WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

ENROLLED

House Bill No. 2551
(By Delegates Doyle, Guthrie, Ferro, Frazier, Reynolds and Walters)

Passed March 12, 2011
In Effect Ninety Days From Passage
ENROLLED

H. B. 2551

(BY DELEGATES DOYLE, GUTHRIE, FERRO, FRAZIER, REYNOLDS AND WALTERS)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to repeal §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia of 1931, as amended; to repeal §44-5-12, §44-5-13, §44-5-14 and §44-5-15 of said code; to repeal §44-6-2a of said code; to repeal §44-14-1, §44-14-2, §44-14-3 §44-14-4 and §44-14-5 of said code; to amend and reenact §38-1-13 of said code; to amend said code by adding thereto a new section, designated §44-4-22; to amend and reenact §44-5-1, §44-5-7 and §44-5-11 of said code; to amend and reenact §44-5A-2, §44-5A-3 and §44-5A-4 of said code; to amend said code by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; to amend and reenact §44-6-1 and §44-6-2 of said code; to amend said code by adding thereto a new section, designated §44-6-11; to amend and reenact §44-6C-1, §44-6C-2, and §44-6C-9 of said code; to amend and reenact §44-7-1 of said code; to amend said code by adding thereto a new section, designated §44-7-4; and to amend said code by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105,
§44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901, §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104, §44D-11-1105, all relating generally to estates and trusts and their administration; providing that certain provisions of current law to have no effect after specified date; providing certain provisions of current law are not to apply to trusts and trustees after specified date; changing names of certain articles of existing code; providing for the creation, administration, revision and termination of trusts; providing for trustees, powers and duties of trustees and substitution of trustees; providing for distribution of trust assets; specifying powers and certain restrictions on powers of fiduciaries; amending the Uniform Prudent Investor Act; modernizing language of certain existing sections of code and deleting obsolete language; adopting West Virginia Uniform Trust Code; providing general provisions and definitions; providing for judicial proceedings; providing for representation of trusts;
providing for creation, validity, modification and termination of trusts; providing for creditor’s claims; providing for spendthrift trusts, discretionary trusts and revocable trusts; providing for the office of trustee; providing duties and powers of trustees; providing for liability of trustees and rights of persons dealing with trustee; providing various miscellaneous provisions for trusts and trustees; specifying delayed effective date for West Virginia Uniform Trust Code; and providing rules for application of that date.

Be it enacted by the Legislature of West Virginia:

That §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia, 1931, as amended, be repealed; that §44-5-12, §44-5-13, §44-5-14 and §44-5-15 be repealed; that §44-6-2a be repealed; that §44-14-1, §44-14-2, §44-14-3, §44-14-4 and §44-14-5 be repealed; that §38-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-4-22; that §44-5-1, §44-5-7, §44-5-11 of said code be amended and reenacted; that §44-5A-2, §44-5A-3 and §44-5A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; that §44-6-1 and §44-6-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-6-11; that §44-6C-1, §44-6C-2, and §44-6C-9 of said code be amended and reenacted; that §44-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-7-4; and that said code be amended by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413,
§44D-4-414, §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-8-818, §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104 and §44D-11-1105, all to read as follows:

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.

§38-1-13. Substitution of trustees under a trust deed securing a debt.

(a) When a trust deed to secure a debt or obligation does not by its terms prescribe a method for substitution, the party secured by the trust deed, or any surety indemnified by the deed, or the assignee or personal representative of any secured party or surety may, if there is a death, removal, declination, resignation, refusal or inability of the original trustee or trustees named in the instrument, substitute a trustee or trustees in his or her, or its place by a writing duly signed and acknowledged and recorded in the office of the clerk of the county commission where the real estate covered by the trust deed is situate.

(b) When a substitution is made under this section of a trustee or trustees of a trust deed securing a debt or
obligation, the substitution is effected when the party
secured, or a surety indemnified by the deed, or the assignee
or personal representative of any such secured party or surety
has deposited true copies of the notice of the substitution in
the United States mail, first class postage prepaid, addressed
to the last known addresses of the grantor or grantors or any
other person owing the debt or obligation, and has presented
the original of the notice to the clerk of the county
commission in whose office the trust deed is recorded,
causing the notice to be recorded and indexed in a general
lien book or other appropriate book in which trust deeds or
assignments of trust deeds are recorded. There shall be
appended to the notice presented for recording a certificate
by the party making the substitution, certifying that copies of
the notice were mailed as required by this subsection, and
showing the date of the mailing.

(c) It is not necessary to give notice under this section to
a trustee who has removed from the state, declined to accept
the trust, refused to act as trustee, or has resigned, or to the
personal representative of one who has died.

CHAPTER 44. ADMINISTRATION OF ESTATES AND
TRUSTS.

ARTICLE 4. ACCOUNTING BY PERSONAL
REPRESENTATIVES.

§44-4-22. Application only to personal representatives,
guardians, curators or committees.

The provisions of this article apply only to personal
representatives, guardians, curators or committees, as the
case may be, and do not apply to or affect trustees who are
governed by the provisions of the West Virginia Uniform
Trust Code in chapter forty-four-d of this code.
ARTICLE 5. GENERAL PROVISIONS AS TO PERSONAL REPRESENTATIVES.

§44-5-1. List of fiduciaries.

(a) The clerk of the county commission of each county shall keep a record, to be known as the "Record of Fiduciaries," in which he or she shall enter, in separate columns, first, the name of every fiduciary authorized to act as such by the county commission or clerk of the county commission; secondly, the name of the decedent for whose estate he or she is personal representative or curator; thirdly, the names of the distributees of the estate, showing their relation to the decedent; fourthly, the name of the living person or persons for whom he or she is minor guardian, curator, committee or trustee; fifthly, the penalty of his or her bond; sixthly, the names of his or her sureties; seventhly, the date of the order conferring his or her authority, and a reference to the book and page where entered; eighthly, the date of any order revoking his or her authority, and a reference to the book and page where entered; ninthly, the date of the return of every inventory and appraisement of the estate; tenthly, the date of the confirmation of each report of settlement of the accounts of the fiduciary; and the clerk shall index the record in the name of the decedent, estate, ward or person represented by the fiduciary. Any clerk failing to make entry, as to any fiduciary, within ten days after the order conferring or revoking the authority, or the date of the return of the inventory and/or appraisement, or the date of the confirmation of any report of settlement, shall, for every failure, forfeit $20.

