



STATE OF NEW JERSEY
NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

UNIFORM TRUST CODE

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THE UNIFORM TRUST CODE

INTRODUCTION

The Uniform Trust Code (2000 version) [UTC 2000, rev'd and am'd 2005] was the product of several years of drafting and was motivated by the objective of providing as comprehensive Trust Code for all states, as it was the view of several prominent bodies that the law of trusts was thin in some states, non-uniform in certain matters, and scattered throughout statutory law. The UTC 2000 primarily was modelled upon the California Trust Code, deemed the best state codification of trust law, and the Restatement (3rd) of Trusts. Twenty-one states have enacted UTC 2000.¹ New Jersey has not adopted the Act. Since 2000, the UTC has undergone several revisions and amendments. The current version is the amended and revised UTC 2005.

This Final Report and Recommendations is set forth in two parts. The First Part is a general description based on a reading of the Official Text and secondary literature. It highlights main features of UTC 2005 that the drafters, the reporter and expert commentary deemed significant changes from the predecessor statute. The UTC Official Text and its commentary run 179 pages.

The Second Part of this Final Report and Recommendations summarises the work of the New Jersey *ad hoc* Committee on the Uniform Trust Code.² The Committee is comprised of New Jersey's leading experts in the field of Trusts and Probates. During a several year period, the Committee studied the Official Text, modified Official Text language, deleted non-conforming sections, repealed New Jersey law rendered obsolete by the Uniform Trust Code, and prepared a summary of their changes that is reproduced here.

In addition, the Committee has worked with the Office of Legislative Services, and the New Jersey version is prepared in bill form to the satisfaction of the Committee. The New Jersey Law Revision Commission has been informed of the activities of the *ad hoc* Committee, has reviewed the Draft Final Bill and endorses without reservation or qualification the work product of the *ad hoc* Committee. Consequently, the New Jersey Law Revision Commission recommends that the New Jersey Legislature enact the New Jersey Uniform Trust Code.

Part One: General Description

Select Background Issues of UTC 2000

1. Drafting Process. The drafting committee consisted of the Uniform Law Commissioners; the reporter was David M. English, the W.F. Fratcher Missouri Endowed Professor of Law at the University of Missouri-Columbia. Major groups participating in the process included: the

¹ Data based on information obtained from the "The National Conference of Commissioners on Uniform State Laws" website last visited June 9, 2008, found at http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-utc2000.asp. There are four 2008 introductions.

² The members of the *ad hoc* Committee are: Richard Lert (Chair), Michael Backer, Andrew DeMaio, Glenn Henkel, Richard Kahn, Robert Pless, Warren Racusin, and Jordan Weitberg.

American Bar Association; the American College of Trust and Estate Counsel; the American Bankers Association; and the California and Colorado State bars.

2. Reasons for the Code. The main reason was the growing use of trusts, particularly in the estate planning area but also developments of commercial trusts, and the recognition that state law taken as a whole was too thin to support the structure of trusts. While the primary source of trust law in most states is the Restatement of Trusts, the drafting committee found gaps in the law and failure to provide guidance on several practical issues. In addition, there are uniform related uniform acts that, if adopted, may be repealed and/or integrated, if a state were to adopt the UTC.

3. Related Uniform Acts. Examples of related Uniform Acts on trusts and related subjects are:

- Uniform Prudent Investor Act
- Uniform Probate Code [Article VII would be repealed]
- Uniform Trustee Powers Act
- Uniform Common Trust Fund Act
- Uniform Custodial Trust Act
- Uniform Management of Institutional Funds Act
- Uniform Principal and Income Act
- Uniform Statutory Rule Against Perpetuities
- Uniform Testamentary Additions to Trusts Act

New Jersey has adopted several of the above: Uniform Prudent Investor Act, Uniform Probate Code, Uniform Management of Institutional Funds Act, Uniform Principal and Income Act, and the Uniform Statutory Rules against Perpetuities. In addition, New Jersey statutory law on trusts and related subjects is enormous. Therefore, a careful examination of how the UTC would affect New Jersey Law is a major undertaking, and will require substantial study and time.

4. Relationship to the Restatement of Trusts. The UTC 2000 was drafted in close coordination with the Restatement (3rd) of Trusts and with the revision of the restatement of Property: Wills and Donative Transfers. Consequently, the UTC 2000 may be described loosely as a codification of a majority of provisions of the Restatement. In the view of the Reporter, this procedure is superior to the Restatement, as it is binding law if enacted in the state and provides clarity to practitioners in the field. Having said this, the UTC 2000 does not displace the common law of trusts but supplements it.

Select Key Issues of UTC 2000

1. Scope. The UTC 2000 applies only to express trusts and does not apply to constructive trusts or other judicially crafted trusts that are not express trusts. An express trust is a trust created by the express intention of a settler having the capacity to create that trust and having adequate property interests to fund it. The purpose may be charitable or noncharitable. § 102. Also see § 401 for methods of creating trust. An interesting question raised by the UTC, as it applies to commercial trusts, is whether a trust is a gratuitous transfer or a business deal, that is, a contract. Charitable trusts certainly are donative transfers [gifts], but the varieties of commercial trusts do

not fall within that category.³ Examples of commercial trusts are pension trusts, investment trusts [mutual funds], real estate investment trusts [REITS], oil and gas royalty trusts and asset securitization. A 1997 estimate states that more than 90% of money held in trust in the United States is held in commercial trusts as opposed to personal trusts.⁴

2. Default Provisions. The entire UTC 2000 consists of default statutory provisions that may be overridden by the Trust instrument. The only exceptions for mandatory rules are set forth in § 105. They are:

- The requirements for creating a trust
- The rights of third parties in their dealings with the trustees
- The power of the court to take certain actions, such as to remove a trustee
- The trustee's obligation act in good faith, in accordance with the purpose of the trust, and to administer the trust for the benefit of the beneficiaries
- Limits on the settlor's ability to waive the duty to keep beneficiaries informed of the existence and on the administration of the trust

3. Nonjudicial Settlement Agreements. UTC 2000 encourages out of court settlement of contests. "Interested Persons" may by unanimous consent enter into binding agreements covering a range of matters that a court would have the power to approve. The list of issues set forth in § 111(d) that may be resolved is non-exhaustive. For example, "interested persons" may determine the interpretation or construction of trust terms; transfer the trust's principal place of administration; and determine the resignation or appointment of a trustee. These Nonjudicial settlements raise the question of representation as sometimes beneficiaries may be incapacitated, not yet born or unascertained. To resolve this problem, the UTC 2000 has incorporated doctrines of virtual representation [a not yet born beneficiary represented by another beneficiary with a similar interest], representation by fiduciaries, and appointment of a guardian ad litem. § 303 deal with representation issues.

