrift trust," or words of similar import, in the trust instrument, that would restrain both voluntary and involuntary transfer of the beneficiary's trust interest.

If there is no spendthrift provision in a trust, a creditor may reach a beneficiary's interest by attachment of future or present distributions before the trust is distributed, subject to New Jersey law concerning wage executions (N.J.S.2A:17-50 through N.J.S.2A:17-56, and sections 3 and 4 of P.L.1981, c. 203 (C.2A:17-56.1a and C.2A:17-56.6)).

The article also addresses a type of trust for the young, the elderly, or the disabled, known as a "special needs trust," or "OBRA '93" trust. Such a trust would limit distributions during the term of the trust to benefit one or more "protected persons," such as a person who is aged, blind, disabled, developmentally disabled, or a person under the age of 18, or over the age of 18 and a full-time student, with a serious disability that may prevent self-sufficiency.

A creditor could not reach or attach an interest in a special needs trust, nor require the trustee to distribute to satisfy a creditor's claim. A special needs trust would not be required to repay government aid provided to the protected person unless the aid was provided on the basis that the trust would repay the aid when the person dies, the trust is terminated, and the special needs trust instrument expressly calls for such repayment. This provision would not apply to first-party, self-settled OBRA '93 trusts.

Also, a creditor may not compel a trustee to make a distribution to a beneficiary that is discretionary.

Regardless of any spendthrift provision in a trust, the property of a revocable trust is subject to claims by a settlor's creditor during the settlor's lifetime. With respect to an irrevocable trust, a creditor (or assignee of the settlor) may obtain the maximum amount available that can be distributed to or for the settlor's benefit. After the settlor's death, and subject to the settlor's right to direct the source from which liabilities are paid, the property of a trust revocable at the settlor's

death is subject to creditor claims, cost of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and to a surviving spouse or civil union partner and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, and expenses.

ARTICLE 5 (3B:31-42 THROUGH 31-45). This article addresses the use of revocable trusts as alternatives to wills and seeks to clarify certain issues in connection with the use of revocable trusts. A revocable trust is one in which the settlor retains the power to control, amend, revoke, or add property to the trust similar to a will. The article sets forth the circumstances in which a settlor, a settlor's attorney in fact, or guardian may revoke or amend a revocable trust. A trust is revocable unless the terms of a trust expressly provide that it is irrevocable, or unless there is clear and convincing evidence that it is irrevocable. The trustee of a revocable trust is responsible only to the settlor of the trust. The article establishes time limits on contesting the validity of a revocable trust after the death of the settlor, which generally conform to the time limits for contesting the probate of a will. The bill also protects a trustee who makes distributions from the trust after the settlor's death, unless the trustee knows of a pending or possible contest concerning the validity of the trust.

ARTICLE 6 (3B:31-46 THROUGH 3B:31-53). This article provides a series of default rules concerning the office of trustee, many of which are already established in chapters 11, 14 and 18 of Title 3B of the New Jersey Statutes, New Jersey Rules of Court, and New Jersey case law. Except for the court's authority to issue letters of testamentary trusteeship and to order bond, all of the provisions of Article 6 are subject to modification by the express terms of the governing trust instrument.

The article addresses the process of qualifying a trustee, including procedures for accepting or declining the office of trustee and bonding the trustee. It also establishes the duties and responsibilities between or among co-trustees, and provides standards for addressing various issues that may arise with co-trustees. For example, provisions would permit co-trustees to act by majority action and specify how and what happens when one of several trustees dissents from a course of action, as well as the extent to which the others must act when one is unable or has properly delegated performance of a function.

The article addresses changes in the office of trustee including: when and how a vacancy is filled, the procedure for resignation, grounds for removal, and the duties and obligations of a resigning or removed trustee. The settlor, a co-trustee, a beneficiary or the court on its own initiative may request that a trustee be removed on grounds as set forth in N.J.S.3B:14-21 (such as failing to file an inventory, render an account, refusal to abide by a court order, embezzlement, or neglect, refusal, or inability to perform trustee duties).

The article also prescribes standards for reimbursement for expenses advanced by the trustee. Since the matter of trustee compensation is addressed comprehensively in chapter 18 of Title 3B of the New Jersey Statutes, the provision in the Uniform Trust Code concerning trustee compensation has not been included in the bill.

ARTICLE 7 (3B:31-54 THROUGH 3B:31-70). This article sets forth the basic duties and powers of trustees. The basic duty is the duty of loyalty which requires a trustee to manage the trust solely in the best interests of the beneficiaries and to avoid conflicts of interest between the interests of a trustee and that of a beneficiary. The other duties include the duty of impartiality, the obligation of prudent administration, the obligation to incur only reasonable costs, and the obligation to apply the trustee's special skills when there is reliance on those skills in the naming of the trustee. A trustee may delegate certain duties and powers, but is held to a prudent standard of appointment in so doing. The agent of any such delegation is held to the fiduciary standard of the trustee in the exercise of the trustee's delegated duties and powers.

With regard to the trustee's duty to disclose and make reports, provisions require the trustee to keep qualified beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.

The article also includes a section, not included in the model legislation, concerning the powers of fiduciaries to direct investment decisions for a trust. When a governing instrument gives authority to one or more persons to direct, consent to, or disapprove a fiduciary's actual or proposed investment decisions, such persons would be considered to be investment advisers and fiduciaries when exercising such authority unless the governing instrument otherwise provides.

The section provides that if a governing instrument states that the fiduciary is to *follow the direction* of an investment adviser, and the fiduciary acts in accordance with such a direction, then except in cases of willful misconduct or gross negligence, the fiduciary would not be liable for any loss resulting directly or indirectly from any such act. Except to the extent that the governing instrument provides otherwise, the fiduciary, acting under the instrument to follow the investment adviser's direction, would have no duty to: (1) monitor the conduct of the investment adviser; (2) provide advice to the investment adviser or consult with the investment adviser; or (3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the fiduciary would or might have exercised the fiduciary's own discretion in a manner different from the manner directed by the investment adviser.

If the governing instrument provides that a fiduciary is to *make decisions with the consent* of an investment adviser, then except in cases of willful misconduct or gross negligence on the part of the fiduciary, the fiduciary would not be liable for any loss resulting

directly or indirectly from any act taken or omitted as a result of such investment adviser's failure to provide such consent after having been requested to do so by the fiduciary.

Absent clear and convincing evidence to the contrary, the actions of the fiduciary pertaining to matters within the scope of the investment adviser's authority, such as confirming that the investment adviser's directions have been carried out and recording and reporting actions taken at the investment adviser's direction, would be presumed to be administrative actions taken by the fiduciary solely to allow the fiduciary to perform those duties assigned to the fiduciary under the governing instrument. Such administrative actions would not be deemed to constitute an undertaking by the fiduciary to monitor the investment adviser or otherwise participate in actions within the scope of the investment adviser's authority.

ARTICLE 8 (3B:31-71 THROUGH 3B:31-81). This article addresses the liability of a trustee and the rights of persons dealing with the trustee. It provides for remedies when there is a breach of an obligation by the trustee and specifies how money damages are to be determined. It also specifies certain trustee defenses, including the addition of a statute of limitations for claims alleging breach of trust. Generally, a beneficiary could not commence a proceeding for breach of trust against a trustee more than six months after the date the beneficiary (or beneficiary's representative) received a report disclosing the existence of a potential claim. If such a report was not applicable to a potential claim, the claim would have to be filed within five years of the following first-occurring event: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust. However, the foregoing would not bar any proceeding by a beneficiary until five years after such beneficiary has attained majority, has knowledge of the existence of the trust and has knowledge that such beneficiary is or was a beneficiary of the trust, if these factors were applicable to the beneficiary's situation.

ARTICLE 9 (3B:31-82 THROUGH 3B:31-84). Miscellaneous administrative provisions are addressed in this final article, such as clarifying the status of the proposed code's provisions under the federal statutory law regarding electronic records and signatures. The article also provides a severability clause so that if any provision of the code is held invalid, the invalidity does not affect other provisions of the code.

The provisions of the code, as stated in this article, would apply to trusts created before, on, or after the effective date of the bill.

ADDITIONAL SECTIONS

In addition to the new supplemental chapter, described above, the bill amends existing law, at N.J.S.3B:14-37, clarifying that a person, other than a beneficiary, who in good faith assists a fiduciary or deals

with the fiduciary for value is protected as if the fiduciary properly exercised his power. A similar provision would be added to the section concerning a person who in good faith assists a former trustee, without knowledge that the trusteeship was terminated, to protect that person from liability as if the former trustee were still a trustee.

Lastly, the bill repeals four sections of existing law that are unnecessary or are inconsistent with the bill's provisions: N.J.S.3B:11-5 (trustee's death or failure to act; appointment of new trustee by court; powers); N.J.S.3B:11-6 (vacancy in trusteeship upon discharge or removal); N.J.S.3B:11-7 (power of new, substituted or additional trustees); and section 1 of P.L.2001, c.144 (C.3B:11-38) (trust funds for pets).

The bill, as amended and reported by the committee, is identical to Senate Bill No. 2035, also amended and reported today by the committee.

The committee amendments to the bill:

- add a definition for "beneficiary," to specify that the term includes persons: who have any present or future trust interest, vested or contingent; who, in a capacity other than that of a trustee, hold appointment power over trust property; who are owners in a trust interest by assignment or other transfer; or who, relating to a charitable trust only, are entitled to enforce the trust;
- expand the definition of "trustee" set forth in existing law to include a corporate entity in its capacity as a trustee or co-trustee where two or more are appointed;
- provide that a nonjudicial settlement of a trust matter cannot be used to produce results contrary to the statutory trust law, including, but not limited to, attempts to terminate or modify a trust in an impermissible manner;
- indicate that a settlor may not represent and bind a beneficiary with respect to the termination or modification of a noncharitable irrevocable trust;
- clarify that a trustee's power to select a beneficiary from an indefinite class is not void pursuant to section 14 of P.L.1999, c.159 (C.46:2F-10), which repealed the Uniform Statutory Rule Against Perpetuities, or any other applicable rule against perpetuities or restraint on alienation;
- eliminate a provision which would have allowed a settlor general authority to bring a proceeding to approve or disapprove a proposed modification or termination of a trust; instead, a settlor may only act to modify a charitable trust;
- provide that a noncharitable irrevocable trust may be modified or terminated upon consent of the trustee, not the settlor as originally provided in the underlying bill;

- add, regarding a trust spendthrift provision, that such a provision does not prevent the appointment of interests through the exercise of a power of appointment;
- grant, to a trustee of a special needs trust, broad discretion to make trust distributions, and require that such a trust have at least one protected person as a beneficiary;
- remove language concerning creditor claims on an irrevocable trust, so that assets of such a trust may still be subject to a creditor's claim even when a trustee's authority to pay taxing authorities directly, or reimburse the settlor for trust income tax payable by the settlor, is solely discretionary;
- move the new section concerning the investment functions of fiduciaries, as described above, into the proposed new chapter on trusts in Title 3B (section 1 of the underlying bill), instead of these provisions being contained in a stand-alone section (section 3 of the underlying bill – which, accordingly, is omitted in its entirety by the amendments) ;
- require that a trustee keep qualified beneficiaries reasonably informed about the administration of a trust and of the material facts necessary for them to protect their interests;
- provide that the provisions establishing a general five-year statute of limitations on actions against a trustee would not bar a proceeding by a beneficiary until five years after such beneficiary has attained majority, has knowledge of the existence of the trust and has knowledge that such beneficiary is or was a beneficiary of the trust, if these factors were applicable to the beneficiary's situation; and
- correct references to the term “co-trustee,” as well as correct and update internal cross-references and external references to existing trust law and other relevant applicable law.

SENATE, No. 2035

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MAY 5, 2014

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator PETER J. BARNES, III

District 18 (Middlesex)

SYNOPSIS

“Uniform Trust Code.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/20/2014)

1 AN ACT concerning trusts, supplementing Title 3B of the New
2 Jersey Statutes, enacting additional chapter 31, Uniform Trust
3 Code, amending N.J.S.3B:14-37, and repealing N.J.S.3B:11-5,
4 N.J.S.3B:11-6, N.J.S.3B:11-7, and P.L.2001, c.144.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. An additional chapter, Chapter 31, is added to Title 3B of
10 the New Jersey Statutes as follows:

11
12 CHAPTER 31
13 UNIFORM TRUST CODE

14
15 TABLE OF CONTENTS

16
17 ARTICLE 1
18 GENERAL PROVISIONS AND DEFINITIONS

- 19
20 3B:31-1. Short Title.
21 3B:31-2. Scope.
22 3B:31-3. Definitions.
23 3B:31-4. Knowledge.
24 3B:31-5. Default and Mandatory Rules.
25 3B:31-6. Common Law of Trusts; Principles of Equity.
26 3B:31-7. Governing Law.
27 3B:31-8. Principal Place of Administration.
28 3B:31-9. Methods and Waiver of Notice.
29 3B:31-10. Others Treated as Qualified Beneficiaries.
30 3B:31-11. Nonjudicial Settlement Agreements.
31 3B:31-12. Rules of Construction.