(b) This section does not apply to a trustee.

§44-5-7. Authority of personal representatives to compound and compromise liabilities due to or from them.
It is lawful for any guardian, committee or trustee, to compound and compromise any liability due to or from him or her, unless the compounding and compromise is ratified and approved by a court of competent jurisdiction, all parties in interest being before the court by proper process. When the compounding and compromise has been ratified and approved, it is binding on all parties in interest before the court. It is lawful for any personal representative to compound and compromise any liability due to or from him or her, as long as the compounding and compromise is ratified and approved by the fiduciary commissioner to whom the estate or trust has been referred, or by a commissioner appointed by the circuit court when the estate of the decedent is being settled in a chancery suit, and is reported by the fiduciary commissioner to his or her court. When the report is confirmed, the compounding and compromise shall be binding on all parties to the proceedings.

§44-5-11. Application only to personal representatives, curators, and minor guardians.

The provisions of this article apply only to personal representatives, curators, and minor guardians, as the case may be, and do not apply to or affect guardians and conservators of adult protected persons who are governed by the provisions of the Guardian and Conservatorship Act in chapter forty-four-a of this code or trustees who are governed by the provisions of the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

ARTICLE 5A. POWERS OF FIDUCIARIES.

§44-5A-2. Incorporation by reference of enumerated powers by testator; restriction on exercise of powers.

(a) After June 30, 2011, by an intention of the testator expressed in a will, any or all of the powers or any portion of
the powers enumerated in section three of this article, as they
exist at the time of the signing of the will by the testator may
be, by appropriate reference made thereto, incorporated in the
will, with the same effect as though the language were set
forth verbatim in the instrument. Incorporation of one or
more of the powers contained in section three of this article
by reference to that section is in addition to and not in
limitation of the common law or statutory powers of the
fiduciary.

(b) No power of authority conferred upon a fiduciary as
provided in this article may be exercised by the fiduciary in
a manner as, in the aggregate, to deprive the trust or the estate
involved of an otherwise available tax exemption, deduction
or credit, expressly including the marital deduction, or
operate to impose a tax upon a donor or testator or other
person as owner of any portion of the trust or estate involved.
“Tax” includes, but is not limited to, any federal, state, or
local income, gift, estate or inheritance tax.

(c) Nothing in this section prevents the incorporation of
the powers enumerated in section three of this article in any
other kind of instrument or agreement.

§44-5A-3. Powers which may be incorporated by reference in
trust instrument.

The following powers may be incorporated by reference
by a testator in the will as provided in section two of this
article and the following powers apply without the need for
incorporation by reference to trustees who are governed by
the provisions of the West Virginia Uniform Trust Code in
chapter forty-four-d of this code:

(a) Retain original property. -- To retain for the time the
fiduciary considers advisable any property, real or personal,
which the fiduciary may receive, even though the retention of
the property by reason of its character, amount, proportion to
the total estate or otherwise would not be appropriate for the
fiduciary apart from this provision.

(b) Sell and exchange property. -- To sell, exchange, give
options upon, partition or otherwise dispose of any property
or interest therein which the fiduciary may hold from time to
time, with or without order of court, at public or private sale
or otherwise, upon the terms and conditions, including credit,
and for the consideration the fiduciary considers advisable,
and to transfer and convey the property or interest therein
which is at the disposal of the fiduciary, in fee simple
absolute or otherwise, free of all trust; and the party dealing
with the fiduciary is not under a duty to follow the proceeds
or other consideration received by the fiduciary from the sale
or exchange.

(c) Invest and reinvest. -- To invest and reinvest, as the
fiduciary considers advisable, in stocks (common or
preferred), bonds, debentures, notes, mortgages or other
securities, in or outside the United States; in insurance
contracts on the life of any beneficiary or of any person in
whom a beneficiary has an insurable interest, or in annuity
contracts for any beneficiary, in any real or personal
property, in investment trusts; in participations in common
trust funds, and generally in property the fiduciary considers
advisable, even though the investment is not of the character
approved by applicable law but for this provision.

(d) Invest without diversification. -- To make investments
which cause a greater proportion of the total property held by
the fiduciary to be invested in investments of one type or of
one company than would be considered appropriate for the
fiduciary apart from this provision.
(e) **Continue business.** -- To the extent and upon terms and conditions and for the periods as the fiduciary considers necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form of organization, including, but not limited to, the power:

1. To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
2. To dispose of any interest therein or acquire the interest of others therein;
3. To contribute thereto or invest therein additional capital or to lend money thereto, in any case upon terms and conditions the fiduciary approves from time to time;
4. To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole; and
5. In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it is not necessary to itemize receipts and disbursements and distributions of property but it is sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary is permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

(f) **Form corporation or other entity.** -- To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of the corporation or entity, and to continue to hold the stock and securities and obligations.
(g) Operate farm. -- To continue any farming operation received by the fiduciary pursuant to the will or other instrument and to do any and all things considered advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including, but not limited to, the following powers:

1. To operate the farm with hired labor, tenants or sharecroppers;
2. To lease or rent the farm for cash or for a share of the crops;
3. To purchase or otherwise acquire farm machinery and equipment and livestock;
4. To construct, repair and improve farm buildings of all kinds needed in the fiduciary’s judgment, for the operation of the farm;
5. To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting or marketing, or for the construction, repair or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock;
6. To employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil;
7. To protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate;
8. To ditch, dam and drain damp or wet fields and areas of the farm when and where needed;
(9) To engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant pastures and crops necessary to carry on the operations;

(10) To market the products of the farm; and

(11) In general, to employ good husbandry in the farming operation.

