

ASSEMBLY, No. 2915

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 13, 2014

Sponsored by:

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman JACK M. CIATTARELLI

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

“Uniform Trust Code.”

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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

11
12 CHAPTER 31
13 UNIFORM TRUST CODE

14
15 TABLE OF CONTENTS

16
17 ARTICLE 1
18 GENERAL PROVISIONS AND DEFINITIONS

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

32
33 ARTICLE 2
34 REPRESENTATION

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

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

Matter underlined thus is new matter.

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

29
30

ARTICLE 4
CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY
TRUSTS

31
32
33

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

41
42

ARTICLE 5
REVOCABLE TRUSTS

43
44

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

1 Trust; Distribution of Trust Property.

2

3

ARTICLE 6

4

OFFICE OF TRUSTEE

5

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

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

8 3B:31-48. Cotrustees.

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

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

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

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

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

14

15

ARTICLE 7

16

DUTIES AND POWERS OF TRUSTEE

17

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

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

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

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

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

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

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

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

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

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

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

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

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

32 3B:31-67. Discretionary Powers.

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

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

35

36

ARTICLE 8

37

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

38

DEALING WITH TRUSTEE

39

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

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

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

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

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

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

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

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

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

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

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

3

4

ARTICLE 9

5

MISCELLANEOUS PROVISIONS

6

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

8 3B:31-82. Severability Clause.

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

10

11

ARTICLE 1

12

GENERAL PROVISIONS AND DEFINITIONS

13

14 3B:31-1. Short Title.

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

17

18 3B:31-2. Scope.

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

22

23 3B:31-3. Definitions.

24 As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25

26 3B:31-4. Knowledge.

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

29 (1) has actual knowledge of it;

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

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

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

47

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45

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

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

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

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

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

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

15

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

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

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

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

29

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

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

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

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

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

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

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

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

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

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

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

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

16
17 ARTICLE 2
18 REPRESENTATION
19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 A trust may be created by:

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

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

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

5

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

7 a. A trust is created only if:

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

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

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

11 (a) a charitable trust;

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

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

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

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

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

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

27

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

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

31 a. the trust instrument was executed;

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

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

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

38

39 3B:31-21. Trust Purposes.

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

43

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7

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

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

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

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

23

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

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

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

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

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

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

39

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

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

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

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

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

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

8

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

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

14

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

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

19

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

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

25

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

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

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

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

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

40

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

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

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

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

5

6 3B:31-36. Spendthrift Provision.

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

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

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

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

20

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

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

24 a. Special Needs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22

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

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

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

29 (2) The trustee has abused the discretion.

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

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

36

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

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

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

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

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

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

13 b. For purposes of this section:

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

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

26

27 3B:31-40. Overdue Distribution.

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

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

45

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

ARTICLE 5
REVOCABLE TRUSTS

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

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

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

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

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

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

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

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

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

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

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

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

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

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

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

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

1 3B:31-44. Settlor's Powers; Powers of Withdrawal.

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

5

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

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

11 (1) 3 years after the settlor's death; or

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

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

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

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

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

29

30

ARTICLE 6
OFFICE OF TRUSTEE

31

32

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

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

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

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

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

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

46 b. A person designated as trustee who has not yet accepted the
47 trusteeship may renounce the trusteeship. A designated trustee who
48 does not accept the trusteeship within a reasonable time after

1 knowing of the designation is deemed to have renounced the
2 trusteeship.

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

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

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

11

12 3B:31-47. Trustee's Bond.

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

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

20

21 3B:31-48. Cotrustees.

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

27 b. If a vacancy occurs in a cotrusteeship, the remaining
28 cotrustees shall act for the trust unless the trust instrument provides
29 otherwise.

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

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

41 e. A trustee may not delegate to a cotrustee the performance of
42 a function the settlor reasonably expected the trustees to perform
43 jointly. Unless a delegation was irrevocable, a trustee may revoke a
44 delegation previously made.

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

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

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

5

6 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

7 a. A vacancy in a trusteeship occurs if:

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

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

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

- 22 (1) by a person designated pursuant to the terms of the trust to
23 act as successor trustee;
24 (2) by a person appointed by unanimous agreement of the
25 qualified beneficiaries; or
26 (3) by a person appointed by the court.

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

- 29 (1) by a person designated pursuant to the terms of the trust to
30 act as successor trustee; or
31 (2) by a person appointed by the court.