4. Principal Place of Administration. This issue is important as it affects which state's income tax applies to the trust and determines which court has primary jurisdiction over the trust. The problem arises in the context of trustees, advisors, operation facilities being located in different jurisdictions. UTC § 108(a) takes the view that a provision in the trust designating the place of administration is valid provided the trustee's principal place of business is located in the designated jurisdiction, or a trustee is a resident of the designated jurisdiction, or all or part of the trust's administration occurs in the designated place. §108 also contains rules for determining the place of administration where the trust instrument has failed to make a designation.

5. Uneconomic Trust. A trustee without a court order may terminate a trust if the value of the trust property is insufficient to justify the cost of administration. The UTC 2000 uses a bracketed

³ Excluded also from the ambit of commercial trusts are the stream of governmentally created "trusts", the deed of trust to transfer real property, and reference to trusts in bankruptcy proceedings.

⁴ John H. Langbeinn, *The Secret Life of The Trust: The Trust as an Instrument of Commerce*, 107 Yale L.J. 165, 166 (1997)

figure of \$50,000, but states are free to raise the amount, for example, to \$100,000. This issue is noted because the Commission approved the Uniform Prudent Management of Institutional Funds Act that contains in §6 a provision permitting a trustee to remove a restriction if the fund's value is less than \$100,000. The UTC would add on the additional authority to terminate the trust and distribute the property.

6. Revocable Trust Presumption. The UTC 2000 reverses the common law assumption that trusts are irrevocable. §602(a). The reversal follows the current trend of most common trusts. The settlor may make the trust irrevocable by providing for that provision.

6. Duties and Powers of Trustee. These duties and powers are delineated in detail in §§801 through 817. As noted previously, these provisions may be overridden by specific terms in the trust, except for the duty to inform, duty to act in good faith and requirement to act in accordance with the purposes of the trust and for the benefit of the beneficiaries.

7. Remedies for Breach of Trust. These provisions are set forth in §§ 1001 through 1009. According to Professor English, "The measure of damages for breach of trust is designed to restore the beneficiaries to the position they would have been in had the breach not occurred. But it also serves another purpose - to prevent the trustee from profiting from the breach. Consequently, under the Code the trustee is liable for the higher of the profit made by the trustee or harm caused to the beneficiaries." §1002(a).

8. Dealing with Third Persons. UTC 2000 follows the theory that commercial transactions between trustees and third parties [that is, persons other than trustees or beneficiaries] should be treated like any commercial transaction to lubricate the flow of commerce and advance the purposes of the fund. If stricter standards applied, third persons would not take the increased risk of dealing with a trust and take its business elsewhere.

9. Creditor's Claims; Spendthrift and Discretionary Trusts. First, the UTC 2000 allows for spendthrift provisions provided the provision restrains the voluntary and involuntary transfer of the beneficiary's interest. §502(a). In this circumstance, a creditor cannot reach the interest of the beneficiary until the distribution is received by the beneficiary. Exceptions to spendthrift provisions are set forth in §503, the most significant, though most obvious, is the unenforceability of a spendthrift provision against a claim of the State or federal government pursuant to law. Significantly, the UTC 2000 permits creditors of the settlor to reach assets of the trust when the settlor is designated a beneficiary of the trust. "Consequently, the drafter's rejected the approach taken in Alaska and Delaware allowing a settlor to take a beneficial interest immune from creditor claims. NJ Law in this area is consistent with the UTC 200. *E.g.*, *Estate of DeMartino v. Division of Medical Assistance and Health Services*, 373 N.J. Super 210 (App. Div. 2004), *certif. denied*, 182 N.J. 485 (2005) (rejecting claim of estate trustee that assets of testamentary trust were beyond reach of state to recover Medicaid paid benefits for deceased spouse since at time of creation of trust, decedent had sufficient interest in the trust assets though that interest fell short of legal and beneficial ownership).

Part Two: Ad Hoc Committee Commentary

The general review is secondary to the explanations and commentary of the ad hoc Committee setting forth its reasons to modification of the Official Text. It is of pre-eminent importance for understanding the New Jersey Uniform Trust Code. The Commentary is taken verbatim from the reports of the Committee members.

NEW JERSEY UNIFORM TRUST CODE AD HOC COMMITTEE PREFATORY STATEMENT INTRODUCING SUMMARY OF CODE ARTICLES

The Uniform Trust Code (2000) is the first national codification of the law of trusts, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), organized to provide states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

The following is a summary of the work of an *ad hoc* Committee of New Jersey lawyers who are either Fellows of the American College of Probate Counsel, the Real Property Probate and Trust Law Section of the New Jersey State Bar Association, or both. The Committee members who worked on the legislation are Michael Backer, Andrew DeMaio, Glenn Henkel, Richard Kahn, Richard Lert, Robert Pless, Warren Racusin, and Jordan Weitberg. Each article was assigned to Committee member who acted as reporter. Each report was then reviewed by the entire Committee. The Uniform Trust Code was primarily intended to provide statutory and policy guidance for the many jurisdictions that do not have a well developed body of case law. In the case of New Jersey, there is a well developed body of State law, which nevertheless has gaps.

The Committee adhered to existing case law, as known, deviating only in cases where there were sufficient gaps in the law or there were strong policy grounds for a reversal of the law. The primary stimulus to the Commissioners' drafting of the Uniform Trust Code was the greater use of trusts in recent years, both in family estate planning and in commercial transactions, both in the United States and internationally. This greater use of the trust, and consequent rise in the number of day-to-day questions involving trusts, has led to a recognition that the trust law in many States is thin. It has also led to a recognition that the existing Uniform Acts relating to trusts, while numerous, are fragmentary. The Uniform Trust Code will provide States with precise, comprehensive, and easily accessible guidance on trust law questions. On issues on which States diverge or on which the law is unclear or unknown, the Code, for the first time, provides a uniform rule as a starting point for further consideration. The Code also contains a number of innovative provisions.