(h) Manage real property. -- (1) To improve, manage, protect and subdivide any real property;

(2) To dedicate or withdraw from dedication parks, streets, highways or alleys;

(3) To terminate any subdivision or part thereof;

(4) To borrow money for the purposes authorized by this subdivision for periods and upon terms and conditions as to rates, maturities and renewals the fiduciary considers advisable and to mortgage or otherwise encumber any property or part thereof, whether in possession or reversion;

(5) To lease any property or part thereof to commence at the present or in the future, upon terms and conditions, including options to renew or purchase, and for such period or periods the fiduciary considers advisable although the period or periods may extend beyond the duration of the trust or the administration of the estate involved;

(6) To make coal, gravel, sand, oil, gas and other mineral leases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which the property lies;
(7) To manage and improve timber and forests on the property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(8) To modify, renew or extend leases;

(9) To employ agents to rent and collect rents;

(10) To create easements and release, convey or assign any right, title or interest with respect to any easement on the property or part of the property;

(11) To erect, repair or renovate any building or other improvement on the property, and to remove or demolish any building or other improvement, in whole or in part; and

(12) To deal with the property and every part of the property in all other ways and for other purposes or considerations as it would be lawful for any person owning the same to deal with the property either in the same or in different ways from those specified elsewhere in this subdivision.

(i) Pay taxes and expenses. -- To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust or estate.

(j) Receive additional property. -- To receive additional property from any source and administer the additional property as a portion of the appropriate trust or estate under the management of the fiduciary but the fiduciary is not required to receive the property without his or her consent.

(k) Deal with other trusts. -- In dealing with one or more fiduciaries:
(1) To sell property, real or personal, to, or to exchange property with, the trustee of any trust which the decedent or the settlor or his or her spouse or any child of his or her creation, for estates and upon terms and conditions as to sale price, terms of payment, and security as the fiduciary considers advisable; and the fiduciary is under no duty to follow the proceeds of any such sale; and

(2) To borrow money for periods and upon terms and conditions as to rates, maturities, renewals and securities the fiduciary considers advisable from any trust created by the decedent, his or her spouse, or any child of his or her, for the purpose of paying debts of the decedent, taxes, the costs of the administration of the estate, and like charges against the estate, or any part thereof, or discharging the liability of any fiduciary thereof and to mortgage, pledge or otherwise encumber a portion of the estate or any trust as may be required to secure the loan or loans and to renew the loans.

(I) Borrow money. -- To borrow money for periods and upon terms and conditions as to rates, maturities, renewals, and security the fiduciary considers advisable, including the power of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber a portion of the estate or any trust as may be required to secure the loan or loans; and to renew existing loans either as maker or endorser.

(m) Make advances. -- To advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances with any interest the fiduciary has a lien on the assets of the trust or estate as against a beneficiary.
(n) **Vote shares.** -- To vote shares of stock owned by the estate or any trust at stockholders meetings in person or by special, limited or general proxy, with or without power of substitution.

(o) **Register in name of nominee.** -- To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship so that title to the security may pass by delivery, but the fiduciary is liable for any act of the nominee in connection with the stock so held.

(p) **Exercise options, rights and privileges.** -- To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages or other property into other stocks, bonds, debentures, notes, mortgages or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages or other property; and to hold the stocks, bonds, debentures, notes, mortgages or other property so acquired as investments of the estate or trust so long as the fiduciary considers advisable.

(q) **Participate in reorganizations.** -- To unite with other owners of property similar to any which may be held at any time in the decedent’s estate or in any trusts in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease or sale of the property, incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders or bondholders protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to the plan; and to
receive as investments of an estate or any trust any securities issued as a result of the execution of the plan.

(r) Reduce interest rates. -- To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.

(s) Renew and extend obligations. -- To continue any obligation, whether secured or unsecured, upon and after maturity with or without renewal or extension upon terms the fiduciary considers advisable, without regard to the value of the security, if any, at the time of the continuance.

(t) Foreclose and bid in. -- To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust or other lien securing the bond, note or other obligation, and to bid in the property at the foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(u) Insure. -- To carry insurance coverage, including public liability, for hazards and in amounts, either in stock companies or in mutual companies, as the fiduciary considers advisable.

(v) Collect. -- To collect, receive and receipt for rents, issues, profits, and income of an estate or trust.

(w) Litigate, compromise or abandon. -- To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary considers advisable, and the fiduciary's decision is conclusive between the fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud by
those persons; and in the absence of fraud, bad faith or gross
negligence of the fiduciary, is conclusive between the
fiduciary and the beneficiaries of the estate or trust.

(x) Employ and compensate agents, etc. -- To employ and
compensate, out of income or principal or both and in
proportion as the fiduciary considers advisable, persons
considered by the fiduciary needful to advise or assist in the
proper settlement of the estate or administration of any trust,
including, but not limited to, agents, accountants, brokers,
atorneys-at-law, attorneys-in-fact, investment brokers, rental
agents, realtors, appraisers, and tax specialists; and to do so
without liability for any neglect, omission, misconduct or
default of the agent or representative as long as he or she was
selected and retained with due care on the part of the
fiduciary.

(y) Acquire and hold property of two or more trusts
undivided. -- To acquire, receive, hold and retain the
principal of several trusts created by a single instrument
undivided until division becomes necessary in order to make
distributions; to hold, manage, invest, reinvest, and account
for the several shares or parts of shares by appropriate entries
in the fiduciary’s books of account, and to allocate to each
share or part of share its proportionate part of all receipts and
expenses: Provided, That the provisions of this subdivision
do not defer the vesting in possession of any share or part of
share of the estate or trust.

(z) Establish and maintain reserves. -- To set up proper
and reasonable reserves for taxes, assessments, insurance
premiums, depreciation, obsolescence, amortization,
depletion of mineral or timber properties, repairs,
improvements and general maintenance of buildings or other
property out of rents, profits or other income received; and to
set up reserves also for the equalization of payments to or for
Provided, That the provisions of this subdivision do not affect the ultimate interests of beneficiaries.

(aa) Distribute in cash or kind. -- To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to determine the value of capital assets for the purpose of making distribution thereof if and when there is more than one distributee thereof, which determination is binding upon the distributees unless clearly capricious, erroneous and inequitable: Provided, That the fiduciary may not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof.

(bb) Pay to or for minors or incompetents. -- To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

(1) Directly to the minor or incompetent;

(2) To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital or other institutional care of the minor or incompetent;

(3) To the legal or natural guardian of the minor or incompetent;

(4) To any other person, whether or not appointed guardian of the person by any court, who does, in fact, have the care and custody of the person of the minor or incompetent.
The fiduciary is not under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom the payments were made; and the receipt of the person is full acquittance to the fiduciary.