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

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

38

39 3B:31-50. Resignation of Trustee.

40 a. A trustee may resign:

- 41 (1) upon at least 30 days' notice to the qualified beneficiaries, the
42 settlor, if living, all cotrustees, and the trustee or trustees, if any,
43 designated pursuant to the terms of the trust to succeed the
44 resigning trustee; or
45 (2) with the approval of the court.

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

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

4
5 3B:31-51. Removal of Trustee.

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

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

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

15
16 3B:31-52. Delivery of Property by Former Trustee.

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

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

27
28 3B:31-53. Reimbursement of Expenses.

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

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

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

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

40
41 ARTICLE 7

42 DUTIES AND POWERS OF TRUSTEE

43
44 3B:31-54. Duty to Administer Trust.

45 Upon acceptance of a trusteeship, the trustee shall administer the
46 trust in good faith, in accordance with its terms and purposes and
47 the interests of the beneficiaries, and in accordance with this act and
48 other applicable law.

1 3B:31-55. Duty of Loyalty.

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

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

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

12 (2) the transaction was approved by the court;

13 (3) the beneficiary did not commence a judicial proceeding
14 within the time allowed by N.J.S.3B:31-73;

15 (4) the beneficiary consented to the trustee's conduct, ratified the
16 transaction, or released the trustee in compliance with N.J.S.3B:31-
17 77; or

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

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

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

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

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

28 (4) a corporation or other person or enterprise in which the
29 trustee, or a person that owns a significant interest in the trustee,
30 has an interest that might affect the trustee's judgment.

31 d. A transaction between a trustee and a beneficiary that does
32 not concern trust property but that occurs during the existence of
33 the trust or while the trustee retains significant influence over the
34 beneficiary and from which the trustee obtains an advantage
35 attributable to the existence of the trust is voidable by the
36 beneficiary if the beneficiary establishes that the transaction was
37 unfair to the beneficiary.

38 e. A transaction not concerning trust property in which the
39 trustee engages in the trustee's individual capacity involves a
40 conflict between personal and fiduciary interests if the transaction
41 concerns an opportunity properly belonging to the trust.

42 f. In voting shares of stock of a corporation or in exercising
43 powers of control over similar interests in other forms of enterprise,
44 the trustee shall act in the best interests of the beneficiaries and
45 shall vote to elect or appoint directors or other managers who will
46 manage the corporation or enterprise in the best interests of the
47 beneficiaries.

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

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

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

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

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

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

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

17

18 3B:31-56. Duty of Impartiality.

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

22

23 3B:31-57. Duty of Prudent Administration.

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

28

29 3B:31-58. Costs of Administration.

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

33

34 3B:31-59. Duty to Use Special Skills.

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

39

40 3B:31-60. Delegation by Trustee.

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

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

46 (1) selecting an agent;

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

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

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

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

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

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

18

19 3B:31-61. Powers to Direct.

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

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

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

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

36

37 3B:31-62. Control and Protection of Trust Property.

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

40

41 3B:31-63. Recordkeeping and Identification of Trust Property.

42 a. A trustee shall keep adequate records of the administration
43 of the trust.

44 b. A trustee shall keep trust property separate from the trustee's
45 own property.

46 c. Except as otherwise provided in subsection d. of this section,
47 a trustee shall cause the trust property to be designated so that the

1 interest of the trust, to the extent feasible, appears in records
2 maintained by a party other than a trustee or beneficiary.

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

6

7 3B:31-64. Duty to Enforce and Defend Claims.

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

10

11 3B:31-65. Duty to Collect Trust Property and Redress Breaches
12 of Trust.

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

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

18

19 3B:31-66. Duty to Disclose and Discretion to Periodically
20 Report.

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

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

26 c. A trustee seeking the protection of N.J.S.3B:31-73 may
27 provide the beneficiaries with a report of the trust property,
28 liabilities, receipts, and disbursements, including the source and
29 amount of the trustee's compensation, a listing of the trust assets,
30 and, if feasible, their respective market values.

31

32 3B:31-67. Discretionary Powers.

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

38

39 3B:31-68. General Powers of Trustee.

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

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

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

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

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

- 1 (c) any other powers conferred by this act and by Title 3B.
2 b. The exercise of a power is subject to the fiduciary duties
3 prescribed by this act and by Title 3B.

4
5 3B:31-69. Distribution Upon Termination.