Default Rules: Most of the Uniform Trust Code consists of default rules that apply only if the terms of the trust fail to address or insufficiently cover a particular issue. Pursuant to 3B:31-5, a drafter is free to override a substantial majority of the Code's provisions. The important exceptions are set forth in 3B:31-5(b).

Innovative Provisions: Much of the Uniform Trust Code is a codification of the common law of trusts. But the Code does contain a number of innovative provisions. Among the more significant

are specification of the rules of trust law that are not subject to override in the trust's terms (3B:31-5), the inclusion of a comprehensive article on representation of beneficiaries (Article 3), rules on trust modification and termination that will enhance flexibility (3B:31-31 through 3B:31-38), and the inclusion of an article collecting the special rules pertaining to revocable trusts (Article 6).

**NEW JERSEY UNIFORM TRUST CODE
SUMMARY OF ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS**

Article 1 of the UTC contains definitions and general provisions. Within those definitions and provisions, however, lie some of the UTC's key policy issues. The definitions within 3B:31-3 lend substance to many of the provisions throughout the trust code. For example, the definition of "qualified beneficiary" determines which trust beneficiaries are entitled to notice of certain actions and whose consent is required for others.

3B:31-11 expands this definition by providing that certain other persons (including the Attorney General with respect to a charitable trust) have the same rights as a qualified beneficiary. 3B:31-5 states that most of the UTC's provisions are default rules, which may be modified or negated by the drafter of the trust instrument. Some UTC provisions, however, are mandatory, and therefore cannot be modified through a trust instrument. For example, 3B:31-5(b)(11) provides that the time periods for commencing a judicial proceeding concerning a trust may not be altered by the terms of a trust instrument. 3B:31-5(b)(8) provides that a trust agreement may not modify the duty of a trustee to respond to a beneficiary's request for information regarding the trust, provided that the beneficiary has reached the age of 35 and is a qualified beneficiary as defined in 3B:31-3.

3B:31-7 and 3B:31-8 establish rules regarding the governing law of a trust and the administrative situs (principal place of administration) of a trust. As a general rule, the drafter of a trust agreement may designate which state's law shall govern and in which jurisdiction the trust shall be administered. There are, however, exceptions. 3B:31-8 also sets forth a procedure for changing the situs of a trust.

3B:31-11 provides statutory authority for the nonjudicial settlement of a trustee's accounts and other matters related to trust administration. This provision permits the efficient and economical administration of a trust, particularly when there are no disputes among the trustee and the beneficiaries.

The definitions and general provisions within Article 1, together with the later provisions of the UTC, create certainty and clarity within the field of trust law in New Jersey.

NEW JERSEY UNIFORM TRUST CODE
ARTICLE 2
JUDICIAL PROCEEDINGS

This article should not be enacted. It relates to the role of the courts in the administration of trusts, jurisdiction of trustees and beneficiaries, subject matter jurisdiction and venue, all of which matters are preempted in New Jersey by the Rules Governing the Courts of New Jersey.

NEW JERSEY UNIFORM TRUST CODE
SUMMARY OF ARTICLE 3
REPRESENTATION

This article deals with representation of beneficiaries, both representation by fiduciaries (personal representatives, trustees, guardians, and conservators), and what is known as virtual representation. Representation is a topic not adequately addressed under the trust law of most States. Representation is addressed in the Restatement (First) of Property §§ 180-186 (1936), but the coverage of this article is more complete.

3B:31-17 is the introductory section, laying out the scope of the article. The representation principles of this article have numerous applications under this Code. The representation principles of the article apply for purposes of settlement of disputes, whether by a court or non-judicially. They apply for the giving of required notices. They apply for the giving of consents to certain actions.

3B:31-18 through 3B:31-21 cover the different types of representation. 3B:31-18 deals with representation by the holder of a general testamentary power of appointment. (Revocable trusts and presently exercisable general powers of appointment are covered by 3B:31-48, which grant the settlor or holder of the power all rights of the beneficiaries or persons whose interests are subject to the power). 3B:31-19 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. 3B:31-20 is the virtual representation provision. It provides for representation of and the giving of a binding consent by another person having a substantially identical interest with respect to the particular issue. 3B:31-21 authorizes the court to appoint a representative to represent the interests of unrepresented persons or persons for whom the court concludes the other available representation might be inadequate. The provisions of this article are subject to modification in the terms of the trust. See 3B:31-5. Settlers are free to specify their own methods for providing substituted notice and obtaining substituted consent.

NEW JERSEY UNIFORM TRUST CODE
SUMMARY OF ARTICLE 4
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

Article 4 deals with how a trust is validly created, modified and terminated. In particular, the rules on when a trust may be terminated or modified are a significant addition to this sometimes-murky area of New Jersey law. The changes include procedures for terminating a trust whose

material purposes have been accomplished and procedures that allow a trust to be terminated irrespective of material purpose where the settlor and all trust beneficiaries consent.

The rules on modification and termination generally are designed to carry out the settlor's intent consistent with the purposes of the trust, while giving beneficiaries flexibility where changes would otherwise be limited to the express terms of the trust that are often non-existent.

3B:31-22 through 3B:31-30 deal with the creation of a trust and the purposes for a trust. The New Jersey committee decided not to adopt UTC 3B:31-28 that allows a trust to be created based on an oral declaration without a trust instrument, and added a clause to 3B:31-22 providing that a written instrument is required in order to create a trust. 3B:31-23 states the requirements for creation of a trust, including the requirement that the same person not be the sole trustee and the sole beneficiary. If the sole trustee is also the sole beneficiary of the income interests, then a different person or persons must hold the remainder interests or the trust will not be valid.

3B:31-24 recognizes the validity of trusts created in other jurisdictions provided the requirements of the statute are met, including the requirement that the trust be in writing. As for trust purposes, under 3B:31-25 a trust generally may be enforced if its purposes are lawful, not contrary to public policy, and possible to achieve. Under 3B:31-27 a trust induced by fraud or duress is not valid. 3B:31-26 addresses valid purposes for charitable trusts and 3B:31-30 addresses situations where non-charitable trusts without ascertainable beneficiaries are valid. 3B:31-29 addresses trust for the care of animals. Although New Jersey has an existing statute that addresses trusts for animals, the New Jersey committee recommends the adoption of the UTC provision because the UTC provision is broader and to make our statute consistent with the uniform law.