32
33 ARTICLE 2
34 REPRESENTATION

- 35
36 3B:31-13. Representation: Basic Effect.
37 3B:31-14. Representation by Holder of General Testamentary
38 Power of Appointment.
39 3B:31-15. Representation by Fiduciaries and Parents.
40 3B:31-16. Representation by Person Having Substantially
41 Identical Interest.
42 3B:31-17. Appointment of Representative.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Trust; Distribution of Trust Property.

2

3

ARTICLE 6

4

OFFICE OF TRUSTEE

5

6 3B:31-46. Accepting or Declining Trusteeship.

7 3B:31-47. Trustee's Bond.

8 3B:31-48. Cotrustees.

9 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

10 3B:31-50. Resignation of Trustee.

11 3B:31-51. Removal of Trustee.

12 3B:31-52. Delivery of Property by Former Trustee.

13 3B:31-53. Reimbursement of Expenses.

14

15

ARTICLE 7

16

DUTIES AND POWERS OF TRUSTEE

17

18 3B:31-54. Duty to Administer Trust.

19 3B:31-55. Duty of Loyalty.

20 3B:31-56. Duty of Impartiality.

21 3B:31-57. Duty of Prudent Administration.

22 3B:31-58. Costs of Administration.

23 3B:31-59. Duty to Use Special Skills.

24 3B:31-60. Delegation by Trustee.

25 3B:31-61. Powers to Direct.

26 3B:31-62. Control and Protection of Trust Property.

27 3B:31-63. Recordkeeping and Identification of Trust Property.

28 3B:31-64. Duty to Enforce and Defend Claims

29 3B:31-65. Duty to Collect Trust Property and Redress Breaches of
30 Trust.

31 3B:31-66. Duty to Disclose and Discretion to Periodically Report.

32 3B:31-67. Discretionary Powers.

33 3B:31-68. General Powers of Trustee.

34 3B:31-69. Distribution Upon Termination.

35

36

ARTICLE 8

37

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

38

DEALING WITH TRUSTEE

39

40 3B:31-70. Remedies for Breach of Trust.

41 3B:31-71. Damages for Breach of Trust.

42 3B:31-72. Damages in Absence of Breach.

43 3B:31-73. Limitation of Action Against Trustee.

44 3B:31-74. Reliance on Trust Instrument.

45 3B:31-75. Event Affecting Administration or Distribution.

46 3B:31-76. Exculpation of Trustee.

47 3B:31-77. Beneficiary's Consent, Release, or Ratification.

48 3B:31-78. Limitation on Personal Liability of Trustee.

1 3B:31-79. Interest as General Partner.

2 3B:31-80. Certification of Trust.

3

4

ARTICLE 9

5

MISCELLANEOUS PROVISIONS

6

7 3B:31-81. Electronic Records and Signatures.

8 3B:31-82. Severability Clause.

9 3B:31-83. Application to Existing Relationships.

10

11

ARTICLE 1

12

GENERAL PROVISIONS AND DEFINITIONS

13

14 3B:31-1. Short Title.

15 This act shall be known and may be cited as the "Uniform Trust
16 Code."

17

18 3B:31-2. Scope.

19 This act applies to express trusts, charitable or noncharitable, and
20 trusts created pursuant to a statute, judgment, or decree that requires
21 the trust to be administered in the manner of an express trust.

22

23 3B:31-3. Definitions.

24 As used in this act:

25 "Action," with respect to an act of a trustee, includes a failure to
26 act.

27 "Charitable trust" means a trust, or portion of a trust, created for
28 a charitable purpose described in subsection a. of N.J.S.3B:31-22.

29 "Environmental law" means a federal, State, or local law, rule,
30 regulation, or ordinance relating to protection of the environment.

31 "Interests of the beneficiaries" means the beneficial interests
32 provided in the terms of the trust.

33 "Jurisdiction," with respect to a geographic area, includes a state
34 or country.

35 "Power of withdrawal" means a presently exercisable general
36 power of appointment other than a power exercisable only upon
37 consent of the trustee or a person holding an adverse interest.

38 "Property" means anything that may be the subject of ownership,
39 whether real or personal, legal or equitable, or any interest therein.

40 "Qualified beneficiary" means a beneficiary who, on the date the
41 beneficiary's qualification is determined:

42 (1) is a distributee or permissible distributee of trust income or
43 principal;

44 (2) would be a distributee or permissible distributee of trust
45 income or principal if the interests of the distributees described in
46 paragraph (1) terminated on that date; or

47 (3) would be a distributee or permissible distributee of trust
48 income or principal if the trust terminated on that date.

1 "Revocable," as applied to a trust, means revocable by the settlor
2 without the consent of the trustee or a person holding an adverse
3 interest.

4 "Settlor" means a person, including a testator, who creates, or
5 contributes property to, a trust. If more than one person creates or
6 contributes property to a trust, each person is a settlor of the portion
7 of the trust property attributable to that person's contribution except
8 to the extent another person has the power to revoke or withdraw
9 that portion.

10 "Spendthrift provision" means a term of a trust which restrains
11 both voluntary and involuntary transfer of a beneficiary's interest.

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

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

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

23 "Trustee" includes an original, additional, and successor trustee,
24 and a cotrustee.

25

26 3B:31-4. Knowledge.

27 a. Subject to subsection b. of this section, a person has
28 knowledge of a fact if the person:

29 (1) has actual knowledge of it;

30 (2) has received a notice or notification of it; or

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

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

47

48 3B:31-5. Default and Mandatory Rules.

- 1 a. Except as otherwise provided in the terms of the trust, this
2 act governs the duties and powers of a trustee, relations among
3 trustees, and the rights and interests of a beneficiary.
- 4 b. The terms of a trust prevail over any provision of this act
5 except:
- 6 (1) the requirements for creating a trust;
7 (2) the duty of a trustee to act in good faith and in accordance
8 with the purposes of the trust;
9 (3) the requirement that a trust and its terms be for the benefit of
10 its beneficiaries, and that the trust have a purpose that is lawful, not
11 contrary to public policy, and possible to achieve;
12 (4) the power of the court to modify or terminate a trust under
13 N.J.S.3B:31-26 through 3B:31-33;
14 (5) the effect of a spendthrift provision and the rights of certain
15 creditors and assignees to reach a trust as provided in article 4 of
16 this act;
17 (6) the power of the court under N.J.S.3B:31-47 to require,
18 dispense with, or modify or terminate a bond;
19 (7) the duty under subsections a. and b. of N.J.S.3B:31-66 to
20 respond to the request of a qualified beneficiary of an irrevocable
21 trust who has attained the age of 35 years for a copy of the trust
22 instrument or for other information reasonably related to the
23 administration of the trust;
24 (8) the effect of an exculpatory term under N.J.S.3B:31-76;
25 (9) the rights under N.J.S.3B:31-78 through N.J.S.3B:31-80 of a
26 person other than a trustee or beneficiary;
27 (10) periods of limitation for commencing a judicial proceeding;
28 and
29 (11) the power of the court to take such action and exercise such
30 jurisdiction as may be necessary in the interests of justice.

31
32 3B:31-6. Common Law of Trusts; Principles of Equity.

33 The common law of trusts and principles of equity supplement
34 this act, except to the extent modified by this act or another statute
35 of this State.

36
37 3B:31-7. Governing Law.

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

- 39 a. the law of the jurisdiction designated in the terms unless the
40 designation of that jurisdiction's law is contrary to a strong public
41 policy of the jurisdiction having the most significant relationship to
42 the matter at issue; or
43 b. in the absence of a controlling designation in the terms of
44 the trust, the law of the jurisdiction having the most significant
45 relationship to the matter at issue.

46
47 3B:31-8. Principal Place of Administration.

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

5 (1) a trustee maintains a place of business located in or a trustee
6 is a resident of the designated jurisdiction; or

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

9 In the absence of terms of a trust designating the principal place
10 of administration, the initial principal place of administration of a
11 nontestamentary trust shall be this State if the trust is governed by
12 the law of this State, and the principal place of administration of a
13 testamentary trust shall be the jurisdiction in which the decedent
14 was domiciled at the time of death.

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

18 c. The trustee, in furtherance of the duty prescribed by
19 subsection b. of this section, may transfer the trust's principal place
20 of administration to another State or to a jurisdiction outside of the
21 United States.

22 d. The trustee shall notify the qualified beneficiaries of a
23 proposed transfer of a trust's principal place of administration not
24 less than 60 days before initiating the transfer. The notice of
25 proposed transfer shall include:

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

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

30 (3) the date on which the proposed transfer is anticipated to
31 occur; and

32 (4) the date, not less than 60 days after the giving of the notice,
33 by which the qualified beneficiary is required to notify the trustee
34 of an objection to the proposed transfer.

35 e. The authority of a trustee under this section to transfer a
36 trust's principal place of administration terminates if a qualified
37 beneficiary notifies the trustee of an objection to the proposed
38 transfer on or before the date specified in the notice, unless the
39 trustee secures judicial approval for the transfer pursuant to
40 N.J.S.3B:21-2 through N.J.S.3B:21-4.

41 f. In connection with a transfer of the trust's principal place of
42 administration, the trustee may transfer some or all of the trust
43 property to a successor trustee designated in the terms of the trust or
44 appointed pursuant to N.J.S.3B:31-49.

45

46 3B:31-9. Methods and Waiver of Notice.

47 a. Notice to a person under this act or the sending of a
48 document to a person under this act shall be accomplished in a

1 manner reasonably suitable under the circumstances and likely to
2 result in receipt of the notice or document. Permissible methods of
3 notice or for sending a document include first-class mail, personal
4 delivery, delivery to the person's last known place of residence or
5 place of business, or a properly directed textual electronic message.

6 b. Notice otherwise required under this act or a document
7 otherwise required to be sent under this act need not be provided to
8 a person whose identity or location is unknown to and not
9 reasonably ascertainable by the trustee.

10 c. Notice under this act or the sending of a document under this
11 act may be waived by the person to be notified or sent the
12 document.

13 d. Notice of a judicial proceeding shall be given as provided in
14 the applicable rules of civil procedure.

15

16 3B:31-10. Others Treated as Qualified Beneficiaries.

17 a. Whenever notice to qualified beneficiaries of a trust is
18 required under this act, the trustee shall also give notice to any other
19 beneficiary who has sent the trustee a request for notice.

20 b. A charitable organization expressly designated to receive
21 distributions under the terms of a charitable trust or a person
22 appointed to enforce a trust created for the care of an animal or
23 another noncharitable purpose as provided in N.J.S.3B:31-24 or
24 N.J.S.3B:31-25 has the rights of a qualified beneficiary under this
25 act.

26 c. The attorney general of this State has the rights of a
27 qualified beneficiary with respect to a charitable trust having its
28 principal place of administration in this State.

29

30 3B:31-11. Nonjudicial Settlement Agreements.

31 a. For purposes of this section, "interested persons" means
32 persons whose consent would be required in order to achieve a
33 binding settlement were the settlement to be approved by the court.

34 b. Except as otherwise provided in subsection c. of this section
35 or any other provision of this chapter, interested persons may enter
36 into a binding nonjudicial settlement agreement with respect to any
37 matter involving a trust.

38 c. A nonjudicial settlement agreement is valid only to the
39 extent it does not violate a material purpose of the trust and
40 includes terms and conditions that could be properly approved by
41 the court under this act or other applicable law.

42 d. Matters that may be resolved by a nonjudicial settlement
43 agreement include:

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

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

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

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

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

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

5 e. Any interested person may request the court to approve a
6 nonjudicial settlement agreement, to determine whether the
7 representation as provided in article 2 was adequate, and to
8 determine whether the agreement contains terms and conditions the
9 court could have properly approved.

10
11 3B:31-12. Rules of Construction.

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

16
17 ARTICLE 2
18 REPRESENTATION
19

20 3B:31-13. Representation: Basic Effect.

21 a. Notice to a person who may represent and bind another
22 person under this article has the same effect as if notice were given
23 directly to the other person.