(cc) *Apportion and allocate receipts and expenses.* -- Where not otherwise provided by statute to determine:

(1) What is principal and what is income of any estate or trust and to allocate or apportion receipts and expenses as between principal and income in the exercise of the fiduciary's discretion, and, by way of illustration and not limitation of the fiduciary's discretion, to charge premiums on securities purchased at a premium against principal or income or partly against each;

(2) Whether to apply stock dividends and other noncash dividends to income or principal or apportion them as the fiduciary considers advisable; and

(3) What expenses, costs, taxes (other than estate, inheritance, and succession taxes and other governmental charges) shall be charged against principal or income or apportioned between principal and income and in what proportions.

(dd) *Make contracts and execute instruments.* -- To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers granted in this section.

(ee) The foregoing powers are limited as follows for any trust which is classified as a "private foundation" as that term is defined by section 509 of the Internal Revenue Code of
(1) The fiduciary shall make distributions of amounts, for each taxable year, at times and in a manner as not to become subject to the tax imposed by section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(2) No fiduciary may engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(3) No fiduciary may retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(4) No fiduciary may make any investments in a manner as to subject the trust to tax under section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(5) No fiduciary may make any taxable expenditures as defined in section 4945(e) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.
§44-5A-4. Designation of testamentary trustee as beneficiary of insurance.

A policy of life insurance may contain a designation of a beneficiary, a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurer. The proceeds of the insurance shall be paid to the trustee or trustees to be held and disposed of under the terms of the will as they exist at the death of the testator; but if no trustee or trustees makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within the one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assign of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured. The proceeds of the insurance as collected by the trustee or trustees are not subject to debts of the insured or to inheritance tax to any greater extent than if the proceeds were payable to any other named beneficiary other than the estate of the insured, and are not considered as payable to the estate of the insured for any purpose. The insurance proceeds so held in trust may be commingled with any other assets which may properly come into the trust as provided in the will. Enactment of this section does not invalidate previous life insurance policy designations naming trustees of trusts established by will.

§44-5A-5. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.
(a) Where a will, trust or other governing instrument authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or a separate trust to be funded by a pecuniary amount or formula unless the will, trust or other governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution, and if any pecuniary bequests or separate trusts established under the will or trust by a pecuniary amount or formula is not entirely funded or an amount necessary to fund the bequest or trust completely is not irrevocably set aside within fifteen months after the date of the testator's or grantor's death, the fiduciary shall allocate to the bequest or trust a prorata share of the income earned by the estate of the testator or grantor or other fund from which the bequest or trust is to be funded between the date of death of the testator or grantor and the date or dates of the funding.

(b) Whenever a fiduciary under the provisions of a will, trust or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust and is authorized to satisfy the bequest or transfer by selection and distribution of assets in kind, and the will, trust or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will, trust or other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest or transfer. This section does not apply to prevent a fiduciary from carrying into effect the provisions of the will, trust or other governing instrument that the fiduciary, in order to implement the bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution.
amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) (1) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust is authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary’s discretion so that cash and other properties distributed in satisfaction of the bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of the bequest or transfer in trust and any such agreement heretofore entered into after April 1, 1964, is hereby validated. The fiduciary is authorized to enter into any other agreement not in conflict with the express terms of the will, trust or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction or other deduction or exemption available under the Internal Revenue laws of the United States of America, and to do and perform all acts incident to that purpose.

(2) Unless ordered by a court of competent jurisdiction, the bank or trust company operating a common trust fund, as provided in section six of this article, is not required to render an accounting with regard to the fund, before any fiduciary commissioner but it may, by application to the circuit court of the county in which is located the principal place of business of the bank or trust company, secure the approval of an accounting in the condition the court may fix: Provided, That nothing in this section relieves a fiduciary acquiring, holding or disposing of an interest in any common trust fund
from making an accounting as required by law with respect
of the interest.

(d) The fiduciary of any trust created by will, trust or
other governing instrument may from time to time without
need of court approval to divide the trust or trusts for
purposes of the generation skipping transfer tax ("GST") of
section 2601 of the Internal Revenue Code of 1986, as in
effect on January 1, 2010, or any similar or successor law of
like import, or for any other tax, administrative or other
purposes. In exercising this authority for inclusion ratio,
marital deduction election, reverse qualified terminal interest
property election or other GST or other tax purposes, the
power shall be exercised in a manner that complies with
applicable Internal Revenue Code Treasury Regulations or
other requirements for accomplishing the intended purposes.
If that division is made for purposes of separating assets with
respect to which the federal estate tax marital deduction
election is to be made from those as to which the election is
not to be made, the division shall be done on a fractional or
percentage basis and the assets of the trust or other fund to be
divided shall be valued for purposes of the division on the
date or dates of division.

§44-5A-6. Restrictions on exercise of power for fiduciary’s
benefit.

(a) A power conferred upon a person in his or her
capacity as fiduciary to make discretionary distributions of
principal or income to himself or herself or to make
discretionary allocations in his or her favor of receipts or
expenses between income and principal cannot be exercised
by him or her. If the power is conferred on two or more
fiduciaries, it may be exercised by the fiduciaries who are not
so disqualified. If there is no fiduciary qualified to exercise
the power, it may be exercised by a special fiduciary
appointed by the court authorized under article fourteen of
this chapter, and in accordance with the procedure described
therein, to appoint a successor or substitute trustee. Except
as provided in subsection (c) of this section this section
applies to all trusts now in existence and to all trusts which
are created later.

(b) Unless either: (1) Mandatory; (2) limited by an
ascertainable standard relating to the health, education,
support or maintenance of the fiduciary; or (3) exercisable by
the fiduciary only in conjunction with another person having
a substantial interest in the trust which is adverse to the
interest of the fiduciary, a power to make distributions of
principal or income is a discretionary power for purposes of
this section.

(c) This section does not apply to trusts that come into
existence or are amended after the effective date of this
section which show a clear intent that this section does not
apply.