3B:31-31 through 3B:31-38 deal with the modification and termination of a trust. These provisions deal with the purposes for modification and termination and the procedures for modification and termination. The general provision is contained in 3B:31-31, which summarizes the grounds on which a trust may be terminated and specifies which persons may bring an action to terminate a trust.

3B:31-32 describes the circumstances when a non-charitable trust may be compelled by the beneficiaries, with or without the consent of the settlor. If the settlor and all beneficiaries consent, a non-charitable trust may be modified or terminated even if doing so is inconsistent with a material purpose of the trust. Without the settlor's consent, and only with the consent of all the beneficiaries, the trust may be modified or terminated only if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. Significantly, a spendthrift provision in the terms of the trust is not presumed to be a material purpose of the trust, though an interested party will be able to offer proof of material purpose.

Under 3B:31-33, a court may modify the administrative or dispositive terms of a trust if doing so will further the purposes of the trust. 3B:31-34 addresses modification or termination of a charitable trust and 3B:31-35 addresses modification or termination of an uneconomical trust. 3B:31-36 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 N.J.S.A. 3B:3-33.1(b). 3B:31-37 permits modification to achieve a settlor's tax objectives,

consistent with existing New Jersey law. 3B:31-38 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 N.J.S.A. 3B:14-23(r), and the New Jersey committee modified the UTC section to conform to the existing statute.

NEW JERSEY UNIFORM TRUST CODE
SUMMARY OF ARTICLE 5
CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

Article Five of the Uniform Trust Code deals with spendthrift provisions in trusts. This Article has generated the most interest and controversy from States that have considered the UTC. Spendthrift clauses are generally enforceable in NJ except for the self settled trust. To the extent that the UTC proposed statutory procedural changes, we suggested that, consistent with current NJ Practice, procedural issues be reserved for the NJ Court rules.

Article 501 recites the general rule that “spendthrift provisions” (e.g., trust language that prevents a beneficiary or the beneficiary’s creditors from attaching the trust corpus) are to be honored. There are a variety of situations in New Jersey where there are statutory and/or judicially recognized protection is afforded to a trust. Accordingly, the proposed language was modified to clarify that existing law, (See N.J.S.A. 2A:17-50, et seq. which is a statutory restriction on an ability of a creditor to attach an income stream) continue to override the terms of the UTC rules. Moreover, the intention of the revision to the language is to protect other existing provisions such as, N.J.S.A. 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.A. 17B:24-6 (the inability of a creditor to attach proceeds of life insurance policies); N.J.S.A. 17B:24-7 (the inability of creditors to attach annuity proceeds); N.J.S.A. 17B:24-8 (the inability of creditors to attach health and disability insurance benefits); and, N.J.S.A. 17B:24-9 (the inability of creditors to attach proceeds of group insurance policies).

3B:31-40 addresses both involuntary alienations, as well as voluntary alienations, and is consistent with a substantial body of New Jersey case law which has been acknowledged in our state for more than 100 years. Because the proposed statute seems to restrict the application of the Spendthrift Provisions to the beneficiary clarification was provided, as the law should protect trustee to apply a spendthrift provision to an involuntary alienation. N.J.S.A. 3B:11-1 is the statute which now applies to spendthrift trusts but is limited to self settled trusts. Under New Jersey law a spendthrift provision is a material provision of a trust. *Heritage Bank North, N.A. v. Hunterdon Medical Center*, 164 N.J.Super. 33 (App.Div. 1978). Finally, current New Jersey law authorizes a party to disclaim notwithstanding any limitation in the nature of a Spendthrift Provision. See, N.J.S.A. 3B:9-11.

The Uniform Trust Code 3B:31-41 provides that there are certain creditors (i.e., “exception creditors”) that are can attach a Trust with a spendthrift provision. Other “exception creditors” in the UTC 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. Our proposed suggestion for 503 is a

deviation from the provision suggested by the commissioners. In New Jersey there are certain recognized creditors that are “excepted” from the application of the spendthrift clause, thus additional provisions are unnecessary. Adding additional “protected classes” as exception creditors has drawn national criticism. Our proposal clarifies the protection as to special needs trusts. Under New Jersey law, no creditors can compel distribution from a trust. The creditor can attach distributions once made to the beneficiary.

As a general rule, Settlers are authorized to create Trusts for the benefit of a beneficiary and vest total discretion in a Trustee to administer the Trust and make distributions without interference by a Court. 3B:31-42 codifies these rules. A Trustee would be subject to the tax authorization contained in I.R.C. §2041 as already codified in N.J.S.A. 3B:11-4.1, et seq. The remaining changes from the Uniform act are made to be consistent with changes to 3B:31-41, discussed above.

3B:31-43 appears to re-codify N.J.S.A. 3B:11-1, where at the right of any creator to a Trust to receive either income or principal of the Trust, or any part of either thereof, presently or in the future, shall be freely alienable and shall be subject to the claims of creditors, notwithstanding any provision to the contrary in the terms of the Trust.

3B:31-44 provides that creditors can attach a distribution that is “overdue” and 3B:31-45 clarifies that Trust assets not available for a trustees personal obligations. Both sections appear to be a valid restatement of New Jersey law. While we believe the principles would be understood, a codification of the rules would be helpful.

NEW JERSEY UNIFORM TRUST CODE SUMMARY OF ARTICLE 6 REVOCABLE TRUSTS

Article 6 addresses the use of revocable trusts as alternatives to Wills and seeks to clarify certain issues in connection with the use of revocable trusts. It creates some important changes from current New Jersey law, particularly (i) presuming that a trust is revocable, and (ii) establishing that the capacity to make a trust is the same as the capacity to make a Will. We have generally followed this approach, while making clear that the intent of the creator of the trust should control in determining whether a trust is to be revocable or irrevocable.

3B:31-46 provides that the capacity required to create, amend or revoke a trust is the same as that required to execute a Will. 3B:31-47 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. It also sets forth the circumstances in which a settlor, a settlor’s attorney in fact or guardian may revoke or amend a revocable trust.

3B:31-48 provides that the Trustee of a revocable trust is responsible only to the settlor of the trust. It also provides that the holder of a power of withdrawal over a trust has the same rights as a settlor with respect to the property subject to such power. 3B:31-49 sets forth time limits on contesting the validity of a revocable trust after the death of the settlor. These time limits generally conform to the time limits for contesting the probate of a Will. It 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.