24 b. The consent of a person who may represent and bind another
25 person under this article is binding on the person represented unless
26 the person represented objects to the representation before the
27 consent would otherwise have become effective.

28 c. Except as otherwise provided in N.J.S.3B:31-43, a person
29 who under this article may represent a settlor who lacks capacity
30 may receive notice and give a binding consent on the settlor's
31 behalf.

32
33 3B:31-14. Representation by Holder of General Testamentary
34 Power of Appointment.

35 a. To the extent there is no conflict of interest between the
36 holder of a general testamentary power of appointment and the
37 persons represented with respect to the particular question or
38 dispute, the holder may represent and bind persons whose interests,
39 as permissible appointees, takers in default, or otherwise, are
40 subject to the power.

41 b. A holder of a general power of appointment in favor of the
42 holder or holder's estate shall not be deemed to have a conflict with
43 permissible appointees and takers in default.

44
45 3B:31-15. Representation by Fiduciaries and Parents.

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

- 1 a. a guardian of the property may represent and bind the estate
2 that the guardian of the property controls;
- 3 b. a guardian of the person may represent and bind the ward if
4 a guardian of the property has not been appointed;
- 5 c. an agent having authority to act with respect to the particular
6 question or dispute may represent and bind the principal;
- 7 d. a trustee may represent and bind the beneficiaries of the
8 trust;
- 9 e. a personal representative of a decedent's estate may
10 represent and bind persons interested in the estate; and
- 11 f. a parent may represent and bind the parent's minor or unborn
12 child if a guardian for the child has not been appointed.

13
14 3B:31-16. Representation by Person Having Substantially
15 Identical Interest.

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

23
24 3B:31-17. Appointment of Representative.

25 a. If the court determines that an interest is not represented
26 under this article or that the otherwise available representation
27 might be inadequate, the court may appoint a guardian ad litem or
28 other representative to receive notice, give consent, and otherwise
29 represent, bind, and act on behalf of a minor, incapacitated, or
30 unborn individual, or a person whose identity or location is
31 unknown. A guardian ad litem or other representative may be
32 appointed to represent several persons or interests.

33 b. A guardian ad litem or other representative may act on
34 behalf of the individual or person represented with respect to any
35 matter arising under this act, whether or not a judicial proceeding
36 concerning the trust is pending.

37 c. A guardian ad litem or other representative may consider the
38 benefit accruing to the living members of the individual's family.

39

40

ARTICLE 3

41

CREATION, VALIDITY, MODIFICATION AND

42

TERMINATION OF TRUST

43

44 3B:31-18. Methods of Creating Trust.

45 A trust may be created by:

- 46 a. transfer of property under a written instrument to another
47 person as trustee during the settlor's lifetime or by will or other
48 written disposition taking effect upon the settlor's death;

1 b. written declaration by the owner of property that the owner
2 holds identifiable property as trustee; or

3 c. written exercise of a power of appointment in favor of a
4 trustee.

5

6 3B:31-19. Requirements for Creation.

7 a. A trust is created only if:

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

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

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

11 (a) a charitable trust;

12 (b) a trust for the care of an animal, as provided in N.J.S.3B:31-
13 24; or

14 (c) a trust for a noncharitable purpose, as provided in
15 N.J.S.3B:31-25;

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

17 (5) the same person is not the sole trustee and sole beneficiary of
18 all beneficial interests.

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

22 c. A power in a trustee to select a beneficiary from an
23 indefinite class is valid. If the power is not exercised within a
24 reasonable time, the power fails and the property subject to the
25 power passes to the persons who would have taken the property had
26 the power not been conferred.

27

28 3B:31-20. Written Trusts Created in Other Jurisdictions.

29 A written trust not created by will is validly created if its
30 creation complies with the law of the jurisdiction in which:

31 a. the trust instrument was executed;

32 b. at the time the trust was created, the settlor was domiciled,
33 had a place of abode, or was a national;

34 c. at the time the trust was created, a trustee was domiciled or
35 had a place of business; or

36 d. at the time the trust was created, any trust property was
37 located.

38

39 3B:31-21. Trust Purposes.

40 A trust may be enforced only to the extent its purposes are
41 lawful, not contrary to public policy, and possible to achieve. A
42 trust and its terms shall be for the benefit of its beneficiaries.

43

44 3B:31-22. Charitable Purposes; Enforcement.

45 a. A charitable trust is one that is created for the relief of
46 poverty, the advancement of education or religion, the promotion of
47 health, governmental or municipal purposes, or other purpose the
48 achievement of which is beneficial to the community.

1 b. If the terms of a charitable trust do not state a particular
2 charitable purpose or beneficiary, and the trustee or other person
3 authorized to state a particular charitable purpose or name a
4 particular charitable beneficiary fails to make a selection, the court
5 may select one or more charitable purposes or beneficiaries. The
6 selection shall be consistent with the settlor's intention to the extent
7 it can be ascertained.

8 c. A proceeding to enforce a charitable trust may be brought by
9 the settlor, by the Attorney General, by the trust's beneficiaries or
10 by other persons who have standing.

11
12 3B:31-23. Creation of Trust Induced by Fraud, Duress, or Undue
13 Influence.

14 A trust is void to the extent its creation was induced by fraud,
15 duress, or undue influence.

16
17 3B:31-24. Trust for Care of Animal.

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

23 b. A trust authorized by this section may be enforced by the
24 settlor or by a person appointed in the terms of the trust or, if no
25 person is so appointed, by a person appointed by the court. A
26 person having an interest in the welfare of the animal may request
27 the court to appoint a person to enforce the trust or to remove a
28 person appointed.

29 c. Property of a trust authorized by this section may be applied
30 only to its intended use, except to the extent the court determines
31 that the value of the trust property exceeds the amount required for
32 the intended use. Except as otherwise provided in the terms of the
33 trust, property not required for the intended use shall be distributed
34 to the settlor, if then living, otherwise to the settlor's estate.

35
36 3B:31-25. Noncharitable Trust Without Ascertainable
37 Beneficiary.

38 Except as otherwise provided in N.J.S.3B:31-24 or by another
39 statute, the following rules apply:

40 a. A trust may be created for a noncharitable but otherwise
41 valid purpose without a definite or definitely ascertainable
42 beneficiary or for a noncharitable but otherwise valid purpose to be
43 selected by the trustee.

44 b. A trust authorized by this section may be enforced by the
45 settlor or by a person appointed in the terms of the trust or, if no
46 person is so appointed, by a person appointed by the court.

47 c. Property of a trust authorized by this section may be applied
48 only to its intended use, except to the extent the court determines

1 that the value of the trust property exceeds the amount required for
2 the intended use. Except as otherwise provided in the terms of the
3 trust, property not required for the intended use shall be distributed
4 to the settlor, if then living, otherwise to the settlor's estate.

5
6 3B:31-26. Modification or Termination of Trust; Proceedings
7 for Approval or Disapproval.

8 a. In addition to the methods of termination prescribed by
9 N.J.S.3B:31-27 through N.J.S.3B:31-33, a trust terminates to the
10 extent the trust is revoked or expires pursuant to its terms, no
11 purpose of the trust remains to be achieved, or the purposes of the
12 trust have become unlawful, contrary to public policy of this State,
13 or impossible to achieve.

14 b. A proceeding to approve or disapprove a proposed
15 modification or termination under N.J.S.3B:31-27 through
16 N.J.S.3B:31-33, or trust combination or division under N.J.S.3B:31-
17 34, may be commenced by a trustee or beneficiary, and a
18 proceeding to approve or disapprove a proposed modification or
19 termination under N.J.S.3B:31-27 may be commenced by the
20 settlor. The settlor of a charitable trust may maintain a proceeding
21 to modify the trust under N.J.S.3B:31-29.

22
23 3B:31-27. Modification or Termination of Noncharitable
24 Irrevocable Trust by Consent.

25 a. A noncharitable irrevocable trust may be modified or
26 terminated upon consent of the settlor and all beneficiaries, even if
27 the modification or termination is inconsistent with a material
28 purpose of the trust. A settlor's power to consent to a trust's
29 modification or termination may be exercised by an agent under a
30 power of attorney only to the extent expressly authorized by the
31 power of attorney or the terms of the trust; or by the settlor's
32 guardian with the approval of the court supervising the guardianship
33 if an agent is not so authorized.

34 b. A noncharitable irrevocable trust may be terminated upon
35 consent of all of the beneficiaries if the court concludes that
36 continuance of the trust is not necessary to achieve any material
37 purpose of the trust. A noncharitable irrevocable trust may be
38 modified upon consent of all of the beneficiaries if the court
39 concludes that modification is not inconsistent with a material
40 purpose of the trust.

41 c. A spendthrift provision in the terms of the trust is not
42 presumed to constitute a material purpose of the trust.

43 d. Upon termination of a trust under subsection a. or b. of this
44 section, the trustee shall distribute the trust property as agreed by
45 the beneficiaries.

46 e. If not all of the beneficiaries consent to a proposed
47 modification or termination of the trust under subsection a. or b. of

1 this section, the modification or termination may be approved by
2 the court if the court is satisfied that:

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

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

7

8 3B:31-28. Modification or Termination Because of
9 Unanticipated Circumstances or Inability to Administer Trust
10 Effectively.

11 a. The court may modify the administrative or dispositive
12 terms of a trust or terminate the trust if, because of circumstances
13 not anticipated by the settlor, modification or termination will
14 further the purposes of the trust. To the extent practicable, the
15 modification shall be made in accordance with the settlor's probable
16 intent.

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

20 c. Upon termination of a trust under this section, the trustee
21 shall distribute the trust property in a manner consistent with the
22 purposes of the trust.

23

24 3B:31-29. Modification or Termination of Charitable Trust (Cy
25 Pres).

26 a. Except as otherwise provided in subsection b. of this section,
27 if a particular charitable purpose becomes unlawful, impracticable,
28 impossible to achieve, or wasteful:

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

30 (2) the trust property does not revert to the settlor or the settlor's
31 estate; and

32 (3) the court may modify or terminate the trust by directing that
33 the trust property be applied or distributed, in whole or in part, in a
34 manner consistent with the settlor's charitable purposes.

35 b. A provision in the terms of a charitable trust that would
36 result in distribution of the trust property to a noncharitable
37 beneficiary prevails over the power of the court under subsection a.
38 of this section.

39

40 3B:31-30. Modification or Termination of Uneconomic Trust.

41 a. After notice to the qualified beneficiaries, the trustee of a
42 trust consisting of trust property having a total value less than
43 \$100,000 may terminate the trust if the trustee concludes that the
44 value of the trust property is insufficient to justify the cost of
45 administration.

46 b. The court may modify or terminate a trust or remove the
47 trustee and appoint a different trustee if it determines that the value

1 of the trust property is insufficient to justify the cost of
2 administration.

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

6 d. This section does not apply to an easement for conservation
7 or preservation.

8

9 3B:31-31. Reformation to Correct Mistakes.

10 The court may reform the terms of a trust, even if unambiguous,
11 to conform the terms to the settlor's probable intent if it is proved
12 by clear and convincing evidence that there was a mistake of fact or
13 law, whether in expression or inducement.

14

15 3B:31-32. Construction to Conform Trust Terms to Probable
16 Intent of Settlor.

17 The court may construe the terms of a trust, even if
18 unambiguous, to conform to the settlor's probable intent.

19

20 3B:31-33. Modification to Achieve Settlor's Tax Objectives.

21 To achieve the settlor's tax objectives, the court may modify the
22 terms of a trust in a manner that is not contrary to the settlor's
23 probable intent. The court may provide that the modification has
24 retroactive effect.

25

26 3B:31-34. Combination and Division of Trusts.

27 a. Subject to subsection b. of this section,

28 (1) the trustees of two or more trusts or parts of trusts may
29 combine the trusts or parts thereof into a single trust, even if such
30 trusts or parts thereof are created by different settlors or under
31 different instruments, and even if the trusts have different trustees;
32 and

33 (2) the trustees of a single trust may divide the trust into two or
34 more separate trusts, in which case distributions provided by the
35 governing instrument may be made from one or more of the
36 separate trusts.

37 b. A combination or division under this section may be effected
38 only if the result does not impair rights of any beneficiary or
39 adversely affect the achievement of the purposes of the trust.

40

41 ARTICLE 4
42 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY
43 TRUSTS
44

45 3B:31-35. Rights of Beneficiary's Creditor or Assignee.

46 Except as otherwise provided by law, to the extent a beneficiary's
47 interest is not protected by a spendthrift provision, a creditor or
48 assignee of the beneficiary may reach the beneficiary's interest by

1 attachment of present or future distributions to or for the benefit of
2 the beneficiary, subject to N.J.S.2A:17-51 et seq. or other
3 applicable law. The court may limit the award to such relief as is
4 appropriate under the circumstances.