(a) For purposes of this section:

(1) “Environmental law” means any federal, state or local
law, rule, regulation or ordinance relating to the regulation of
hazardous substances or hazardous wastes, air pollution,
water pollution and underground storage tanks;

(2) “Hazardous substance” means any substance defined
as hazardous in the Comprehensive Environmental Response,
Compensation and Liability Act (“CERCLA”) [42 U.S.C.
9601, et seq. (1980)] as amended and in effect on January 1,
2010, and regulations promulgated thereunder;
(3) "Hazardous waste" means a waste characterized or listed as hazardous in the Resource, Conservation and Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as amended] as in effect on January 1, 2010, and regulations promulgated thereunder;

(4) "Fiduciary" means a fiduciary as defined by section one-d, article four-d, chapter thirty-one of this code.

(b) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") has the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:

(1) To inspect property held by the fiduciary including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting the property and to take necessary or reasonable action, including reporting to the appropriate regulatory authority as may be otherwise required by law, with respect to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(2) To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;
(3) To refuse to accept property in trust or estate if the fiduciary determines any property to be donated or conveyed to the trust or estate is contaminated by any hazardous substance or hazardous waste or is being used or has been used for any activity directly or indirectly involving any violation of an environmental law which is reasonably likely to result in liability to the fiduciary; Provided, That the refusal does not limit the liability of the trust or estate or its income or principal, for any liability the trust or estate may otherwise have in connection with any environmental law, but only to limit the liability of the fiduciary. Property not accepted into a trust or estate by the fiduciary may revert to the grantor or its successors or pass by the laws of descent and distribution, as may otherwise be provided by law;

(4) To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

(5) To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it and its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(c) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate.

(d) A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any
(e) Neither the acceptance by the fiduciary of property nor the failure by the fiduciary to inspect property creates any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-1. Fiduciaries to put money out at interest.

(a) Executors, administrators, guardians, curators, committees or trustees may, by direction of the circuit court of the county, where they were appointed or qualified, put out at interest all moneys in their hands which they are or may be lawfully required to retain, whether it belongs to minors, legatees or other person or persons, upon security, and for the length of time, as the court will allow, and if the security so taken, bona fide and without fraud, proves insufficient, it is the loss of the beneficiaries entitled thereto; and it is the duty of the executors, administrators, guardians, curators, committees or trustees, in cases where the estates in their hands may be materially benefited thereby, to make application to the circuit court for direction, and in case they neglect so to do they are accountable for the interest that might have been made thereby; but if no person who may be willing to take the money at interest, giving the security, can be found by the executors, administrators, guardians, curators, committees or trustees, then the executors, administrators, guardians, curators, committees or trustees, in those cases, are accountable for the principal money only, until it can be put out at interest as aforesaid; but in any case where executors, administrators, guardians, curators, committees or trustees use the money of the estates which
come to their hands, they are accountable not only for the principal, but also for the interest thereon.

(b) This section does not apply to a trust or a trustee.

§44-6-2. In what securities fiduciaries may invest trust funds.

Any executor, administrator, guardian, curator, committee, trustee or other fiduciary whose duty it may be to loan or invest money entrusted to him or her as such, may, without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein:

Provided, That except as otherwise provided in article six-c of this chapter, the fiduciary shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the “Farm Credit Act Amendments of 1986” (12 U. S. C. §2001 et. seq.), as amended, debentures issued by the Federal National Mortgage Association, securities issued by the Federal Home Loan Bank System; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the “International Bank for Reconstruction and Development” or by the “Inter-American Development Bank” or by the “Asian Development Bank” or by the “African Development Bank”;
(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of the investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the Legislature of the state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political division of this state that have been issued pursuant to the authority of any law of this state, since May 9, 1917;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by the mortgage or trust deed does not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value is the higher, of the real estate covered by the mortgage or trust deed, and when the mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title or title insurance policy, showing good title in the mortgagor when making the mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his or her interest may appear: Provided, That the rate of interest upon the above enumerated securities in this subdivision, in which the investments may be made, may not be less than three and one-half percent per annum nor greater than the maximum rate of interest which the bonds or negotiable notes may bear under applicable law: Provided, however, That the provisions herein establishing a minimum
(f) In savings accounts and time deposits of bank or trust companies to the extent that the deposits are insured by the Federal Deposit Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created, if there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the rate of interest upon the savings accounts or time deposits may not be less than the rate paid other depositors in the bank or trust company;

(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that the shares are insured by the Federal Savings and Loan Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created: Provided, That there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, however, That the dividend rate upon the shares may not be less than the rate paid to other shareholders in the associations; and

(h) In other securities of corporations organized and existing under the laws of the United States, or of the District of Columbia or any state of the United States, including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness and shares of common and preferred stocks of the corporations and securities of any open end or closed end management type investment company or investment trust registered under the “Federal Investment Company Act” of 1940, as from time to time amended, which persons of prudence, discretion and intelligence acquire or retain for their own account, as long as:
(1) An investment may not be made pursuant to the provisions of this subdivision which, at the time the investment is made, will cause the aggregate market value thereof to exceed fifty percent of the aggregate market value at that time of all of the property of the fund held by the fiduciary. Notwithstanding the aforesaid percentage limitation the cash proceeds of the sale of securities received or purchased by a fiduciary and made eligible by this subdivision may be reinvested in any securities of the type described in this subdivision;

(2) Bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of the corporations may not be purchased under authority of this subdivision unless the obligations, if other than issues of a common carrier subject to the provisions of section twenty-a of the "Interstate Commerce Act", as amended, are obligations issued, guaranteed or assumed by corporations which have any securities currently registered with the Securities and Exchange Commission; and

(3) Common or preferred stocks, other than bank and insurance company stocks, may not be purchased under authority of this subdivision unless currently fully listed and registered upon an exchange registered with the Securities and Exchange Commission as a national securities exchange. A sale or other liquidation of any investment may not be required solely because of any change in the relative market value of those investments made eligible by this subdivision and those made eligible by the preceding subdivisions of this section. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under the provisions of this subdivision, a fiduciary may rely upon published market quotations as to those investments for which the quotations are available, and upon such valuations
of other investments as in the fiduciary’s best judgment seem fair and reasonable according to available information.