**UNIFORM TRUST CODE
SUMMARY OF ARTICLE 7
OFFICE OF TRUSTEE**

Article 7 of the UTC 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, our Rules of Court and our case law. 3B:31-50 and 3B:31-51 address the process of qualifying a trustee, including procedures for acceptance or declination of this office and bonding the trustee. 3B:31-52 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 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. Many of these provisions are already addressed at N.J.S. 3B:11, as indicated more specifically in our Committee comments.

3B:31-53 through 3B:31-56 address changes in the office of trustee; i.e., when and how a vacancy must be filled, the procedure for resignation, grounds for removal and the duties and obligations of a resigning or removed trustee. Where the Committee determined that these issues were already adequately addressed in our Probate Code or our Rules of Court and the provisions of the Uniform Act were redundant, they have not been enacted.

3B:31-57 and 3B:31-58 prescribe standards for trustee compensation and reimbursement for expenses advanced. Since the matter of trustee compensation is addressed comprehensively at N.J.S. 3B:18, 3B:31-57 has not been enacted. Except for the Court's authority to issue letters of testamentary trusteeship and to order bond, all of the provisions of this Article are subject to modification by the express terms of the governing instrument.

**NEW JERSEY UNIFORM TRUST CODE
SUMMARY OF ARTICLE 8
DUTIES AND POWERS OF TRUSTEE**

Article Eight sets forth the basic duties and certain powers of trustees. The concepts are, for the most part, firmly embedded in our statutory and case law. Several are complementary to and broaden duties and powers stated in our Prudent Investor Act, such as the fundamental duties to act in good faith in accordance with the terms of the trust and applicable law, and to act prudently, impartially, and with undivided loyalty to the trust's beneficiaries.

ARTICLE EIGHT enacts specific duties concerning keeping trust beneficiaries informed, an area of the law heretofore decidedly unclear in New Jersey and elsewhere. This Article embraces and expands on the authorization in the Prudent Investor Act 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.

The New Jersey Drafting Committee has proposed some revisions to several of the sections of the nationally promulgated Uniform Trust Code for purposes of clarifying specific language, or making the language used consistent with traditional language familiar to New Jersey fiduciaries and trusts and estates lawyers. For example, in dealing with the duty of loyalty, we have recommended reference to the duty of “undivided loyalty.” Several of our proposed modifications are intended to keep this Article compatible with and complementary to our Prudent Investor Act, such as the duty of the trustee to notify qualified beneficiaries of delegations of duties and powers.

We opted not to re-enact our Prudent Investor Act and specific fiduciary powers codified in N.J.S.A. 3B:14-23 so as to incorporate them into our Uniform Trust Code because these statutes also govern fiduciaries not subject to the Uniform Trust Code, such as executors and guardians. The Committee saw no need to have parallel but somewhat different fiduciary powers exclusively governing trustees.

NEW JERSEY UNIFORM TRUST CODE
ARTICLE 9
UNIFORM PRUDENT INVESTOR ACT

Enacted, with variations, in New Jersey as the Prudent Investor Act, L. 1997, c. 26, effective June 5, 1997, N.J.S.A. 3B:20-11.1 et. seq. Decision is not to include within the UTC.

NEW JERSEY UNIFORM TRUST CODE
ARTICLE 10
LIABILITY OF TRUSTEE AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

Article 10 addresses liability of trustees and trustee dealings with persons other than beneficiaries. With respect to the rights of beneficiaries, the article lists the remedies for breach of trust (§1001); specifies how money damages are to be determined (§1002); and specifies certain trustee defenses, including the addition of a statute of limitations for claims alleging breach of trust (§1005) and a provision on enforcing exculpatory clauses (§1008).

With respect to transactions by trustees with third persons, the UTC encourages trustees and third persons to engage in commercial transactions to the same extent as if no trust was involved. Addressed are personal liability of the trustee for contract or tort and the rights of bona fide purchasers. §1010-1012. To protect the privacy of the trust, a procedure is provided whereby a trustee may verify authority by means of a certificate instead of providing the third person with a copy of the trust instrument. §1013. The Article does not include §1004, which provides that the court, in judicial proceedings relating to the administration of the trust, may award attorney’s fees against the trustee, the trust, or even a beneficiary, as justice and equity may require. The matter of attorney’s fees is left with existing Court Rules and developing case law.

**NEW JERSEY UNIFORM TRUST CODE
SUMMARY OF ARTICLE 11
MISCELLANEOUS PROVISIONS**

Article 11 of the UTC contains miscellaneous administrative provisions. It provides for the effective date of the trust code, and states that the provisions of the trust code generally apply to trusts created before, on or after the effective date. The bill provides that it will take effect 180 days following enactment.

Article 11 also includes a severability clause and clarifies the status of the trust code under the federal statutory law regarding electronic records and signatures. 3B:31-93 repeals three sections of existing law that are unnecessary or are inconsistent with the trust code.

STATUTES RECOMMENDED FOR REPEAL OR AMENDMENT

The following statutes are recommended for repeal: N.J.S. 3B:11-5, N.J.S. 3B:11-6, N.J.S. 3B:11-7, N.J.S. 3B:11-38, and the following for amendment: N.J.S. 3B:14-37.

CONCLUSION

Therefore, it is recommended that the New Jersey Legislature enact the New Jersey Uniform Trust Code in the form produced by the New Jersey *ad hoc* Committee on the Uniform Trust Code.

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

3B:31-1 SHORT TITLE

This act shall be known and may be cited as the “Uniform Trust Code”

[Source UTC § 101]

3B:31-2 SCOPE

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

[Source UTC § 102]

3B:31-3 DEFINITIONS

As used in this act:

“Action,” with respect to an act of a trustee, includes a failure to act.

“Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection a. of N.J.S. 3B:31-26.

“Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

“Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

“Jurisdiction,” with respect to a geographic area, includes a State or country.

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

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

“Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined: (A) is a distributee or permissible distributee of trust income or principal; (B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date; or (C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

“Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

“Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of

the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

“Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

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

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

“Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

“Trustee” includes an original, additional, and successor trustee, and a cotrustee.