5

6 3B:31-36. Spendthrift Provision.

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

9 b. A term of the trust providing that the interest of a
10 beneficiary is held subject to a "spendthrift trust," or words of
11 similar import, is sufficient to restrain both voluntary and
12 involuntary transfer of the beneficiary's interest.

13 c. A beneficiary may not transfer an interest in a trust in
14 violation of a valid spendthrift provision and, except as otherwise
15 provided in this article, a creditor or assignee of the beneficiary
16 may not reach the interest or a distribution by the trustee before its
17 receipt by the beneficiary.

18 d. A spendthrift provision is valid even though a beneficiary is
19 named as the sole trustee or as a co-trustee of the trust.

20

21 3B:31-37. Exceptions to Spendthrift Provision.

22 Even if a trust contains a spendthrift provision, the following
23 shall apply:

24 a. Special Needs

25 (1) "Protected person" means a person who is:

26 (a) an aged, blind, or disabled individual as defined at 42 U.S.C.
27 s.1382c;

28 (b) developmentally disabled as defined in section 2 of P.L.1979,
29 c.105 (C.30:1AA-2); or

30 (c) under age 18, or over age 18 and a full-time student, with
31 serious disabilities that reasonably may prevent the individual from
32 being self sufficient as an adult.

33 (2) "Special needs trust" means an OBRA '93 trust, as defined in
34 subsection a. of section 3 of P.L.2000, c.96 (C.3B:11-37), or trust
35 governed by a written instrument which:

36 (a) grants a trustee full discretion to determine whether and
37 when to distribute;

38 (b) limits distributions during the trust term to distributions to
39 benefit one or more protected persons, although others may realize
40 incidental benefits;

41 (c) provides that the trustee does not have any obligation to pay
42 the protected person's obligations or fund their support;

43 (d) does not give the protected person any right to require the
44 trustee to distribute at a specific time or for a particular purpose or
45 to assign or encumber interests in the trust; and

46 (e) evidences the grantor's intent to supplement rather than
47 replace or impair government assistance that the protected person
48 receives or for which they otherwise may be eligible.

1 b. Notwithstanding any other provision of this act or other law
2 (1) trustees of a special needs trust are not required to distribute
3 for any particular purpose or at any particular time during the trust
4 term;

5 (2) all creditors, including, but not limited to, spendthrift
6 exception creditors, of a protected person may not reach or attach a
7 protected person's interest in a special needs trust and neither
8 creditors nor a court may require the trustees to distribute to satisfy
9 a protected person's creditor's claim;

10 (3) a special needs trust shall not be required to repay
11 government aid provided to a protected person unless the aid was
12 provided on the basis that the special needs trust would repay the
13 aid when the protected person dies, or the special needs trust sooner
14 terminates, and the special needs trust instrument expressly calls for
15 such repayment; and

16 (4) a special needs trust shall terminate at such time as provided
17 in its governing instrument.

18 c. Notwithstanding N.J.S.3B:31-35 and N.J.S.3B:31-36,
19 trustees of a special needs trust shall exercise their discretion in
20 good faith to further trust purposes and courts may exercise their
21 equity authority to remedy trustee abuses of discretion.

22

23 3B:31-38. Discretionary Trusts; Effect of Standard.

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

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

29 (2) The trustee has abused the discretion.

30 b. This section does not limit the right of a beneficiary to
31 maintain a judicial proceeding against a trustee for an abuse of
32 discretion or failure to comply with a standard for distribution.

33 c. With respect to the powers set forth in section 1 of P.L.1996,
34 c.41 (C.3B:11-4.1), the provisions of this section shall apply even
35 though the beneficiary is the sole trustee or a co-trustee of the trust.

36

37 3B:31-39. Creditor's Claim Against Settlor.

38 a. Whether or not the terms of a trust contain a spendthrift
39 provision, the following rules apply:

40 (1) During the lifetime of the settlor, the property of a revocable
41 trust is subject to claims of the settlor's creditors.

42 (2) With respect to an irrevocable trust, a creditor or assignee of
43 the settlor may reach the maximum amount that can be distributed
44 to or for the settlor's benefit. If a trust has more than one settlor,
45 the amount the creditor or assignee of a particular settlor may reach
46 may not exceed the settlor's interest in the portion of the trust
47 attributable to that settlor's contribution. Provided, however, the
48 assets of an irrevocable trust are not subject to the claims of a

1 creditor of the settlor solely because of the existence of the trustee's
2 discretionary power to pay directly to the taxing authorities or to
3 reimburse the settlor for any income tax payable by the settlor on
4 trust income or principal.

5 (3) After the death of a settlor, and subject to the settlor's right
6 to direct the source from which liabilities will be paid, the property
7 of a trust that was revocable at the settlor's death is subject to
8 claims of the settlor's creditors, costs of administration of the
9 settlor's estate, the expenses of the settlor's funeral and disposal of
10 remains, and to a surviving spouse and children to the extent the
11 settlor's probate estate is inadequate to satisfy those claims, costs,
12 expenses.

13 b. For purposes of this section:

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

18 (2) upon the lapse, release, or waiver of the power, the holder is
19 treated as the settlor of the trust only to the extent the value of the
20 property affected by the lapse, release, or waiver exceeds the
21 greater of the amount specified in section 2041(b)(2) or 2514(e) of
22 the federal Internal Revenue Code of 1986 (26 U.S.C. s.2041(b)(2)
23 or 26 U.S.C. s.2514(e)), or section 2503(b) of the federal Internal
24 Revenue Code of 1986 (26 U.S.C. s.2503(b)), in each case as in
25 effect on the effective date of this act, or as later amended.

26
27 3B:31-40. Overdue Distribution.

28 a. For the purposes of this section, "mandatory distribution"
29 means a distribution of income or principal that the trustee is
30 required to make to a beneficiary under the terms of the trust,
31 including a distribution upon termination of the trust. The term
32 excludes a distribution subject to the exercise of the trustee's
33 discretion, regardless of whether the terms of the trust (1) include a
34 support or other standard to guide the trustee in making distribution
35 decisions, or (2) provide that the trustee "may" or "shall" make
36 discretionary distributions, including distributions pursuant to a
37 support or other standard.

38 b. Except as otherwise provided in section 1 of P.L.1996, c.41
39 (C.3B:11-4.1), whether or not a trust contains a spendthrift
40 provision, a creditor or assignee of a beneficiary may reach a
41 mandatory distribution of income or principal, including a
42 distribution upon termination of the trust, if the trustee has not
43 made the distribution to the beneficiary within a reasonable time
44 after the mandated distribution date.

45
46 3B:31-41. Personal Obligations of Trustee

47 Trust property is not subject to personal obligations of the
48 trustee, even if the trustee becomes insolvent.

ARTICLE 5

REVOCABLE TRUSTS

3B:31-42. 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.

3B:31-43. Revocation or Amendment of Revocable Trust.

a. Unless the terms of a trust expressly provide that the trust is irrevocable, or that it is proved by clear and convincing evidence that the settlor intended for it to be irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this act.

b. If a revocable trust is created or funded by more than one settlor:

(1) 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; and

(2) 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.

c. The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

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

(a) executing 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

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

d. Upon revocation of a revocable trust, the trustee shall deliver the trust property to the settlor as the settlor directs.

e. 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 and the power.

f. A guardian of the settlor or 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 guardianship.

g. 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.

1 3B:31-44. Settlor's Powers; Powers of Withdrawal.

2 While a trust is revocable, rights of the beneficiaries are subject
3 to the control of, and the duties of the trustee are owed exclusively
4 to, the settlor.

5

6 3B:31-45. Limitation on Action Contesting Validity of
7 Revocable Trust; Distribution of Trust Property.

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

11 (1) 3 years after the settlor's death; or

12 (2) 4 months, in the case of a resident, or 6 months, in the case of
13 a nonresident, after the trustee sent the person a copy of the trust
14 instrument and a notice informing the person of the trust's
15 existence, of the trustee's name and address, and of the time allowed
16 for commencing a proceeding.

17 b. Upon the death of the settlor of a trust that was revocable at
18 the settlor's death, the trustee may proceed to distribute the trust
19 property in accordance with the terms of the trust. The trustee is
20 not subject to liability for doing so unless:

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

23 (2) a potential contestant has notified the trustee in writing of a
24 possible judicial proceeding to contest the validity of the trust and
25 the trustee has received written notice of a judicial proceeding
26 commenced within 90 days after the contestant sent the notification.

27 c. A beneficiary of a trust that is determined to have been
28 invalid is liable to return any distribution received.

29

30

ARTICLE 6

31

OFFICE OF TRUSTEE

32

33 3B:31-46. Accepting or Declining Trusteeship.

34 a. Except as otherwise provided in subsection c. of this section,
35 a person designated as trustee accepts the trusteeship:

36 (1) in the case of a testamentary trustee or substituted
37 testamentary trustee, as provided in N.J.S.3B:11-2, and

38 (2) in the case of any other trustee,

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

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

46 b. A person designated as trustee who has not yet accepted the
47 trusteeship may renounce the trusteeship. A designated trustee who
48 does not accept the trusteeship within a reasonable time after

1 knowing of the designation is deemed to have renounced the
2 trusteeship.

3 c. A person designated as trustee, without accepting the
4 trusteeship, may:

5 (1) act to preserve the trust property if, within a reasonable time
6 after acting, the person sends a renunciation of the trusteeship to the
7 settlor or, if the settlor is dead or lacks capacity, to the qualified
8 beneficiaries and to any designated successor trustee; and

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

11

12 3B:31-47. Trustee's Bond.

13 a. A trustee shall give bond to secure performance of the
14 trustee's duties as prescribed by N.J.S.3B:15-1 et seq. if the court or
15 surrogate finds that a bond is needed to protect the interests of the
16 beneficiaries or is required by the terms of the trust and the court
17 has not dispensed with that requirement.

18 b. Unless otherwise directed by the court, the cost of the bond
19 is an expense of the trust.

20

21 3B:31-48. Cotrustees.

22 a. Cotrustees who are unable to reach a unanimous decision
23 may act by majority decision. A dissenting trustee who joins in
24 carrying out a decision of the majority but expresses his dissent in
25 writing promptly to his cotrustees shall not be liable for the act of
26 the majority.

27 b. If a vacancy occurs in a cotrusteeship, the remaining
28 cotrustees shall act for the trust unless the trust instrument provides
29 otherwise.

30 c. A cotrustee shall participate in the performance of a trustee's
31 function unless the cotrustee is unavailable to perform the function
32 because of absence, illness, disqualification under other law, or
33 other temporary incapacity or the cotrustee has properly delegated
34 the performance of the function to another trustee.

35 d. If a cotrustee is unavailable to perform duties because of
36 absence, illness, disqualification under other law, other temporary
37 incapacity, or a vacancy remains unfilled and prompt action is
38 necessary to achieve the purposes of the trust or to avoid injury to
39 the trust property, the remaining cotrustee or a majority of the
40 remaining cotrustees shall act for the trust.

41 e. A trustee may not delegate to a cotrustee the performance of
42 a function the settlor reasonably expected the trustees to perform
43 jointly. Unless a delegation was irrevocable, a trustee may revoke a
44 delegation previously made.

45 f. A trustee who does not join in an action of a cotrustee or
46 cotrustees because of absence, illness, disqualification or other
47 temporary incapacity shall not be liable for that action.

1 g. Notwithstanding subsection a. or f. of this section, every
2 trustee shall exercise reasonable care to:

- 3 (1) prevent a cotrustee from committing a breach of trust; and
4 (2) compel a cotrustee to redress a breach of trust.

5

6 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

7 a. A vacancy in a trusteeship occurs if:

- 8 (1) a person designated as trustee renounces the trusteeship;
9 (2) a person designated as trustee cannot be identified or does
10 not exist;
11 (3) a trustee resigns or is discharged;
12 (4) a trustee is disqualified or removed;
13 (5) a trustee dies; or
14 (6) a guardian or conservator is appointed for an individual
15 serving as trustee.

16 b. If one or more cotrustees remain in office, a vacancy in a
17 trusteeship need not be filled unless the trust instrument provides
18 otherwise. A vacancy in a trusteeship shall be filled if the trust has
19 no remaining trustee.

20 c. A vacancy in a trusteeship of a noncharitable trust that is
21 required to be filled shall be filled in the following order of priority:

- 22 (1) by a person designated pursuant to the terms of the trust to
23 act as successor trustee;
24 (2) by a person appointed by unanimous agreement of the
25 qualified beneficiaries; or
26 (3) by a person appointed by the court.