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

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

22

23 ARTICLE 8

24 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

25 DEALING WITH TRUSTEE

26

27 3B:31-70. Remedies for Breach of Trust.

28 a. A violation by a trustee of a duty the trustee owes to a
29 beneficiary is a breach of trust.

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

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

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

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

36 (4) order a trustee to account;

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

39 (6) suspend the trustee;

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

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

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

45 (10) order any other appropriate relief.

46

47 3B:31-71. Damages for Breach of Trust.

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

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

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

7 b. Except as otherwise provided in this subsection, if more than
8 one trustee is liable to the beneficiaries for a breach of trust, a
9 trustee is entitled to contribution from the other trustee or trustees
10 based on the comparative degree of culpability for the breach.
11 However, a trustee who committed the breach in bad faith or with
12 reckless indifference to the purposes of the trust or the interests of
13 the beneficiaries is not entitled to contribution from a trustee who
14 was not guilty of such conduct. A trustee who received a benefit
15 from the breach of trust is not entitled to contribution from another
16 trustee to the extent of the benefit received.

17

18 3B:31-72. Damages in Absence of Breach.

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

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

27

28 3B:31-73. Limitation of Action Against Trustee.

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

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

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

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

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

44 (3) the termination of the trust.

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

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

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

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

6
7 3B:31-74. Reliance on Trust Instrument.

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

12
13 3B:31-75. Event Affecting Administration or Distribution.

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

19
20 3B:31-76. Exculpation of Trustee.

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

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

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

28 b. An exculpatory term drafted or caused to be drafted by the
29 trustee is invalid as an abuse of a fiduciary or confidential
30 relationship unless the trustee proves that the exculpatory term is
31 fair under the circumstances and that its existence and contents
32 were adequately communicated to the settlor.

33
34 3B:31-77. Beneficiary's Consent, Release, or Ratification.

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

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

41 b. at the time of the consent, release, or ratification, the
42 beneficiary did not know of the beneficiary's rights or of the
43 material facts relating to the breach.

44
45 3B:31-78. Limitation on Personal Liability of Trustee.

46 a. Except as otherwise provided in the contract, a trustee is not
47 personally liable on a contract properly entered into in the trustee's

1 fiduciary capacity in the course of administering the trust if the
2 trustee in the contract disclosed the fiduciary capacity.

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

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

14

15 3B:31-79. Interest as General Partner.

16 a. Except as otherwise provided in subsection c. of this section
17 or unless personal liability is imposed in the contract, a trustee who
18 holds an interest as a general partner in a general or limited
19 partnership is not personally liable on a contract entered into by the
20 partnership after the trust's acquisition of the interest if the fiduciary
21 capacity was disclosed in the contract or in a statement previously
22 filed pursuant to the "Uniform Partnership Act (1996)," P.L.2000,
23 c.161 (C.42:1A-1 et seq.) or the "Uniform Limited Partnership Law
24 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.).

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

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

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

39

40 3B:31-80. Certification of Trust.

41 a. Instead of furnishing a copy of the trust instrument to a
42 person other than a beneficiary, the trustee may furnish to the
43 person a certification of trust containing the following information:

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

46 (2) the identity of the settlor;

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

48 (4) the powers of the trustee;

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

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

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

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

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

11 d. A certification of trust need not contain the dispositive terms
12 of a trust.

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

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

24 g. A person making a demand for the trust instrument in
25 addition to a certification of trust or excerpts is liable for damages if
26 the court determines that the person did not act in good faith in
27 demanding the trust instrument.

28 h. This section does not limit the right of a person to obtain a
29 copy of the trust instrument in a judicial proceeding concerning the
30 trust.

31

32

ARTICLE 9

33

MISCELLANEOUS PROVISIONS

34

35 3B:31-81. Electronic Records and Signatures.

36 The provisions of this act governing the legal effect, validity, or
37 enforceability of electronic records or electronic signatures, and of
38 contracts formed or performed with the use of such records or
39 signatures, conform to the requirements of section 102 of the
40 “Electronic Signatures in Global and National Commerce Act” (15
41 U.S.C. s.7002), and supersede, modify, and limit the requirements
42 of that act.

43

44 3B:31-82. Severability Clause.

45 If any provision of this act or its application to any person or
46 circumstances is held invalid, the invalidity does not affect other
47 provisions or applications of this act which can be given effect

1 without the invalid provision or application, and to this end the
2 provisions of this act are severable.