Trust funds received by executors, administrators, guardians, curators, committees, trustees and other fiduciaries may be kept invested in the securities originally received by them, or if the trust funds originally received were stock or securities of a bank, in shares of stock or other securities (and securities received as distributions in respect thereof) of a holding company subject to the federal Bank Holding Company Act of 1956, as amended, received upon conversion of, or in exchange for, shares of stock or other securities of the bank; unless otherwise ordered by a court having jurisdiction of the matter, as hereinafter provided, or unless the instrument under which the trust was created directs that a change of investment be made, and any such fiduciary is not liable for any loss that may occur by depreciation of the securities.

This section does not apply where the instrument creating the trust, or the last will and testament of any testator or any court having jurisdiction of the matter, specially directs in what securities the trust funds shall be invested, and every the court has power specially to direct by order or orders, from time to time, additional securities in which trust funds may be invested, and any investment thereof made in accordance with the special direction is legal, and no executor, administrator, guardian, curator, committee, trustee or other fiduciary may be held for any loss resulting in any such case.

This section does not apply to trusts or trustees.

§44-6-11. Application only to executors, administrators, guardians, curators or committees.
The provisions of this article apply only to executors, administrators, guardians, curators or committees, as the case may be, and do not apply to or affect trustees who are governed by the provisions of the West Virginia Uniform Prudent Investor Act in article six-c of this chapter and the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.

§44-6C-1. Prudent investor rule.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust instrument. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust instrument.

§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a
part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income and preservation or appreciation of capital; and

(8) An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.
(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

(g)(1) Unless otherwise directed by the terms of the trust instrument, the duties of a trustee of an irrevocable life insurance trust with respect to acquiring or retaining a contract of insurance upon the life of the grantor, or the lives of the grantor and the grantor’s spouse, do not include a duty:

(A) To determine whether the contract is or remains a proper investment;

(B) To exercise policy options available under the contract in the event the policy lapses or is terminated due to failure to pay premiums; or

(C) To diversify the contract.

(2) A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.


(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
(3) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(e) The delegating trustee is not responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and the trustee’s compliance with the scope and specific terms of the delegation.

ARTICLE 7. RESIGNATION OF PERSONAL REPRESENTATIVES AND PROCEDURE UPON RESIGNATION.

§44-7-1. Fiduciary desiring to resign to file petition; summons thereon.

A personal representative or curator desiring to resign his or her trust, may file his or her petition for that purpose in the
county commission of the county in which he or she was
appointed, stating the names of all persons, so far as known
by him or her, interested in the estate in his or her hands or
under his or her control, and to which his or her duties as
fiduciary relate, and if any of them are under disability, or
nonresidents of the state; or if there are persons interested in
the estate whose names are unknown, all of these facts, and
the names of the guardians and committees of the persons
under disability, if there are guardians or committees, shall be
stated in the petition. Upon the filing of the petition the clerk
of the court shall issue a summons against all the persons so
named and the guardians and the committees of those under
disability, if they have any, and against “the unknown parties
in interest,” if any there are, mentioned in the petition, to
appear before the court on a day to be named in the
summons, which day may be not less than thirty days from
the filing of the petition, and answer the petition, and state to
the court the reasons, if any they have, why the petition
should not be granted. If any of the persons interested reside
in another county in this state, the summons as to them shall
be directed and sent by mail by the clerk to the sheriff of that
county to be served and returned by him or her; and as to the
persons named in the petition who reside out of this state, or
who cannot by the use of due diligence be found, and as to
the unknown parties, an order of publication shall be awarded
against them, which shall be published or posted and
published, as in cases of appointment and qualification of
personal representatives.

§44-7-4. Application only to personal representatives, curators
or minor guardians.

The provisions of this article apply only to personal
representatives, curators and minor guardians, as the case
may be, and do not apply to or affect guardians and
conservators of an adult protected person who are governed
by the provisions of the Guardian and Conservatorship Act
in chapter forty-four-a of this code or trustees who are
governed by the provisions of the West Virginia Uniform
Trust Code in chapter forty-four-d of this code.

CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


1 This chapter may be cited as the “West Virginia Uniform
2 Trust Code.”

§44D-1-102. Scope.

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

§44D-1-103. Definitions.

1 In this chapter:

2 (a) “Action,” with respect to an act of a trustee, includes
3 a failure to act.

4 (b) “Ascerturable standard” means a standard relating to
5 an individual’s health, education, support or maintenance
6 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1)
7 of the Internal Revenue Code.

8 (c) “Beneficiary” means a person that:
9 (1) Has a present or future beneficial interest in a trust, vested or contingent;

10 (2) In a capacity other than that of trustee, holds a power of appointment over trust property; or

11 (3) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.

12 (d) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection (a), section four hundred five, article four of this chapter.

13 (e) “Conservator” means a person appointed by the court to administer the estate and financial affairs of a protected person.

14 (f) “Court” means a court of this state having proper jurisdiction under section two hundred three, article two of this chapter, and venue under section two hundred four of that article.

15 (g) “Current beneficiary” means a beneficiary that, on the date the beneficiary’s qualification is determined, is a distributee or permissible distributee of trust income or principal.

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

17 (i) “Grantor” means a person, including a testator, who creates, or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to
that person's contribution except to the extent another person
has the power to revoke or withdraw that portion.

(j) "Guardian" means a person appointed by the court
who is responsible for the personal affairs of a protected
person or a parent to make decisions regarding the support,
care, education, health and welfare of a minor. The term does
not include a guardian ad litem.

(k) "Interested person" means heirs, devisees, children,
spouses, creditors, beneficiaries and any others having a
property right in or claim against a trust or the property in a
trust. It also includes persons having priority for appointment
as personal representative and other fiduciaries representing
interested persons. The meaning as it relates to particular
persons may vary from time to time and must be determined
according to the particular purposes of, and matter involved
in, any proceeding.

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

(m) "Internal Revenue Code" or "Internal Revenue Code
of 1986" means the Internal Revenue Code of 1986 codified
in 26 U.S.C. 1 et seq., as amended and in effect on January 1,
2011.

(n) "Jurisdiction" with respect to a geographic area,
includes a state or country.

(o) "Person" means an individual, corporation, business
trust, estate, trust, partnership, limited liability company,
association, joint venture, unincorporated nonprofit
association, charitable organization, government,
governmental subdivision, agency or instrumentality, public
corporation or any other legal or commercial entity.
(p) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(1) Exercisable by a trustee and limited by an ascertainable standard; or

(2) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

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

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

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

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

(s) "Revocable," as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

(t) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.
(u) "State" means a state of the United States, the District
of Columbia, Puerto Rico, the United States Virgin Islands or
any territory or insular possession subject to the jurisdiction
of the United States. The term includes an Indian tribe or
band recognized by federal law or formally acknowledged by
a state.