27 d. A vacancy in a trusteeship of a charitable trust that is
28 required to be filled shall be filled in the following order of priority:

- 29 (1) by a person designated pursuant to the terms of the trust to
30 act as successor trustee; or
31 (2) by a person appointed by the court.

32 e. Whether or not a vacancy in a trusteeship exists or is
33 required to be filled, the court may appoint an additional trustee or
34 special fiduciary whenever the court considers the appointment
35 desirable for the administration of the trust.

36 f. A person appointed to fill a vacancy in a trusteeship shall
37 have all the powers and discretions of the original trustee.

38

39 3B:31-50. Resignation of Trustee.

40 a. A trustee may resign:

- 41 (1) upon at least 30 days' notice to the qualified beneficiaries, the
42 settlor, if living, all cotrustees, and the trustee or trustees, if any,
43 designated pursuant to the terms of the trust to succeed the
44 resigning trustee; or
45 (2) with the approval of the court.

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

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

4
5 3B:31-51. Removal of Trustee.

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

9 b. The court may remove a trustee for any of the reasons stated
10 in N.J.S.3B:14-21.

11 c. Pending a final decision on a request to remove a trustee, or
12 in lieu of or in addition to removing a trustee, the court may order
13 such appropriate relief as may be necessary to protect the trust
14 property or the interests of the beneficiaries.

15
16 3B:31-52. Delivery of Property by Former Trustee.

17 a. Unless a cotrustee remains in office or the court otherwise
18 orders, and until the trust property is delivered to a successor trustee
19 or other person entitled to it, a trustee who has resigned or been
20 removed has the duties of a trustee and the powers necessary to
21 protect the trust property.

22 b. A trustee who has resigned or been removed shall proceed
23 expeditiously to deliver the trust property within the trustee's
24 possession to the cotrustee, successor trustee, or other person
25 entitled to it, but a resigning trustee may retain a reasonable reserve
26 for the costs of finalizing that trustee's administration of the trust.

27
28 3B:31-53. Reimbursement of Expenses.

29 a. In addition to the compensation allowed by N.J.S.3B:18-2 et
30 seq., a trustee is entitled to be reimbursed out of the trust property
31 for:

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

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

37 b. An advance by a trustee of money or other property for the
38 protection of the trust gives rise to a lien against trust property to
39 secure reimbursement.

40
41 ARTICLE 7

42 DUTIES AND POWERS OF TRUSTEE

43
44 3B:31-54. Duty to Administer Trust.

45 Upon acceptance of a trusteeship, the trustee shall administer the
46 trust in good faith, in accordance with its terms and purposes and
47 the interests of the beneficiaries, and in accordance with this act and
48 other applicable law.

1 3B:31-55. Duty of Loyalty.

2 a. A trustee shall administer the trust with undivided loyalty to
3 and solely in the best interests of the beneficiaries.

4 b. Subject to the rights of persons dealing with or assisting the
5 trustee as provided in N.J.S.3B:14-37, a sale, encumbrance, or other
6 transaction involving the investment or management of trust
7 property entered into by the trustee for the trustee's own personal
8 account or which is otherwise affected by a conflict between the
9 trustee's fiduciary and personal interests is voidable by a beneficiary
10 affected by the transaction unless:

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

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

13 (3) the beneficiary did not commence a judicial proceeding
14 within the time allowed by N.J.S.3B:31-73;

15 (4) the beneficiary consented to the trustee's conduct, ratified the
16 transaction, or released the trustee in compliance with N.J.S.3B:31-
17 77; or

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

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

24 (1) the trustee's spouse or partner in a civil union;

25 (2) the trustee's parents, parents' descendants, or the spouse or
26 partner in a civil union of any of the foregoing;

27 (3) an agent, accountant, or attorney of the trustee; or

28 (4) a corporation or other person or enterprise in which the
29 trustee, or a person that owns a significant interest in the trustee,
30 has an interest that might affect the trustee's judgment.

31 d. A transaction between a trustee and a beneficiary that does
32 not concern trust property but that occurs during the existence of
33 the trust or while the trustee retains significant influence over the
34 beneficiary and from which the trustee obtains an advantage
35 attributable to the existence of the trust is voidable by the
36 beneficiary if the beneficiary establishes that the transaction was
37 unfair to the beneficiary.

38 e. A transaction not concerning trust property in which the
39 trustee engages in the trustee's individual capacity involves a
40 conflict between personal and fiduciary interests if the transaction
41 concerns an opportunity properly belonging to the trust.

42 f. In voting shares of stock of a corporation or in exercising
43 powers of control over similar interests in other forms of enterprise,
44 the trustee shall act in the best interests of the beneficiaries and
45 shall vote to elect or appoint directors or other managers who will
46 manage the corporation or enterprise in the best interests of the
47 beneficiaries.

1 g. This section does not preclude the following transactions, if
2 fair to the beneficiaries:

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

5 (2) payment of reasonable compensation to the trustee;

6 (3) a transaction between the trust and another trust, decedent's
7 estate, guardianship, conservatorship, or other fiduciary relationship
8 of which the trustee is a fiduciary or in which a beneficiary has an
9 interest;

10 (4) a deposit of trust money in a regulated financial-service
11 institution operated by or affiliated with the trustee; or

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

14 h. The court may appoint a special fiduciary to make decisions
15 with respect to any proposed transaction that might violate this
16 section if entered into by the trustee.

17

18 3B:31-56. Duty of Impartiality.

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

22

23 3B:31-57. Duty of Prudent Administration.

24 A trustee shall administer the trust as a prudent person would, by
25 considering the purposes, terms, distributional requirements, and
26 other circumstances of the trust. In satisfying this standard, the
27 trustee shall exercise reasonable care, skill, and caution.

28

29 3B:31-58. Costs of Administration.

30 In administering a trust, the trustee may incur only costs that are
31 appropriate and reasonable in relation to the trust property, the
32 purposes of the trust, and the skills of the trustee.

33

34 3B:31-59. Duty to Use Special Skills.

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

39

40 3B:31-60. Delegation by Trustee.

41 a. A trustee may delegate ministerial, administrative and
42 management duties and powers that a prudent trustee of comparable
43 skills could properly delegate under the circumstances.

44 b. The trustee shall exercise reasonable care, skill, and caution
45 in:

46 (1) selecting an agent;

47 (2) establishing in writing the scope and terms of the delegation,
48 consistent with the purposes and terms of the trust; and

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

4 c. A trustee shall provide reasonable written notice to the
5 qualified beneficiaries on each occasion upon which the trustee
6 delegates duties pursuant to this section, including the identity of
7 the agent.

8 d. A trustee who complies with subsections b. and c. of this
9 section is not liable to the beneficiaries or to the trust for an action
10 of the agent to whom the function was delegated.

11 e. In performing a delegated function, the agent shall owe to
12 the trustee and the beneficiaries the same duties as the fiduciary and
13 shall be held to the same standards as the fiduciary.

14 f. By accepting a delegation of powers or duties from the
15 trustee of a trust that is subject to the law of this State, an agent
16 submits to the jurisdiction of the courts of this State, even if the
17 delegation agreement provides otherwise.

18

19 3B:31-61. Powers to Direct.

20 a. While a trust is revocable, the trustee may follow a direction
21 of the settlor that is contrary to the terms of the trust.

22 b. If the terms of a trust confer upon a person other than the
23 settlor of a revocable trust the power to direct certain actions of the
24 trustee, the trustee shall act in accordance with a written exercise of
25 the power unless the attempted exercise is contrary to the terms of
26 the trust or the trustee knows the attempted exercise would
27 constitute a breach of a fiduciary duty that the person holding the
28 power owes to the beneficiaries of the trust.

29 c. The terms of a trust may confer upon a trustee or other
30 person a power to direct the modification or termination of the trust.

31 d. A person, other than a beneficiary, who holds a power to
32 direct is required to act in good faith with regard to the purposes of
33 the trust and the interests of the beneficiaries. The holder of a
34 power to direct is liable for any loss that results from the holder's
35 failure to act in good faith.

36

37 3B:31-62. Control and Protection of Trust Property.

38 A trustee shall take reasonable steps to take control of and
39 protect the trust property.

40

41 3B:31-63. Recordkeeping and Identification of Trust Property.

42 a. A trustee shall keep adequate records of the administration
43 of the trust.

44 b. A trustee shall keep trust property separate from the trustee's
45 own property.

46 c. Except as otherwise provided in subsection d. of this section,
47 a trustee shall cause the trust property to be designated so that the

1 interest of the trust, to the extent feasible, appears in records
2 maintained by a party other than a trustee or beneficiary.

3 d. If the trustee maintains records clearly indicating the
4 respective interests, a trustee may invest as a whole the property of
5 the trust with other fiduciary accounts maintained by the trustee.

6

7 3B:31-64. Duty to Enforce and Defend Claims.

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

10

11 3B:31-65. Duty to Collect Trust Property and Redress Breaches
12 of Trust.

13 a. A trustee shall take reasonable steps to compel a former
14 trustee or other person to deliver trust property to the trustee.

15 b. A trustee shall take reasonable steps to redress a breach of
16 trust known to the trustee to have been committed by a former
17 trustee.

18

19 3B:31-66. Duty to Disclose and Discretion to Periodically
20 Report.

21 a. Unless unreasonable under the circumstances, a trustee shall
22 promptly respond to a beneficiary's request for information related
23 to the administration of a trust.

24 b. A trustee, upon request of a beneficiary, shall promptly
25 furnish to the beneficiary a copy of the trust instrument.

26 c. A trustee seeking the protection of N.J.S.3B:31-73 may
27 provide the beneficiaries with a report of the trust property,
28 liabilities, receipts, and disbursements, including the source and
29 amount of the trustee's compensation, a listing of the trust assets,
30 and, if feasible, their respective market values.

31

32 3B:31-67. Discretionary Powers.

33 Notwithstanding the breadth of discretion granted to a trustee in
34 the terms of the trust, including the use of such terms as "absolute,"
35 "sole," or "uncontrolled," the trustee shall exercise a discretionary
36 power in good faith and in accordance with the terms and purposes
37 of the trust and the interests of the beneficiaries.

38

39 3B:31-68. General Powers of Trustee.

40 a. Except as limited by section 1 of P.L.1996, c.41 (C.3B:11-4.1)
41 and other express statutory restrictions, a trustee, without
42 authorization by the court, may exercise:

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

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

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

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

- 1 (c) any other powers conferred by this act and by Title 3B.
2 b. The exercise of a power is subject to the fiduciary duties
3 prescribed by this act and by Title 3B.

4
5 3B:31-69. Distribution Upon Termination.

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

11 b. Upon termination or partial termination of a trust, the trustee
12 may mail or deliver a proposal for distribution to all persons who
13 have a right to object to the proposed distribution. The proposal
14 shall notify all persons who have a right to object to the proposal of
15 their right to object and that their objection is required to be in
16 writing and received by the trustee within 30 days after the mailing
17 or delivery of the proposal. The right of any person to object to the
18 proposed distribution on the basis of the kind or value of asset he or
19 she or another beneficiary is to receive, if not waived earlier in
20 writing, terminates if he or she fails to object in writing received by
21 the trustee within 30 days after mailing or delivery of the proposal.

22

23 ARTICLE 8

24 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

25 DEALING WITH TRUSTEE

26

27 3B:31-70. Remedies for Breach of Trust.

28 a. A violation by a trustee of a duty the trustee owes to a
29 beneficiary is a breach of trust.

30 b. To remedy a breach of trust that has occurred or may occur,
31 the court may:

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

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

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

36 (4) order a trustee to account;

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

39 (6) suspend the trustee;

40 (7) remove the trustee as provided in N.J.S.3B:31-51;

41 (8) reduce or deny compensation to the trustee;

42 (9) subject to N.J.S.3B:14-37, void an act of the trustee, impose a
43 lien or a constructive trust on trust property, or trace trust property
44 wrongfully disposed of and recover the property or its proceeds; or

45 (10) order any other appropriate relief.

46

47 3B:31-71. Damages for Breach of Trust.

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

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

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

7 b. Except as otherwise provided in this subsection, if more than
8 one trustee is liable to the beneficiaries for a breach of trust, a
9 trustee is entitled to contribution from the other trustee or trustees
10 based on the comparative degree of culpability for the breach.
11 However, a trustee who committed the breach in bad faith or with
12 reckless indifference to the purposes of the trust or the interests of
13 the beneficiaries is not entitled to contribution from a trustee who
14 was not guilty of such conduct. A trustee who received a benefit
15 from the breach of trust is not entitled to contribution from another
16 trustee to the extent of the benefit received.