3

4 3B:31-83. Application to Existing Relationships.

5 a. Except as otherwise provided in this act:

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

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

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

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

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

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

27

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

29 3B:14-37. Protection of persons assisting or dealing with
30 fiduciary.

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

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

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

41 d. A person who in good faith pays, transfers or delivers to a
42 fiduciary money or other property is not responsible for the proper
43 application thereof by the fiduciary; and any right or title acquired
44 from the fiduciary in consideration of the payment, transfer or
45 delivery is not invalid in consequence of a misapplication by the
46 fiduciary.

47 e. A person other than a beneficiary who in good faith assists a
48 former trustee, or who in good faith and for value deals with a

1 former trustee, without knowledge that the trusteeship has
2 terminated is protected from liability as if the former trustee were
3 still a trustee.

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

8 g. The protection here expressed is in addition to that provided
9 by comparable provisions of the laws relating to commercial
10 transactions and laws simplifying transfers of securities by
11 fiduciaries.

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

13

14 3. The following sections are repealed:

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

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

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

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

19

20 4. This act shall take effect on the 180th day following
21 enactment.

22

23

24

STATEMENT

25

26 This bill would supplement and revise the State's existing laws
27 concerning trusts. In 2000, the National Conference of
28 Commissioners on Uniform State Laws (now known as the Uniform
29 Law Commission) promulgated the first national codification of the
30 law of trusts: the Uniform Trust Code. The purpose of the code is
31 to provide states with a model uniform trust act that would allow for
32 precise, comprehensive, and easily accessible guidance on trust law
33 questions. Most of the provisions of the model act, which has been
34 revised by the commission several times, are default rules that
35 apply only if the terms of the trust instrument fail to address or
36 insufficiently cover a particular issue. The model act also includes
37 several innovative provisions, which have been incorporated into
38 this bill, including: specification of the rules of trust that are not
39 subject to override in the trust's terms, comprehensive rules on
40 representation of beneficiaries, rules on trust modification and
41 termination that will enhance flexibility, and the inclusion of an
42 article collecting the special rules pertaining to revocable trusts.
43 While this bill is modeled on the commission's Uniform Trust
44 Code, it has been changed and adapted to fit within New Jersey's
45 existing trust law.

46 Article 1 of the bill contains definitions and general provisions.
47 The provisions of this article include: section 3B:31-3, which
48 defines certain terms used in the bill; section 3B:31-5, which

1 enumerates certain rules that cannot be waived in the terms of the
2 trust; section 3B:31-7, which establishes rules regarding the
3 governing law of a trust; section 3B:31-8, which sets forth a
4 procedure for changing the situs (principal place of administration)
5 of a trust; and section 3B:31-11, which provides statutory authority
6 for the nonjudicial settlement of a trustee's accounts and other
7 matters related to trust administration.

8 Article 2 of the bill concerns representation of beneficiaries,
9 including what is known as virtual representation. Section 3B:31-
10 13 is the introductory section, laying out the scope of the article.
11 Sections 3B:31-14 through 3B:31-17 cover the different types of
12 representation. 3B:31-14 deals with representation by the holder of
13 a general testamentary power of appointment. Section 3B:31-15
14 deals with representation by a fiduciary, whether of an estate, trust,
15 conservatorship, or guardianship. The section also allows a parent
16 without a conflict of interest to represent and bind a minor or
17 unborn child. Section 3B:31-16 is the virtual representation
18 provision, providing for representation of and the giving of a
19 binding consent by another person having a substantially identical
20 interest with respect to the particular issue. Section 3B:31-17
21 authorizes the court to appoint a representative to represent the
22 interests of unrepresented persons for whom the court concludes the
23 other available representation might be inadequate.

24 Article 3 of the bill deals with how a trust is validly created,
25 modified and terminated. Sections 3B:31-18 through 3B:31-25 deal
26 with the creation of a trust and the purposes for a trust. Sections
27 3B:31-18 and 3B:31-19 state the method and requirements for
28 creation of a trust, including the requirement that the same person
29 not be the sole trustee and the sole beneficiary. Section 3B:31-20
30 recognizes the validity of trusts created in other jurisdictions
31 provided certain requirements are met, including the requirement
32 that the trust be in writing. The requirement that the trust be in
33 writing is a deviation from the Uniform Trust Code, which allows
34 for trusts to be created orally. Section 3B:31-21 concerns the
35 purposes of a trust and states that a trust generally may be enforced
36 if its purposes are lawful, not contrary to public policy, and possible
37 to achieve. Under section 3B:31-23, a trust induced by fraud or
38 duress is not valid. Section 3B:31-24 adopts a broader provision
39 concerning trusts for the care of animals and section 3B:31-25
40 addresses situations where non-charitable trusts without
41 ascertainable beneficiaries are valid.