(v) "Terms of a trust" means the manifestation of the
grantor's intent regarding a trust's provisions as expressed in
the trust instrument or as may be established by other
evidence that would be admissible in a judicial proceeding.

(w) "Trust instrument" means a writing, including a will,
executed by the grantor that contains terms of the trust,
including any amendments thereto.

(x) "Trustee" includes an original, additional, successor
trustee, and a cotrustee.

(y) "Writing" or "written instrument" does not include an
electronic record or electronic signature as provided in
chapter 39A of this code.

§44D-1-104. Knowledge.

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

(1) Has actual knowledge of it;

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

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

§44D-1-105. Default and mandatory rules.

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

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

(1) The requirements for creating a trust;

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

(3) The requirement that a trust and its terms have a purpose that is lawful, not contrary to public policy, and possible to achieve;
(4) The power of the court to modify or terminate a trust under section four hundred ten through four hundred sixteen, article four of this chapter;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article five of this chapter;

(6) The power of the court under section seven hundred two, article seven of this chapter to require, dispense with, or modify or terminate a bond;

(7) The power of the court under subsection (b), section seven hundred eight, article seven of this chapter, to adjust a trustee’s compensation specified in the terms of the trust instrument which is unreasonably low or high;

(8) The effect of an exculpatory term under section one thousand eight, article ten of this chapter;

(9) The rights under sections one thousand ten through one thousand thirteen, article ten of this chapter, of a person other than a trustee or beneficiary;

(10) Periods of limitation for commencing a judicial proceeding;

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

(12) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections two hundred three and two hundred four, article two of this chapter.
§44D-1-106. Common law of trusts; principles of equity.

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


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

1. The law of the jurisdiction designated in the terms of the trust instrument, including terms which may provide for change of jurisdiction from time to time, unless the designation of that jurisdiction’s law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

2. In the absence of a controlling designation in the terms of the trust instrument, the law of the jurisdiction in which the grantor is domiciled when the trust becomes irrevocable.

§44D-1-108. Principal place of administration.

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

1. A trustee’s principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

2. All or part of the administration occurs in the designated jurisdiction.
(b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, may transfer the trust’s principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust’s purposes, its administration and the interests of the beneficiaries.

(c) When the proposed transfer of a trust’s principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the current beneficiaries of a proposed transfer of a trust’s principal place of administration not less than sixty days before initiating the transfer. A corporate trustee that maintains a place of business in West Virginia where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries has not transferred its principal place of administration merely because all or a significant portion of the administration of the trust is performed outside West Virginia. The notice of proposed transfer must include:

1. The name of the jurisdiction to which the principal place of administration is to be transferred;
2. The address and telephone number at the new location at which the trustee can be contacted;
3. An explanation of the reasons for the proposed transfer;
4. The date on which the proposed transfer is anticipated to occur; and
5. The date, not less than sixty days after the giving of the notice, by which the current beneficiary must notify the trustee of an objection to the proposed transfer.
(d) The authority of a trustee under this section to transfer a trust’s principal place of administration to another state or to a jurisdiction outside the United States terminates if a current beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(e) In connection with a transfer of the trust’s principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust instrument or appointed pursuant to section seven hundred four, article seven of this chapter.

§44D-1-109. Methods and waiver of notice.

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

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

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

(d) Notice of a judicial proceeding shall be given as provided in the applicable rules of civil procedure.
§44D-1-110. Others treated as qualified beneficiaries.

(a) Whenever notice to qualified or current beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter.

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section four hundred eight or four hundred nine, article four of this chapter has the rights of a qualified beneficiary under this chapter.

§44D-1-111. Nonjudicial settlement agreements.

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

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, including, but not limited to:

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

(2) The approval of a trustee’s report or accounting or waiver of the preparation of a trustee’s report or accounting;
(3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

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

(5) Transfer of a trust’s principal place of administration;

(6) Liability or release from liability of a trustee for an action relating to the trust;

(7) Questions relating to the property or an interest in property held as part of a trust;

(8) An investment decision, policy, plan or program of the trustee;

(9) The grant to a trustee of any necessary or desirable power;

(10) The exercise or nonexercise of any power by a trustee;

(11) An action or proposed action by or against a trust or trustee;

(12) The modification or termination of a trust; and

(13) Any other matter concerning the administration of a trust.

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

(d) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in article three of this chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.


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

ARTICLE 2. JUDICIAL PROCEEDINGS.

§44D-2-201. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust’s administration, including a request for instructions and an action to declare rights.


(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving
the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

§44D-2-203. Subject-matter jurisdiction.

The court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

§44D-2-204. Venue.

(a) Except as otherwise provided in subsection (b) of this section, venue for a judicial proceeding involving a trust is in the county of this state in which the trust’s principal place of administration is or will be located unless the proceeding is to recover land, determine title to the land or subject it to a debt, determine the county where the land or any part may be, or, if the trust is created by will and the estate is not yet closed, in the county in which the decedent’s estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of
ARTICLE 3. REPRESENTATION.

§44D-3-301. Representation; basic effect.

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

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

(c) Except as otherwise provided in section four hundred eleven, article four of this chapter, and section six hundred two, article six of this chapter, a person who under this article may represent a grantor who lacks capacity may receive notice and give a binding consent on the grantor’s behalf.

(d) A grantor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under subsection (a), section four hundred eleven, article four of this chapter.

§44D-3-302. Representation by holder of general testamentary power of appointment.

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

§44D-3-303. Representation by fiduciaries and parents.

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

(1) A conservator or guardian of the protected person may represent and bind the estate that the fiduciary controls;

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

(3) A trustee may represent and bind the beneficiaries of the trust;

(4) A personal representative of a decedent’s estate may represent and bind persons interested in the estate;

(5) A parent may represent and bind the parent’s minor or unborn child if a conservator or guardian for the child has not been appointed; and

(6) If a minor or unborn person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor or unborn person.

§44D-3-304. Representation by person having substantially identical interest.
Unless otherwise represented, a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and the person represented.