[Source UTC § 103]

3B:31-4 KNOWLEDGE

a. Subject to subsection b., a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

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

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

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

[Source UTC § 104]

3B:31-5 DEFAULT AND MANDATORY RULES

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

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

(1) the requirements for creating a trust;

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

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

(4) the power of the court to modify or terminate a trust under N.J.S. 3B:31-31 through 3B:31-37;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in N.J.S. 3B:31-39 through 3B:31-44;

(6) the power of the court under N.J.S. 3B:31-50 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection b. of N.J.S. 3B:31-56 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) The duty under subsections a. and b. of NJS 3B:31-71 to respond to the request of a qualified beneficiary of an irrevocable trust who has attained the age of 35 years for a copy of the trust instrument or for other information reasonably related to the administration of the trust;

(9) the effect of an exculpatory term under N.J.S. 3B:31-94;

(10) the rights under N.J.S. 3B:31-96 through 3B:31-99 of a person other than a trustee or beneficiary;

(11) periods of limitation for commencing a judicial proceeding;

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

(13) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in N.J.S. 3B:31-15 and 3B:31-16.

[Source UTC § 105]

3B:31-6 COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

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

[Source UTC § 106]

3B:31-7 GOVERNING LAW

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

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

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

[Source UTC § 107]

3B:31-8 PRINCIPAL PLACE OF ADMINISTRATION

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

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

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

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

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b), may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States.

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

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

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

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

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

(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 704.

[Source UTC § 108]

3B:31-9 METHODS AND WAIVER OF NOTICE

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

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

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

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

[Source UTC § 109]

3B:31-10 OTHERS TREATED AS QUALIFIED BENEFICIARIES

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

b. A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of a qualified beneficiary under this act.

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

[Source UTC § 110]

3B:31-11 NONJUDICIAL SETTLEMENT AGREEMENTS

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

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

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

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

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

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

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

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

- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

e. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in N.J.S. 3B:31-17 through N.J.S. 3B:31-21 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

[Source UTC § 111]

3B:31-12 RULES OF CONSTRUCTION

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

[Source UTC § 112]

ARTICLE 3 REPRESENTATION

3B:31-13 REPRESENTATION: BASIC EFFECT

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

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

(c) Except as otherwise provided in N.J.S. 3B:31-32 and N.J.S. 3B:31-47, a person who under this article who represents a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

[Source UTC § 301]

3B:31-14 REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT

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

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

[Source UTC § 302]

3B:31-15 REPRESENTATION BY FIDUCIARIES AND PARENTS

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

(1) [conservator] may represent and bind the protected person whose estate the [conservator] controls;

(2) [guardian] of the person may represent and bind the ward if a [conservator] of the ward's estate has not been appointed;

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

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a [conservator] or [guardian] for the child has not been appointed.

[Source UTC § 303]

3B:31-16 REPRESENTATION BY PERSONAL HAVING SUBSTANTIALLY IDENTICAL INTEREST

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

[Source UTC § 304]

3B:31-17 APPOINTMENT OF REPRESENTATIVE

(a) If the court determines that an interest is not represented under NJS 3B:31-17 -- 3B:31-20, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem or other representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, protected person or unborn individual, or a person whose identity or location is unknown. A guardian ad litem or other representative may be appointed to represent several persons or interests.

(b) Such guardian ad litem or other representative may act on behalf of the individual represented with respect to any matter arising under this Act, whether or not a judicial proceeding concerning the trust is pending.

(c) Such guardian ad litem or other representative may consider the benefit accruing to the living members of the individual's family.

[Source UTC § 305]

ARTICLE 4

CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

3B:31-18 METHODS OF CREATING A TRUST

A trust may be created by:

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

(2) written declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) written exercise of a power of appointment in favor of a trustee.

[Source UTC § 401]

3B:31-19 REQUIREMENTS FOR CREATION

(a) A trust is created only if:

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

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

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

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in N.J.S. _____; or

(C) a trust for a noncharitable purpose, as provided in N.J.S. _____;

(4) the trustee has duties to perform; and

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

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

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

[Source UTC § 402]

3B:31-20 WRITTEN TRUSTS CREATED IN OTHER JURISDICTIONS

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

(1) the trust instrument was executed; or

(2) at the time the trust was created, the settlor was domiciled, had a place of abode, or was a national; or

(3) at the time the trust was created, a trustee was domiciled or had a place of business; or

(4) at the time the trust was created, any trust property was located.

[Source UTC § 403]

3B:31-21 TRUST PURPOSES

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

[Source UTC § 404]

3B:31-22 CHARITABLE PURPOSES; ENFORCEMENT

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

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

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

[Source UTC § 405]

3B:31-23 CREATION OF TRUST INDUCED BY FRAUD, DURESS

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

[Source UTC § 406]

3B:31-24 TRUST FOR CARE OF ANIMAL

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

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

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

[Source UTC § 408]

3B:31-25 NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Except as otherwise provided in N.J.S. _____ or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable but otherwise valid purpose without a definite or definitely ascertainable beneficiary or for a noncharitable purpose to be selected by the trustee.

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

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's estate.

[Source UTC § 409]

3B:31-26 MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL

(a) In addition to the methods of termination prescribed by N.J.S. _____ through N.J.S. _____, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy of this State, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under N.J.S. _____ through N.J.S. _____, or trust combination or division under N.J.S. _____, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under N.J.S. _____ may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under N.J.S. _____.

[Source UTC § 410]

3B:31-27 MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a

material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized.

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

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

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

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

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

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

[Source UTC § 411]

3B:31-28 MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY

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

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

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

[Source UTC § 412]

3B:31-29 MODIFICATION OR TERMINATION OF CHARITABLE TRUST (CY PRES)

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

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

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

(3) the court may modify or terminate the trust by directing that the trust property

be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a).

[Source UTC § 413]

3B:31-30 MODIFICATION OR TERMINATION OF UNECONOMIC TRUST

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

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

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

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

[Source UTC § 414]

3B:31-31 REFORMATION TO CORRECT MISTAKES

The court may reform the terms of 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.

[Source UTC § 415]

3B:31-32 MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

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

[Source UTC § 416]

3B:31-33 COMBINATION AND DIVISION OF TRUSTS

(a) Subject to subsection (b),

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

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

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

[Source UTC § 417]

ARTICLE 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

3B:31-34 RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

Except as otherwise provided by law, to the extent a beneficiary's interest is not protected by a spendthrift provision, a creditor or assignee of the beneficiary may reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary, subject to N.J.S.A. 2A:17-50 et seq. or any other applicable law. The court may limit the award to such relief as is appropriate under the circumstances.