17

18 3B:31-72. Damages in Absence of Breach.

19 a. A trustee is accountable to an affected beneficiary for any
20 profit made by the trustee arising from the administration of the
21 trust, even absent a breach of trust, except where the interest in the
22 transaction involved is fully disclosed to the beneficiary and
23 consent is freely given.

24 b. Absent a breach of trust, a trustee is not liable to a
25 beneficiary for a loss or depreciation in the value of trust property
26 or for not having made a profit.

27

28 3B:31-73. Limitation of Action Against Trustee.

29 a. A beneficiary may not commence a proceeding against a
30 trustee for breach of trust more than six months after the date the
31 beneficiary or a representative of the beneficiary was sent a report
32 that adequately disclosed the existence of a potential claim for
33 breach of trust and informed the beneficiary of the time allowed for
34 commencing a proceeding.

35 b. A report adequately discloses the existence of a potential
36 claim for breach of trust if it provides sufficient information so that
37 the beneficiary or representative knows of the potential claim or
38 should have inquired into its existence.

39 c. If subsection a. of this section does not apply, a judicial
40 proceeding by a beneficiary against a trustee for breach of trust may
41 be commenced only within five years after the first to occur of:

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

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

44 (3) the termination of the trust.

45 d. For purposes of subsection a. of this section, a beneficiary is
46 deemed to have been sent a report if:

47 (1) in the case of a beneficiary having capacity, it is sent to the
48 beneficiary; or

1 (2) in the case of a beneficiary who under article 2 of this act
2 may be represented and bound by another person, if it is received by
3 his representative.

4 e. This section does not preclude an action to recover for fraud
5 or misrepresentation related to the report.

6
7 3B:31-74. Reliance on Trust Instrument.

8 A trustee who acts in reasonable reliance on the terms of the
9 trust as expressed in the trust instrument is not liable to a
10 beneficiary for a breach of trust to the extent the breach resulted
11 from the reliance.

12
13 3B:31-75. Event Affecting Administration or Distribution.

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

19
20 3B:31-76. Exculpation of Trustee.

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

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

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

28 b. An exculpatory term drafted or caused to be drafted by the
29 trustee is invalid as an abuse of a fiduciary or confidential
30 relationship unless the trustee proves that the exculpatory term is
31 fair under the circumstances and that its existence and contents
32 were adequately communicated to the settlor.

33
34 3B:31-77. Beneficiary's Consent, Release, or Ratification.

35 A trustee is not liable to a beneficiary for breach of trust if the
36 beneficiary, while having capacity, consented to the conduct
37 constituting the breach, released the trustee from liability for the
38 breach, or ratified the transaction constituting the breach, unless:

39 a. the consent, release, or ratification of the beneficiary was
40 induced by improper conduct of the trustee; or

41 b. at the time of the consent, release, or ratification, the
42 beneficiary did not know of the beneficiary's rights or of the
43 material facts relating to the breach.

44
45 3B:31-78. Limitation on Personal Liability of Trustee.

46 a. Except as otherwise provided in the contract, a trustee is not
47 personally liable on a contract properly entered into in the trustee's

1 fiduciary capacity in the course of administering the trust if the
2 trustee in the contract disclosed the fiduciary capacity.

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

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

14

15 3B:31-79. Interest as General Partner.

16 a. Except as otherwise provided in subsection c. of this section
17 or unless personal liability is imposed in the contract, a trustee who
18 holds an interest as a general partner in a general or limited
19 partnership is not personally liable on a contract entered into by the
20 partnership after the trust's acquisition of the interest if the fiduciary
21 capacity was disclosed in the contract or in a statement previously
22 filed pursuant to the "Uniform Partnership Act (1996)," P.L.2000,
23 c.161 (C.42:1A-1 et seq.) or the "Uniform Limited Partnership Law
24 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.).

25 b. Except as otherwise provided in subsection c. of this section,
26 a trustee who holds an interest as a general partner is not personally
27 liable for torts committed by the partnership or for obligations
28 arising from ownership or control of the interest unless the trustee is
29 personally at fault.

30 c. The immunity provided by this section does not apply if an
31 interest in the partnership is held by the trustee in a capacity other
32 than that of trustee or is held by the trustee's spouse or one or more
33 of the trustee's descendants, siblings, or parents, or the spouse of
34 any of them.

35 d. If the trustee of a revocable trust holds an interest as a
36 general partner, the settlor is personally liable for contracts and
37 other obligations of the partnership as if the settlor were a general
38 partner.

39

40 3B:31-80. Certification of Trust.

41 a. Instead of furnishing a copy of the trust instrument to a
42 person other than a beneficiary, the trustee may furnish to the
43 person a certification of trust containing the following information:

44 (1) that the trust exists and the date the trust instrument was
45 executed;

46 (2) the identity of the settlor;

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

48 (4) the powers of the trustee;

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

3 (6) the authority of cotrustees to sign and whether all or less than
4 all are required in order to exercise powers of the trustee; and

5 (7) the name in which title to trust property may be taken.

6 b. A certification of trust shall be signed by all persons
7 identified as currently acting as trustee.

8 c. A certification of trust shall state that the trust has not been
9 revoked, modified, or amended in any manner that would cause the
10 representations contained in the certification of trust to be incorrect.

11 d. A certification of trust need not contain the dispositive terms
12 of a trust.

13 e. A recipient of a certification of trust may require the trustee
14 to furnish copies of those excerpts from the original trust instrument
15 and later amendments which designate the trustee and confer upon
16 the trustee the power to act in the pending transaction.

17 f. A person who acts in reliance upon a certification of trust
18 without knowledge that the representations contained therein are
19 incorrect is not liable to any person for so acting and may assume
20 without inquiry the existence of the facts contained in the
21 certification. Knowledge of the terms of the trust may not be
22 inferred solely from the fact that a copy of all or part of the trust
23 instrument is held by the person relying upon the certification.

24 g. A person making a demand for the trust instrument in
25 addition to a certification of trust or excerpts is liable for damages if
26 the court determines that the person did not act in good faith in
27 demanding the trust instrument.

28 h. This section does not limit the right of a person to obtain a
29 copy of the trust instrument in a judicial proceeding concerning the
30 trust.

31

32

ARTICLE 9

33

MISCELLANEOUS PROVISIONS

34

35 3B:31-81. Electronic Records and Signatures.

36 The provisions of this act governing the legal effect, validity, or
37 enforceability of electronic records or electronic signatures, and of
38 contracts formed or performed with the use of such records or
39 signatures, conform to the requirements of section 102 of the
40 “Electronic Signatures in Global and National Commerce Act” (15
41 U.S.C. s.7002), and supersede, modify, and limit the requirements
42 of that act.

43

44 3B:31-82. Severability Clause.

45 If any provision of this act or its application to any person or
46 circumstances is held invalid, the invalidity does not affect other
47 provisions or applications of this act which can be given effect

1 without the invalid provision or application, and to this end the
2 provisions of this act are severable.

3

4 3B:31-83. Application to Existing Relationships.

5 a. Except as otherwise provided in this act:

6 (1) this act applies to all trusts created before, on, or after its
7 effective date;

8 (2) this act applies to all judicial proceedings concerning trusts
9 commenced on or after its effective date;

10 (3) this act applies to judicial proceedings concerning trusts
11 commenced before its effective date unless the court finds that
12 application of a particular provision of this act would substantially
13 interfere with the effective conduct of the judicial proceedings or
14 prejudice the rights of the parties, in which case the particular
15 provision of this act does not apply and the superseded law applies;

16 (4) any rule of construction or presumption provided in this act
17 applies to trust instruments executed before the effective date of the
18 act unless there is clear indication of a contrary intent in the terms
19 of the trust; and

20 (5) an act done before the effective date is not affected by this
21 act.

22 b. If a right is acquired, extinguished, or barred upon expiration
23 of a prescribed period that has commenced to run under any other
24 statute before the effective date of the act, that statute continues to
25 apply to the right even if that statute has been repealed or
26 superseded by this act.

27

28 2. N.J.S.3B:14-37 is amended to read as follows:

29 3B:14-37. Protection of persons assisting or dealing with
30 fiduciary.

31 a. A person other than a beneficiary who in good faith either
32 assists a fiduciary or deals with him for value is protected as if the
33 fiduciary properly exercised his power.

34 b. The fact that a person knowingly deals with a fiduciary does
35 not alone require the person to inquire into the existence of a power
36 or the propriety of its exercise.

37 c. Except as to real property specifically devised by will, no
38 provision in any will, trust or order of court purporting to limit the
39 power of a fiduciary is effective except as to persons with actual
40 knowledge thereof.

41 d. A person who in good faith pays, transfers or delivers to a
42 fiduciary money or other property is not responsible for the proper
43 application thereof by the fiduciary; and any right or title acquired
44 from the fiduciary in consideration of the payment, transfer or
45 delivery is not invalid in consequence of a misapplication by the
46 fiduciary.

47 e. A person other than a beneficiary who in good faith assists a
48 former trustee, or who in good faith and for value deals with a

1 former trustee, without knowledge that the trusteeship has
2 terminated is protected from liability as if the former trustee were
3 still a trustee.

4 f. The protection here expressed extends to instances in which
5 some procedural irregularity or jurisdictional defect occurred in
6 proceedings leading to the issuance of letters, including a case in
7 which the alleged decedent is found to be alive.

8 g. The protection here expressed is in addition to that provided
9 by comparable provisions of the laws relating to commercial
10 transactions and laws simplifying transfers of securities by
11 fiduciaries.

12 (cf: N.J.S.3B:14-37)

13

14 3. The following sections are repealed:

15 N.J.S.3B:11-5;

16 N.J.S.3B:11-6;

17 N.J.S.3B:11-7; and

18 Section 1 of P.L.2001, c.144 (C.3B:11-38).

19

20 4. This act shall take effect on the 180th day following
21 enactment.

22

23

24

STATEMENT

25

26 This bill would supplement and revise the State's existing laws
27 concerning trusts. In 2000, the National Conference of
28 Commissioners on Uniform State Laws (now known as the Uniform
29 Law Commission) promulgated the first national codification of the
30 law of trusts: the Uniform Trust Code. The purpose of the code is
31 to provide states with a model uniform trust act that would allow for
32 precise, comprehensive, and easily accessible guidance on trust law
33 questions. Most of the provisions of the model act, which has been
34 revised by the commission several times, are default rules that
35 apply only if the terms of the trust instrument fail to address or
36 insufficiently cover a particular issue. The model act also includes
37 several innovative provisions, which have been incorporated into
38 this bill, including: specification of the rules of trust that are not
39 subject to override in the trust's terms, comprehensive rules on
40 representation of beneficiaries, rules on trust modification and
41 termination that will enhance flexibility, and the inclusion of an
42 article collecting the special rules pertaining to revocable trusts.
43 While this bill is modeled on the commission's Uniform Trust
44 Code, it has been changed and adapted to fit within New Jersey's
45 existing trust law.

46 Article 1 of the bill contains definitions and general provisions.
47 The provisions of this article include: section 3B:31-3, which
48 defines certain terms used in the bill; section 3B:31-5, which

1 enumerates certain rules that cannot be waived in the terms of the
2 trust; section 3B:31-7, which establishes rules regarding the
3 governing law of a trust; section 3B:31-8, which sets forth a
4 procedure for changing the situs (principal place of administration)
5 of a trust; and section 3B:31-11, which provides statutory authority
6 for the nonjudicial settlement of a trustee's accounts and other
7 matters related to trust administration.

8 Article 2 of the bill concerns representation of beneficiaries,
9 including what is known as virtual representation. Section 3B:31-
10 13 is the introductory section, laying out the scope of the article.
11 Sections 3B:31-14 through 3B:31-17 cover the different types of
12 representation. 3B:31-14 deals with representation by the holder of
13 a general testamentary power of appointment. Section 3B:31-15
14 deals with representation by a fiduciary, whether of an estate, trust,
15 conservatorship, or guardianship. The section also allows a parent
16 without a conflict of interest to represent and bind a minor or
17 unborn child. Section 3B:31-16 is the virtual representation
18 provision, providing for representation of and the giving of a
19 binding consent by another person having a substantially identical
20 interest with respect to the particular issue. Section 3B:31-17
21 authorizes the court to appoint a representative to represent the
22 interests of unrepresented persons for whom the court concludes the
23 other available representation might be inadequate.