42 Sections 3B:31-26 through 3B:31-33 deal with the modification
43 and termination of a trust. These provisions deal with the purposes
44 and procedures for modification and termination. The general
45 provision is contained in section 3B:31-26, which summarizes the
46 grounds on which a trust may be terminated and specifies which
47 persons may bring an action to terminate a trust. Section 3B:31-27
48 describes the circumstances when a non-charitable trust may be

1 compelled by the beneficiaries, with or without the consent of the
2 settlor. Under section 3B:31-28, a court may modify the
3 administrative or dispositive terms of a trust if doing so will further
4 the purposes of the trust. Section 3B:31-29 addresses modification
5 or termination of a charitable trust and section 3B:31-30 addresses
6 modification or termination of an uneconomical trust. Section
7 3B:31-31 provides for the reformation of a trust to conform to a
8 settlor's probable intent and is designed to be consistent with New
9 Jersey's probable intent doctrine as it applies to trusts under
10 subsection b. of section 28 of P.L.2004, c.132 (C.3B:3-33.1).
11 Section 3B:31-33 permits modification to achieve a settlor's tax
12 objectives, consistent with existing New Jersey law. Section 3B:31-
13 34 provides for the combination of two or more trusts into a single
14 trust and the division of a single trust into two or more trusts,
15 provided the requirements of the section are met. This provision is
16 similar to existing New Jersey law under subsection r. of
17 N.J.S.3B:14-23.

18 Article 4 deals with spendthrift provisions in trusts. This article
19 was heavily edited by the ad hoc committee of New Jersey lawyers
20 to preserve certain aspects of current New Jersey law. For example,
21 the phrase "except as otherwise provided by law" was added to
22 section 3B:31-35 to clarify that the changes are not intended to
23 effect other existing provisions of statutory law including: R.S.25:2-
24 1 et seq. (protection from attachment in the case of a self-settled
25 trust that is a qualified retirement account); N.J.S.17B:24-6 (the
26 inability of a creditor to attach proceeds of life insurance policies);
27 N.J.S.17B:24-7 (the inability of creditors to attach annuity
28 proceeds); N.J.S.17B:24-8 (the inability of creditors to attach health
29 and disability insurance benefits); and, N.J.S.17B:24-9 (the inability
30 of creditors to attach proceeds of group insurance policies).

31 Section 3B:31-37, concerning exceptions to spendthrift
32 provisions, was revised and is not similar to the comparable
33 provision of the Uniform Trust Code. The Uniform Trust Code
34 provides that there are certain creditors, known as "exception
35 creditors," that can attach a trust with a spendthrift provision. Other
36 "exception creditors" in the Uniform Trust Code would be (i) child
37 support; (ii) a spouse; (iii) a former spouse who has a judgment for
38 support or maintenance; (iv) a judgment creditor who has provided
39 services for the protection of a beneficiary's interest; and (v)
40 governmental claims. In New Jersey there are certain recognized
41 creditors that are "excepted" from the application of the spendthrift
42 clause, thus additional provisions are unnecessary. Adding
43 additional classes of exception creditors, as the Uniform Trust Code
44 proposes, has drawn national criticism. The committee of ad hoc
45 lawyers who developed this bill elected not to include this
46 provision. Instead, section 3B:31-37 creates a type of trust for the
47 young or disabled, known as a "special needs trust," which would
48 have certain special protections from creditors.

1 Sections 3B:31-39 through -41 codify certain rules already in
2 place for trusts and make certain changes necessary to implement
3 the provisions of section 3B:31-37 concerning special needs trusts.