[Source UTC § 501]

3B:31-35 SPENDTHRIFT PROVISION

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

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

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in sections 501 to 507, inclusive, of this act, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

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

[Source UTC § 502]

3B:31-36 EXCEPTIONS TO SPENDTHRIFT PROVISION

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

(a) Special Needs

(1) Protected Person means a person who is

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

b) developmentally disabled as defined at N.J.S. 30:1AA-2; or

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

(2) Special Needs Trust means an OBRA '93 Trust (as defined at N.J.S. 3B:11-37) or other trust governed by a written trust instrument which

a) grants trustees full discretion to determine whether and when to distribute;

b) limits distributions during the trust term to distributions to benefit one or more Protected Persons (although others may realize incidental benefits);

c) provides that the trustees do not have any obligation to pay the Protected Persons' obligations or fund their support;

d) does not give the Protected Persons any right to require trustees to distribute at a specific time or for a particular purpose or to assign or encumber interests in the trust; and

e) evidences the grantor's intent to supplement rather than replace or impair government assistance that the Protected Persons receive or for which they otherwise may be eligible.

(b) Notwithstanding any other provision of this Act or other law

(1) trustees of a Special Needs Trust are not required to distribute for any particular purpose or at any particular time during the trust term;

(2) all creditors (including, but not limited to, spendthrift exception creditors) of a Protected Person may not reach or attach a Protected Person's interest in a Special Needs Trust and neither creditors nor courts may require the trustees to distribute to satisfy a Protected Person's creditor's claim;

(3) a Special Needs Trust shall not be required to repay government aid provided to a Protected Person unless the aid was provided on the basis that the Special Needs Trust would repay the aid when the Protected Person dies (or the Special Needs Trust sooner terminates) and the Special Needs Trust instrument expressly calls for such repayment; and

(4) a Special Needs Trust shall terminate at such time as provided in its governing instrument.

(c) Notwithstanding sections 501 and 502 of this Section, trustees of a Special Needs Trust must exercise their discretion in good faith to further trust purposes and courts may exercise their equity authority to remedy trustee abuses of discretion.

[Source UTC § 503]

3B:31-37 DISCRETIONARY TRUSTS EFFECT OF STANDARD

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

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

(2) The trustee has abused the discretion.

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

(c) With respect to the powers set forth in N.J.S.A. 3B:11-4.1, the provisions of this section shall apply even though the beneficiary is the sole trustee or a co-trustee of the trust.

[Source UTC § 504]

3B:31-38 CREDITOR'S CLAIM AGAINST SETTLOR

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

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

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

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

(b) For purposes of this section:

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

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this act, or as later amended.

[Source UTC § 505]

3B:31-39 OVERDUE DISTRIBUTION

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

(b) Except as otherwise provided in N.J.S.A. 3B:11-4.1 of this act, whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the

trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

[Source UTC § 506]

3B:31-40 PERSONAL OBLIGATIONS OF TRUSTEE

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

[Source UTC § 507]

ARTICLE 6 REVOCABLE TRUSTS

3B:31-41 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.

[Source UTC § 601]

3B:31-42 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 [Code]].

(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; and

(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) 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 writing 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 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.

[Source UTC § 602]

3B:31-43 SETTLOR'S POWERS; POWERS OF WITHDRAWAL

(a) While a trust is revocable [delete optional "and the settlor has capacity to revoke the trust"], rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

[Source UTC § 603]

3B:31-44 LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY

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

(1) [three] years after the settlor's death; or

(2) "4 months, in the case of a resident, or 6 months, in the case of a nonresident" after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

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

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

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

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

[Source UTC § 604]

ARTICLE 7
OFFICE OF TRUSTEE

3B:31-45 ACCEPTING OR DECLINING TRUSTEESHIP

a. Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

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

(2) in the case of any other trustee,

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

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

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

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

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

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

[Source UTC Sec. 701]

3B:31-46 TRUSTEE'S BOND

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

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

[Source UTC § 702]

3B:31-47 COTRUSTEES

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision. A dissenting trustee who joins in carrying out a decision of the majority but expresses his dissent in writing promptly to his cotrustees shall not be liable for the act of the majority.

(b) If a vacancy occurs in a cotrusteeship, the remaining trustee or cotrustees shall act for the trust unless the trust instrument provides otherwise.

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

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, other temporary incapacity or a vacancy remains unfilled and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees shall act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expect the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) A trustee who does not join in an action of a cotrustee or cotrustees because of absence, illness, disqualification or other temporary incapacity shall not be liable for that action.

(g) Notwithstanding subsection (a) or (f), every trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a breach of trust; and
- (2) compel a cotrustee to redress a breach of trust.

[Source UTC § 703]

3B:31-48 VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

(a) A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee renounces the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns or is discharged;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled unless the trust instrument provides otherwise. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

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

- (1) by a person designated pursuant to the terms of the trust to act as successor trustee;
- (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

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

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

(2) by a person appointed by the court.

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

[Source UTC § 704]

3B:31-49 RESIGNATION OF TRUSTEE

(a) A trustee may resign:

(1) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, all cotrustees, and the trustee or trustees, if any, designated pursuant to the terms of the trust to succeed the resigning trustee; or

(2) with the approval of the court.

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

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

[Source UTC § 705]

3B:31-50 REMOVAL OF TRUSTEE

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

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

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

[Source UTC § 706]

3B:31-51 DELIVERY OF PROPERTY BY FORMER TRUSTEE

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

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it, but a resigning trustee may retain a reasonable reserve for the costs of finalizing that trustee's administration of the trust.

[Source UTC § 707]

3B:31-52 REIMBURSEMENT OF EXPENSES

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

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

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

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

[Source UTC Sec. 709]

ARTICLE 8

DUTIES AND POWERS OF TRUSTEE

3B:31-53 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 interests of the beneficiaries, and in accordance with this act and other applicable law.

[Source UTC § 801]

3B:31-54 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 Section 1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or 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 Section 1005;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 1009; or

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

(2) the trustee's parents, parents' descendants, or the spouse or domestic partner of any of the foregoing;

(3) an agent 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.