24 Article 3 of the bill deals with how a trust is validly created,
25 modified and terminated. Sections 3B:31-18 through 3B:31-25 deal
26 with the creation of a trust and the purposes for a trust. Sections
27 3B:31-18 and 3B:31-19 state the method and requirements for
28 creation of a trust, including the requirement that the same person
29 not be the sole trustee and the sole beneficiary. Section 3B:31-20
30 recognizes the validity of trusts created in other jurisdictions
31 provided certain requirements are met, including the requirement
32 that the trust be in writing. The requirement that the trust be in
33 writing is a deviation from the Uniform Trust Code, which allows
34 for trusts to be created orally. Section 3B:31-21 concerns the
35 purposes of a trust and states that a trust generally may be enforced
36 if its purposes are lawful, not contrary to public policy, and possible
37 to achieve. Under section 3B:31-23, a trust induced by fraud or
38 duress is not valid. Section 3B:31-24 adopts a broader provision
39 concerning trusts for the care of animals and section 3B:31-25
40 addresses situations where non-charitable trusts without
41 ascertainable beneficiaries are valid.

42 Sections 3B:31-26 through 3B:31-33 deal with the modification
43 and termination of a trust. These provisions deal with the purposes
44 and procedures for modification and termination. The general
45 provision is contained in section 3B:31-26, which summarizes the
46 grounds on which a trust may be terminated and specifies which
47 persons may bring an action to terminate a trust. Section 3B:31-27
48 describes the circumstances when a non-charitable trust may be

1 compelled by the beneficiaries, with or without the consent of the
2 settlor. Under section 3B:31-28, a court may modify the
3 administrative or dispositive terms of a trust if doing so will further
4 the purposes of the trust. Section 3B:31-29 addresses modification
5 or termination of a charitable trust and section 3B:31-30 addresses
6 modification or termination of an uneconomical trust. Section
7 3B:31-31 provides for the reformation of a trust to conform to a
8 settlor's probable intent and is designed to be consistent with New
9 Jersey's probable intent doctrine as it applies to trusts under
10 subsection b. of section 28 of P.L.2004, c.132 (C.3B:3-33.1).
11 Section 3B:31-33 permits modification to achieve a settlor's tax
12 objectives, consistent with existing New Jersey law. Section 3B:31-
13 34 provides for the combination of two or more trusts into a single
14 trust and the division of a single trust into two or more trusts,
15 provided the requirements of the section are met. This provision is
16 similar to existing New Jersey law under subsection r. of
17 N.J.S.3B:14-23.

18 Article 4 deals with spendthrift provisions in trusts. This article
19 was heavily edited by the ad hoc committee of New Jersey lawyers
20 to preserve certain aspects of current New Jersey law. For example,
21 the phrase "except as otherwise provided by law" was added to
22 section 3B:31-35 to clarify that the changes are not intended to
23 effect other existing provisions of statutory law including: R.S.25:2-
24 1 et seq. (protection from attachment in the case of a self-settled
25 trust that is a qualified retirement account); N.J.S.17B:24-6 (the
26 inability of a creditor to attach proceeds of life insurance policies);
27 N.J.S.17B:24-7 (the inability of creditors to attach annuity
28 proceeds); N.J.S.17B:24-8 (the inability of creditors to attach health
29 and disability insurance benefits); and, N.J.S.17B:24-9 (the inability
30 of creditors to attach proceeds of group insurance policies).

31 Section 3B:31-37, concerning exceptions to spendthrift
32 provisions, was revised and is not similar to the comparable
33 provision of the Uniform Trust Code. The Uniform Trust Code
34 provides that there are certain creditors, known as "exception
35 creditors," that can attach a trust with a spendthrift provision. Other
36 "exception creditors" in the Uniform Trust Code would be (i) child
37 support; (ii) a spouse; (iii) a former spouse who has a judgment for
38 support or maintenance; (iv) a judgment creditor who has provided
39 services for the protection of a beneficiary's interest; and (v)
40 governmental claims. In New Jersey there are certain recognized
41 creditors that are "excepted" from the application of the spendthrift
42 clause, thus additional provisions are unnecessary. Adding
43 additional classes of exception creditors, as the Uniform Trust Code
44 proposes, has drawn national criticism. The committee of ad hoc
45 lawyers who developed this bill elected not to include this
46 provision. Instead, section 3B:31-37 creates a type of trust for the
47 young or disabled, known as a "special needs trust," which would
48 have certain special protections from creditors.

1 Sections 3B:31-39 through -41 codify certain rules already in
2 place for trusts and make certain changes necessary to implement
3 the provisions of section 3B:31-37 concerning special needs trusts.

4 Article 5 addresses the use of revocable trusts as alternatives to
5 wills and seeks to clarify certain issues in connection with the use
6 of revocable trusts. Section 3B:31-42 provides that the capacity
7 required to create, amend or revoke a trust is the same as that
8 required to execute a will. Section 3B:31-43 provides that a trust is
9 revocable unless the terms of a trust expressly provide that it is
10 irrevocable, or unless there is clear and convincing evidence that it
11 is irrevocable and sets forth the circumstances in which a settlor, a
12 settlor's attorney in fact, or guardian may revoke or amend a
13 revocable trust. Section 3B:31-44 provides that the trustee of a
14 revocable trust is responsible only to the settlor of the trust. Section
15 3B:31-45 establishes time limits on contesting the validity of a
16 revocable trust after the death of the settlor, which generally
17 conform to the time limits for contesting the probate of a will.
18 Section 3B:31-45 also protects a trustee who makes distributions
19 from the trust after the settlor's death unless the trustee knows of a
20 pending or possible contest.

21 Article 6 of the bill contains a series of default rules dealing with
22 the office of trustee, many of which are already dealt with and
23 firmly established in chapters 11, 14 and 18 of Title 3B of the New
24 Jersey Statutes, New Jersey Rules of Court, and New Jersey case
25 law. Except for the court's authority to issue letters of testamentary
26 trusteeship and to order bond, all of the provisions of Article 6 are
27 subject to modification by the express terms of the governing trust
28 instrument.

29 Sections 3B:31-46 and 3B:31-47 address the process of
30 qualifying a trustee, including procedures for accepting or declining
31 the office of trustee and bonding the trustee. Section 3B:31-48
32 addresses the duties and responsibilities of and other issues that
33 may arise between or among co-trustees. For example, this section
34 permits co-trustees to act by majority action and specifies how and
35 what happens when one of several trustees dissents from a course of
36 action and the extent to which the others shall act when one is
37 unable or has properly delegated performance of a function.

38 3B:31-49 through 3B:31-52 address changes in the office of
39 trustee including: when and how a vacancy is filled, the procedure
40 for resignation, grounds for removal and the duties and obligations
41 of a resigning or removed trustee. Certain provisions of the
42 comparable article of the Uniform Trust Code were deemed
43 redundant and thus not included in this bill.

44 Section 3B:31-53 prescribes standards for reimbursement for
45 expenses advanced by the trustee. Since the matter of trustee
46 compensation is addressed comprehensively in chapter 18 of Title
47 3B of the New Jersey Statutes, the provision in the Uniform Trust

1 Code concerning trustee compensation has not been included in the
2 bill.

3 Article 7 sets forth the basic duties and powers of trustees. This
4 article embraces and expands on the authorization in the “Prudent
5 Investor Act,” P.L.1997, c.26 (C.3B:20-11.1 et seq.), to delegate
6 managerial functions. All of the provisions in this article may be
7 modified or overridden by the express terms of the governing
8 instrument, except for the fundamental obligations to act in good
9 faith for the benefit of the beneficiaries and in accordance with the
10 terms of the governing instrument creating the trust.

11 Article 8 addresses liability of trustees and trustee dealings with
12 persons other than beneficiaries. With respect to the rights of
13 beneficiaries: 3B:31-70 lists the remedies for breach of trust;
14 3B:31-71 specifies how money damages are to be determined; and
15 3B:31-73 and 3B:31-76 specify certain trustee defenses, including
16 the addition of a statute of limitations for claims alleging breach of
17 trust (3B:31-73) and a provision on enforcing exculpatory clauses
18 (3B:31-76). The provision in the Uniform Trust Code concerning
19 attorney’s fees in suits against trustees is not included in the bill.

20 Article 9 of the bill contains miscellaneous administrative
21 provisions. Section 3B:31-81 clarifies the status of the bill’s
22 provisions under the federal statutory law regarding electronic
23 records and signatures. Section 3B:31-82 is a severability clause.
24 Section 3B:31-83 states that the provisions of the trust code
25 generally apply to trusts created before, on or after the effective
26 date.

27 The bill repeals three sections of existing law that are
28 unnecessary or are inconsistent with its provisions: N.J.S.3B:11-5,
29 N.J.S.3B:11-6, N.J.S.3B:11-7, and section 1 of P.L.2001, c.144
30 (C.3B:11-38).

31 The Uniform Trust Code contained two additional articles which
32 have not been included in this bill. Article 2 of the Uniform Trust
33 Code concerned the jurisdiction of the court. In New Jersey, these
34 matters are controlled by court rule. Article 9 of the Uniform Trust
35 Code is the “Prudent Investor Act,” which has already been enacted
36 in this State by P.L.1997, c.26 (C.3B:20-11.1 et seq.).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2035

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 2015

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2035.

This bill, as amended, titled the “Uniform Trust Code,” would supplement and revise the State’s existing laws concerning trusts. The bill is largely based upon model legislation prepared by the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws), with some parts modified or altogether not included in order to better fit within New Jersey’s existing scheme on trust law. Most significantly, the model code contained two articles which have not been included in this bill: Article 2 concerning the jurisdiction of the court, as these matters are controlled by court rule and not statutory law; and Article 9 concerning prudent investor standards, as such standards are already part of the statutory law in this State, known as the “Prudent Investor Act,” P.L.1997, c.26 (C.3B:20-11.1 et seq.).

ARTICLE 1 (3B:31-1 THROUGH 3B:31-12): This article provides the definitions and general provisions to be used throughout the bill, which would largely comprise a new chapter in Title 3B of the New Jersey Statutes. Among the provisions of general applicability are those detailing mandatory requirements for the creation and operation of trusts that cannot be modified or eliminated by the agreed upon terms of a trust; these would include the duty of a trustee to act in good faith, the rights of certain creditors and assignees to reach a beneficiary’s trust interest, and the periods of limitation for commencing judicial proceedings. The article also covers the means for determining which jurisdiction’s law governs a trust, as well as determining the location of a trust’s principal place of administration. Additionally, the article would permit the nonjudicial settlement of a trustee’s accounts and other matters related to trust administration, so long as any such settlement does not produce a result contrary to what is allowed in trust law, including, but not limited to, the modification or termination of a trust in an impermissible manner.

ARTICLE 2 (3B:31-13 THROUGH 3B:31-17). Article 2 sets out guidelines with regard to the representation of a trust in a transaction or proceeding. Representation may be provided by the holder of

general testamentary power of appointment, by a fiduciary or a parent, or by virtual representation. Virtual representation allows a minor, incapacitated person, unborn individual, or a person whose identity or location is unknown to be represented by another having a substantially identical interest concerning a particular question or dispute. If a court determines that an interest is not represented or that available representation might not be adequate, the court may appoint a guardian ad litem or other representative for a minor, incapacitated person, unborn individual, or person whose identity or location is unknown.

ARTICLE 3 (3B:31-18 THROUGH 3B:31-34). This article details the methods and requirements for the creation, modification, and termination of a trust.

The methods to create a trust would be: (1) the transfer of property to a trustee under a written instrument during the life of a settlor (a person who creates or contributes property to a trust), or by will or disposition upon the settlor's death; (2) a written declaration by the owner of property that the owner holds identifiable property as trustee; or (3) a written power of appointment in favor of a trustee. A trust would only be created if there is a definite beneficiary for the trust, or the trust is a charitable trust, a trust for the care of an animal, or a trust for a noncharitable purpose. The written instrument creating a trust or transferring property to a trust would not be invalid or ineffective because the transferee is identified as the trust rather than the trustee thereof.

A trust may generally be enforced if its purposes are lawful, not contrary to public policy, and possible to achieve. Any trust, to the extent its creation was induced by fraud, duress, or undue influence, would be void to such extent.

As to the modification and termination of a trust, the article sets forth the means by which a trustee or beneficiary may commence proceedings to approve or disapprove a proposed trust modification or termination. Additionally, a trust is subject to termination to the extent it is revoked or expires pursuant to its own 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.

A trustee for a trust consisting of property valued at less than \$100,000 may, after notice to qualified beneficiaries, terminate the trust if that trustee concludes that the value of the trust property is insufficient to justify the costs of administration.