4 Article 5 addresses the use of revocable trusts as alternatives to
5 wills and seeks to clarify certain issues in connection with the use
6 of revocable trusts. Section 3B:31-42 provides that the capacity
7 required to create, amend or revoke a trust is the same as that
8 required to execute a will. Section 3B:31-43 provides that a trust is
9 revocable unless the terms of a trust expressly provide that it is
10 irrevocable, or unless there is clear and convincing evidence that it
11 is irrevocable and sets forth the circumstances in which a settlor, a
12 settlor's attorney in fact, or guardian may revoke or amend a
13 revocable trust. Section 3B:31-44 provides that the trustee of a
14 revocable trust is responsible only to the settlor of the trust. Section
15 3B:31-45 establishes time limits on contesting the validity of a
16 revocable trust after the death of the settlor, which generally
17 conform to the time limits for contesting the probate of a will.
18 Section 3B:31-45 also protects a trustee who makes distributions
19 from the trust after the settlor's death unless the trustee knows of a
20 pending or possible contest.

21 Article 6 of the bill contains a series of default rules dealing with
22 the office of trustee, many of which are already dealt with and
23 firmly established in chapters 11, 14 and 18 of Title 3B of the New
24 Jersey Statutes, New Jersey Rules of Court, and New Jersey case
25 law. Except for the court's authority to issue letters of testamentary
26 trusteeship and to order bond, all of the provisions of Article 6 are
27 subject to modification by the express terms of the governing trust
28 instrument.

29 Sections 3B:31-46 and 3B:31-47 address the process of
30 qualifying a trustee, including procedures for accepting or declining
31 the office of trustee and bonding the trustee. Section 3B:31-48
32 addresses the duties and responsibilities of and other issues that
33 may arise between or among co-trustees. For example, this section
34 permits co-trustees to act by majority action and specifies how and
35 what happens when one of several trustees dissents from a course of
36 action and the extent to which the others shall act when one is
37 unable or has properly delegated performance of a function.

38 3B:31-49 through 3B:31-52 address changes in the office of
39 trustee including: when and how a vacancy is filled, the procedure
40 for resignation, grounds for removal and the duties and obligations
41 of a resigning or removed trustee. Certain provisions of the
42 comparable article of the Uniform Trust Code were deemed
43 redundant and thus not included in this bill.

44 Section 3B:31-53 prescribes standards for reimbursement for
45 expenses advanced by the trustee. Since the matter of trustee
46 compensation is addressed comprehensively in chapter 18 of Title
47 3B of the New Jersey Statutes, the provision in the Uniform Trust

1 Code concerning trustee compensation has not been included in the
2 bill.

3 Article 7 sets forth the basic duties and powers of trustees. This
4 article embraces and expands on the authorization in the “Prudent
5 Investor Act,” P.L.1997, c.26 (C.3B:20-11.1 et seq.), to delegate
6 managerial functions. All of the provisions in this article may be
7 modified or overridden by the express terms of the governing
8 instrument, except for the fundamental obligations to act in good
9 faith for the benefit of the beneficiaries and in accordance with the
10 terms of the governing instrument creating the trust.

11 Article 8 addresses liability of trustees and trustee dealings with
12 persons other than beneficiaries. With respect to the rights of
13 beneficiaries: 3B:31-70 lists the remedies for breach of trust;
14 3B:31-71 specifies how money damages are to be determined; and
15 3B:31-73 and 3B:31-76 specify certain trustee defenses, including
16 the addition of a statute of limitations for claims alleging breach of
17 trust (3B:31-73) and a provision on enforcing exculpatory clauses
18 (3B:31-76). The provision in the Uniform Trust Code concerning
19 attorney’s fees in suits against trustees is not included in the bill.

20 Article 9 of the bill contains miscellaneous administrative
21 provisions. Section 3B:31-81 clarifies the status of the bill’s
22 provisions under the federal statutory law regarding electronic
23 records and signatures. Section 3B:31-82 is a severability clause.
24 Section 3B:31-83 states that the provisions of the trust code
25 generally apply to trusts created before, on or after the effective
26 date.

27 The bill repeals three sections of existing law that are
28 unnecessary or are inconsistent with its provisions: N.J.S.3B:11-5,
29 N.J.S.3B:11-6, N.J.S.3B:11-7, and section 1 of P.L.2001, c.144
30 (C.3B:11-38).

31 The Uniform Trust Code contained two additional articles which
32 have not been included in this bill. Article 2 of the Uniform Trust
33 Code concerned the jurisdiction of the court. In New Jersey, these
34 matters are controlled by court rule. Article 9 of the Uniform Trust
35 Code is the “Prudent Investor Act,” which has already been enacted
36 in this State by P.L.1997, c.26 (C.3B:20-11.1 et seq.).