(f) [Reserved]

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries and shall vote to elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

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

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

(2) payment of reasonable compensation to the trustee;

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

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

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

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

[Source UTC § 802]

3B:31-55 DUTY OF IMPARTIALITY

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

[Source UTC § 803]

3B:31-56 DUTY OF PRUDENT ADMINISTRATION

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

[Source UTC § 804]

3B:31-57 COSTS OF ADMINISTRATION

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

[Source UTC § 805]

3B:31-58 DUTY TO USE SPECIAL SKILLS

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

[Source UTC § 806]

3B:31-59 DELEGATION BY TRUSTEE

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

(b) A trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing in writing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

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

(c) A trustee shall provide reasonable written notice to the qualified beneficiaries on each occasion upon which the trustee delegates duties pursuant to this section, including the identity of the agent.

(d) A trustee who complies with subsections (b) and (c) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(e) In performing a delegated function, the agent shall owe to the trustee and the beneficiaries the same duties as the fiduciary and shall be held to the same standards as the fiduciary.

(f) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State, even if the delegation agreement provides otherwise.

[Source UTC § 807]

3B:31-60 POWERS TO DIRECT

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust the power to direct certain actions of the trustee, the trustee shall act in accordance with a written exercise of the power unless the attempted exercise is contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

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

(d) A person, other than a beneficiary, who holds a power to direct is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of the holder's failure to act in good faith.

[Source UTC § 808]

3B:31-61 CONTROL AND PROTECTION OF TRUST PROPERTY

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

[Source UTC § 809]

3B:31-62 RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

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

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

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

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

[Source UTC § 810]

3B:31-63 DUTY TO ENFORCE AND DEFEND CLAIMS

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

[Source UTC § 811]

3B:31-64 DUTY TO COLLECT TRUST PROPERTY AND REDRESS BREACHES OF TRUST

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

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

[Source UTC § 812]

3B:31-65 DUTY TO DISCLOSE AND DISCRETION TO PERIODICALLY REPORT

(a) Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of a trust.

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

(c) A trustee seeking the protection of Section [92(a)] of this act [U.T.C. §905(a)] may provide the beneficiaries with a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values.

[Source UTC § 813]

3B:31-66 DISCRETIONARY POWERS

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

[Source UTC § 814]

3B:31-67 GENERAL POWERS OF TRUSTEE

(a) Except as limited by N.J.S.A. 3B:11-4.1 and other express statutory restrictions, a trustee, without authorization by the court, may exercise:

- (1) powers conferred by the terms of the trust; or
- (2) except as limited by the terms of the trust:

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

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

(C) any other powers conferred by this Act and by Title 3B.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this Act and by Title 3B.

[Source UTC § 815]

3B:31-68 DISTRIBUTION ON TERMINATION

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

(b) Upon termination or partial termination of a trust, the trustee may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The proposal shall notify all persons who have a right to object to the proposal of their right to object and that their objection must be in writing and received by the trustee within 30 days after the mailing or delivery of the proposal. The right of any person to object to the proposed distribution on the basis of the kind or value of asset he or she or another beneficiary is to receive, if not waived earlier in writing, terminates if he or she fails to object in writing received by the trustee within 30 days after mailing or delivery of the proposal.

[Source UTC § 817]

ARTICLE 10

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

DEALING WITH TRUSTEE

3B:31-69 REMEDIES FOR BREACH OF TRUST

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

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

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

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

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

(4) order a trustee to account;

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

- (6) suspend the trustee;
- (7) remove the trustee as provided in Section 706;
- (8) reduce or deny compensation to the trustee;
- (9) subject to Section 1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) order any other appropriate relief.

[Source UTC § 1001]

3B:31-70 DAMAGES FOR BREACH OF TRUST

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

- (1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
- (2) the profit the trustee made by reason of the breach.

(b) If more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees based upon the comparative degree of culpability for the breach. However, a trustee who committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries is not entitled to contribution from a trustee who was not guilty of such conduct. Furthermore, a trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

[Source UTC § 1002]

3B:31-71 DAMAGES IN ABSENCE OF BREACH

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

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

[Source UTC § 1003]

3B:31-72 LIMITATION OF ACTION AGAINST TRUSTEE

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

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

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

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

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

(d) For purposes of subsection (a), a beneficiary is deemed to have been sent a report if:

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

(2) in the case of a beneficiary who under Article 3 may be represented and bound by another person, if it is received by his representative.

(e) this section does not preclude an action to recover for fraud or misrepresentation related to the report.

[Source UTC § 1005]

3B:31-73 RELIANCE ON TRUST INSTRUMENT

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

[Source UTC § 1006]

3B:31-74 EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION

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

[Source UTC § 1007]

3B:31-75 EXCULPATION OF TRUSTEE

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

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

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

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

term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

[Source UTC § 1008]

3B:31-76 BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION

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

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

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

[Source UTC § 1009]

3B:31-77 LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

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

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

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

[Source UTC § 1010]

3B:31-78 INTEREST AS GENERAL PARTNER

(a) Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the New Jersey Uniform Partnership Act (1996) or the Revised New Jersey Uniform Limited Partnership Act of 1976.

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

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

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

[Source UTC § 1011]

3B:31-79 CERTIFICATION OF TRUST

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

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

(2) the identity of the settlor;

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

(4) the powers of the trustee;

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

(6) the authority of cotrustees to sign and whether all or less than all are required in order to exercise powers of the trustee; and

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

(b) A certification of trust shall be signed by all persons identified as currently acting as trustees.

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

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

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

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

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

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

[Source UTC § 1013]

ARTICLE 11

MISCELLANEOUS PROVISIONS

3B:31-80 ELECTRONIC RECORDS AND SIGNATURES

The provisions of this act governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

[Source UTC § 1102]

3B:31-81 SEVERABILITY CLAUSE

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

[Source UTC § 1103]

3B:31-82 EFFECTIVE DATE

Effective Date. This act shall take effect on the 180th day following enactment.

[Source UTC § 1104]

3B:31-83 REPEALER

The following sections are repealed:

N.J.S. 3B:11-5 through 3B:11-7.

[Source UTC § 1105]

3B:31-84 APPLICATION TO EXISTING RELATIONSHIPS

a. Except as otherwise provided in this act:

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

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

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

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

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

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

[Source UTC § 1106]