A 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 would further the purposes of the trust. To the extent practicable, any such modification should be made in accordance with the settlor's probable intent. The court may also reform a trust, even if unambiguous, to conform the terms to the settlor's probable intent if it is proved by clear and convincing

evidence that there was a mistake of fact or law, whether in expression or inducement.

Provisions in the article further provide that the court may modify the terms of a trust to achieve a settlor's tax objectives, so long as done in a manner that is not contrary to the settlor's probable intent.

ARTICLE 4 (3B:31-35 THROUGH 3B:31-41). This article establishes guidelines concerning creditor's claims, and spendthrift and discretionary trusts.

A spendthrift provision restricts a beneficiary's creditor from attaching the beneficiary's interest in the trust until there is a distribution to the beneficiary. A spendthrift provision is created by a reference to a "spendthrift trust," or words of similar import, in the trust instrument, that would restrain both voluntary and involuntary transfer of the beneficiary's trust interest.

If there is no spendthrift provision in a trust, a creditor may reach a beneficiary's interest by attachment of future or present distributions before the trust is distributed, subject to New Jersey law concerning wage executions (N.J.S.2A:17-50 through N.J.S.2A:17-56, and sections 3 and 4 of P.L.1981, c. 203 (C.2A:17-56.1a and C.2A:17-56.6)).

The article also addresses a type of trust for the young, the elderly, or the disabled, known as a "special needs trust," or "OBRA '93" trust. Such a trust would limit distributions during the term of the trust to benefit one or more "protected persons," such as a person who is aged, blind, disabled, developmentally disabled, or a person under the age of 18, or over the age of 18 and a full-time student, with a serious disability that may prevent self-sufficiency.

A creditor could not reach or attach an interest in a special needs trust, nor require the trustee to distribute to satisfy a creditor's claim. A special needs trust would not be required to repay government aid provided to the protected person unless the aid was provided on the basis that the trust would repay the aid when the person dies, the trust is terminated, and the special needs trust instrument expressly calls for such repayment. This provision would not apply to first-party, self-settled OBRA'93 trusts.

Also, a creditor may not compel a trustee to make a distribution to a beneficiary that is discretionary.

Regardless of any spendthrift provision in a trust, the property of a revocable trust is subject to claims by a settlor's creditor during the settlor's lifetime. With respect to an irrevocable trust, a creditor (or assignee of the settlor) may obtain the maximum amount available that can be distributed to or for the settlor's benefit. After the settlor's death, and subject to the settlor's right to direct the source from which liabilities are paid, the property of a trust revocable at the settlor's death is subject to creditor claims, cost of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and to a surviving spouse or civil union partner and children

to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, and expenses.

ARTICLE 5 (3B:31-42 THROUGH 31-45). This article addresses the use of revocable trusts as alternatives to wills and seeks to clarify certain issues in connection with the use of revocable trusts. A revocable trust is one in which the settlor retains the power to control, amend, revoke, or add property to the trust similar to a will. The article sets forth the circumstances in which a settlor, a settlor's attorney in fact, or guardian may revoke or amend a revocable trust. A trust is revocable unless the terms of a trust expressly provide that it is irrevocable, or unless there is clear and convincing evidence that it is irrevocable. The trustee of a revocable trust is responsible only to the settlor of the trust. The article establishes time limits on contesting the validity of a revocable trust after the death of the settlor, which generally conform to the time limits for contesting the probate of a will. The bill also protects a trustee who makes distributions from the trust after the settlor's death, unless the trustee knows of a pending or possible contest concerning the validity of the trust.

ARTICLE 6 (3B:31-46 THROUGH 3B:31-53). This article provides a series of default rules concerning the office of trustee, many of which are already established in chapters 11, 14 and 18 of Title 3B of the New Jersey Statutes, New Jersey Rules of Court, and New Jersey case law. Except for the court's authority to issue letters of testamentary trusteeship and to order bond, all of the provisions of Article 6 are subject to modification by the express terms of the governing trust instrument.

The article addresses the process of qualifying a trustee, including procedures for accepting or declining the office of trustee and bonding the trustee. It also establishes the duties and responsibilities between or among co-trustees, and provides standards for addressing various issues that may arise with co-trustees. For example, provisions would permit co-trustees to act by majority action and specify how and what happens when one of several trustees dissents from a course of action, as well as the extent to which the others must act when one is unable or has properly delegated performance of a function.

The article addresses changes in the office of trustee including: when and how a vacancy is filled, the procedure for resignation, grounds for removal, and the duties and obligations of a resigning or removed trustee. The settlor, a co-trustee, a beneficiary or the court on its own initiative may request that a trustee be removed on grounds as set forth in N.J.S.3B:14-21 (such as failing to file an inventory, render an account, refusal to abide by a court order, embezzlement, or neglect, refusal, or inability to perform trustee duties).

The article also prescribes standards for reimbursement for expenses advanced by the trustee. Since the matter of trustee compensation is addressed comprehensively in chapter 18 of Title 3B

of the New Jersey Statutes, the provision in the Uniform Trust Code concerning trustee compensation has not been included in the bill.

ARTICLE 7 (3B:31-54 THROUGH 3B:31-70). This article sets forth the basic duties and powers of trustees. The basic duty is the duty of loyalty which requires a trustee to manage the trust solely in the best interests of the beneficiaries and to avoid conflicts of interest between the interests of a trustee and that of a beneficiary. The other duties include the duty of impartiality, the obligation of prudent administration, the obligation to incur only reasonable costs, and the obligation to apply the trustee's special skills when there is reliance on those skills in the naming of the trustee. A trustee may delegate certain duties and powers, but is held to a prudent standard of appointment in so doing. The agent of any such delegation is held to the fiduciary standard of the trustee in the exercise of the trustee's delegated duties and powers.

With regard to the trustee's duty to disclose and make reports, provisions require the trustee to keep qualified beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.

The article also includes a section, not included in the model legislation, concerning the powers of fiduciaries to direct investment decisions for a trust. When a governing instrument gives authority to one or more persons to direct, consent to, or disapprove a fiduciary's actual or proposed investment decisions, such persons would be considered to be investment advisers and fiduciaries when exercising such authority unless the governing instrument otherwise provides.

The section provides that if a governing instrument states that the fiduciary is to *follow the direction* of an investment adviser, and the fiduciary acts in accordance with such a direction, then except in cases of willful misconduct or gross negligence, the fiduciary would not be liable for any loss resulting directly or indirectly from any such act. Except to the extent that the governing instrument provides otherwise, the fiduciary, acting under the instrument to follow the investment adviser's direction, would have no duty to: (1) monitor the conduct of the investment adviser; (2) provide advice to the investment adviser or consult with the investment adviser; or (3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the fiduciary would or might have exercised the fiduciary's own discretion in a manner different from the manner directed by the investment adviser.

If the governing instrument provides that a fiduciary is to *make decisions with the consent of* an investment adviser, then except in cases of willful misconduct or gross negligence on the part of the fiduciary, the fiduciary would not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such investment adviser's failure to provide such consent after having been requested to do so by the fiduciary.

Absent clear and convincing evidence to the contrary, the actions of the fiduciary pertaining to matters within the scope of the investment adviser's authority, such as confirming that the investment adviser's directions have been carried out and recording and reporting actions taken at the investment adviser's direction, would be presumed to be administrative actions taken by the fiduciary solely to allow the fiduciary to perform those duties assigned to the fiduciary under the governing instrument. Such administrative actions would not be deemed to constitute an undertaking by the fiduciary to monitor the investment adviser or otherwise participate in actions within the scope of the investment adviser's authority.

ARTICLE 8 (3B:31-71 THROUGH 3B:31-81). This article addresses the liability of a trustee and the rights of persons dealing with the trustee. It provides for remedies when there is a breach of an obligation by the trustee and specifies how money damages are to be determined. It also specifies certain trustee defenses, including the addition of a statute of limitations for claims alleging breach of trust. Generally, a beneficiary could not commence a proceeding for breach of trust against a trustee more than six months after the date the beneficiary (or beneficiary's representative) received a report disclosing the existence of a potential claim. If such a report was not applicable to a potential claim, the claim would have to be filed within five years of the following first-occurring event: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust. However, the foregoing would not bar any proceeding by a beneficiary until five years after such beneficiary has attained majority, has knowledge of the existence of the trust and has knowledge that such beneficiary is or was a beneficiary of the trust, if these factors were applicable to the beneficiary's situation.

ARTICLE 9 (3B:31-82 THROUGH 3B:31-84). Miscellaneous administrative provisions are addressed in this final article, such as clarifying the status of the proposed code's provisions under the federal statutory law regarding electronic records and signatures. The article also provides a severability clause so that if any provision of the code is held invalid, the invalidity does not affect other provisions of the code.

The provisions of the code, as stated in this article, would apply to trusts created before, on, or after the effective date of the bill.

ADDITIONAL SECTIONS

In addition to the new supplemental chapter, described above, the bill amends existing law, at N.J.S.3B:14-37, clarifying that a person, other than a beneficiary, who in good faith assists a fiduciary or deals with the fiduciary for value is protected as if the fiduciary properly exercised his power. A similar provision would be added to the section concerning a person who in good faith assists a former trustee,

without knowledge that the trusteeship was terminated, to protect that person from liability as if the former trustee were still a trustee.

Lastly, the bill repeals four sections of existing law that are unnecessary or are inconsistent with the bill's provisions: N.J.S.3B:11-5 (trustee's death or failure to act; appointment of new trustee by court; powers); N.J.S.3B:11-6 (vacancy in trusteeship upon discharge or removal); N.J.S.3B:11-7 (power of new, substituted or additional trustees); and section 1 of P.L.2001, c.144 (C.3B:11-38) (trust funds for pets).

The bill, as amended and reported by the committee, is identical to Assembly Bill No. 2915 (1R), also amended and reported today by the committee.

The committee amendments to the bill:

- add a definition for "beneficiary," to specify that the term includes persons: who have any present or future trust interest, vested or contingent; who, in a capacity other than that of a trustee, hold appointment power over trust property; who are owners in a trust interest by assignment or other transfer; or who, relating to a charitable trust only, are entitled to enforce the trust;
- expand the definition of "trustee" set forth in existing law to include a corporate entity in its capacity as a trustee or co-trustee where two or more are appointed;
- provide that a nonjudicial settlement of a trust matter cannot be used to produce results contrary to the statutory trust law, including, but not limited to, attempts to terminate or modify a trust in an impermissible manner;
- indicate that a settlor may not represent and bind a beneficiary with respect to the termination or modification of a noncharitable irrevocable trust;
- clarify that a trustee's power to select a beneficiary from an indefinite class is not void pursuant to section 14 of P.L.1999, c.159 (C.46:2F-10), which repealed the Uniform Statutory Rule Against Perpetuities, or any other applicable rule against perpetuities or restraint on alienation;
- eliminate a provision which would have allowed a settlor general authority to bring a proceeding to approve or disapprove a proposed modification or termination of a trust; instead, a settlor may only act to modify a charitable trust;
- provide that a noncharitable irrevocable trust may be modified or terminated upon consent of the trustee, not the settlor as originally provided in the underlying bill;
- add, regarding a trust spendthrift provision, that such a provision does not prevent the appointment of interests through the exercise of a power of appointment;

- grant, to a trustee of a special needs trust, broad discretion to make trust distributions, and require that such a trust have at least one protected person as a beneficiary;
- remove language concerning creditor claims on an irrevocable trust, so that assets of such a trust may still be subject to a creditor's claim even when a trustee's authority to pay taxing authorities directly, or reimburse the settlor for trust income tax payable by the settlor, is solely discretionary;
- add a new section, to be allocated within the proposed new chapter on trusts in Title 3B, concerning the investment functions of fiduciaries, as described in the statement above;
- require that a trustee keep qualified beneficiaries reasonably informed about the administration of a trust and of the material facts necessary for them to protect their interests;
- provide that the provisions establishing a general five-year statute of limitations on actions against a trustee would not bar a proceeding by a beneficiary until five years after such beneficiary has attained majority, has knowledge of the existence of the trust and has knowledge that such beneficiary is or was a beneficiary of the trust, if these factors were applicable to the beneficiary's situation;
- include references throughout the bill to "partner in a civil union" whenever only the term "spouse" appears, to reflect the equal status between marriages and civil unions per the provisions of P.L.2006, c.103 (C.37:1-28 et al.), which established civil unions in this State; and
- correct references to the term "co-trustee," as well as correct and update internal cross-references and external references to existing trust law and other relevant applicable law.