§44D-3-305. Appointment of representative.

(a) If the court determines in a judicial proceeding that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

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

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual’s family.

ARTICLE 4. CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST.

§44D-4-401. Methods of creating trust.

(a) A trust may be created by:
Enr. H.B. 2551] 56

(1) Transfer of property to another person as trustee during the grantor’s lifetime by the grantor or by will or by other disposition taking effect upon the grantor’s death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

(3) Exercise of a power of appointment in favor of a trustee; or

(4) An order of the court.

(b) During the grantor’s lifetime, a trust may also be created by the grantor’s agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor’s behalf or which expressly authorizes the agent to fund an existing trust of the grantor on the grantor’s behalf.

§44D-4-402. Requirement for creation.

(a) Except as created by an order of the court, a trust is created only if:

(1) The grantor has capacity to create a trust;

(2) The grantor indicates an intention, in writing, to create the trust;

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

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in section four hundred eight of this article; or
(C) A trust for a noncharitable purpose, as provided in section four hundred nine, article four of this chapter;

(4) The trustee has duties to perform; and

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

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

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

(d) Notwithstanding the foregoing:

(1) In accordance with the provisions of section eight, article three of chapter forty-one of this code, a trust is valid regardless of the existence, value or character of the corpus of the trust.

(2) The grantor need not have capacity to create a trust if the trust is created in writing during the grantor’s lifetime by the grantor’s agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor’s behalf.

(e) A trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

§44D-4-403. Trusts created in other jurisdictions.
A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The grantor was domiciled, had a place of abode, or was a national;

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

(3) Any trust property was located.

§44D-4-404. Trust purposes.

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

§44D-4-405. Charitable purposes; enforcement.

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

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, upon petition by the trustee or a person having a special interest in the trust, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the grantor’s intention to the extent it can be ascertained.
(c) The grantor of a charitable trust, trustee or a person having a special interest in the trust, may maintain a proceeding to enforce the trust.

(d) This section is not intended to override the provisions of section four, article one, chapter thirty-five of this code, concerning conveyances, devises, dedications, gifts or bequests to religious organizations and to the extent there is a conflict with that section, this section controls.

§44D-4-406. Creation of trust induced by fraud, duress or undue influence.

A trust is void to the extent its creation was induced by fraud, duress or undue influence. As used in this section, "fraud," "duress" and "undue influence" have the same meanings for trust validity purposes as they have for purposes of determining the validity of a will.

§44D-4-407. Oral trusts unenforceable.

Oral trusts are unenforceable in this state.

§44D-4-408. Trust for care of animal.

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

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

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

§44D-4-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in section four hundred eight of this article, or by the provisions of article five-a, chapter thirty-five of this code, or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than the period set forth in section one, article one-a, chapter thirty-six of this code.

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

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not
§44D-4-410. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by sections four hundred eleven through four hundred fourteen, article four of this chapter, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections four hundred eleven through four hundred sixteen of this article, or trust combination or division under section four hundred seventeen of this article, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section four hundred eleven of this article may be commenced by the grantor. The grantor of a charitable trust may maintain a proceeding to modify the trust under section four hundred thirteen of this article.

§44D-4-411. Modification or termination of noncharitable irrevocable trust by consent.

(a) If, upon petition, the court finds that the grantor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A grantor’s power to consent to a trust’s modification...
or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust instrument; by the grantor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the grantor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

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

(c) A spendthrift provision in the terms of the trust instrument is presumed to constitute a material purpose of the trust.

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

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

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
36 (2) The interests of a beneficiary who does not consent will be adequately protected.

§44D-4-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

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

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

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

§44D-4-413. Cy pres.

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

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

(2) The charitable trust property does not revert to the grantor or the grantor’s successors in interest; and

(3) Upon petition by a trustee or a person having a special interest in the trust, the court shall apply cy pres to fulfill as
nearly as possible the grantor’s charitable intention, whether it be general or specific.

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

(1) The charitable trust property is to revert to the grantor and the grantor is still living; or

(2) Fewer than twenty-one years have elapsed since the date of the trust’s creation.

§44D-4-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of a noncharitable trust property having a total value less than $100,000 may terminate the trust, without the necessity of court approval, if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

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

(d) This section does not apply to an easement for conservation or preservation.
§44D-4-415. Reformation to correct mistakes.

1 The court may reform the terms of a trust, even if
2 unambiguous, to conform the terms to the grantor’s intention
3 if it is proved by preponderance of the evidence that both the
4 grantor’s intent and the terms of the trust instrument were
5 affected by a mistake of fact or law, whether in expression or
6 inducement.

§44D-4-416. Modification to achieve grantor’s tax objectives.

1 To achieve the grantor’s tax objectives, the court may
2 modify the terms of a trust in a manner that is not contrary to
3 the grantor’s probable intention. The court may provide that
4 the modification has retroactive effect.

§44D-4-417. Combination and division of trusts.

1 After notice to the qualified beneficiaries, a trustee may
2 combine two or more trusts into a single trust or divide a trust
3 into two or more separate trusts, if the result does not impair
4 rights of any beneficiary or adversely affect achievement of
5 the purposes of the trust.

ARTICLE 5. CREDITOR’S CLAIMS; SPENDTHRIFT AND
DISCRETIONARY TRUSTS.

§44D-5-501. Rights of beneficiary’s creditor or assignee.

1 To the extent a beneficiary’s interest is not subject to a
2 spendthrift provision, the court may authorize a creditor or
3 assignee of the beneficiary to reach the beneficiary’s interest
4 in a trust by execution or other process against the present or
5 future distributions to or for the benefit of the beneficiary.
6 The court may limit the award to relief as appropriate under
7 the circumstances.
§44D-5-502. Spendthrift provision.

(a) A spendthrift provision contained in a trust instrument is valid if it contains language substantially to the effect that it restrains both voluntary and involuntary transfers of a beneficiary's interest.

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

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

§44D-5-503. Exceptions to spendthrift provision.

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) A beneficiary’s child, who has a judgment or court order against the beneficiary for child support;

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

(3) A claim of this state or the United States to the extent a statute of this state or federal law so provides.
§44D-5-504. Discretionary trusts; effect of standard.

(a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust instrument contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion, even if:

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

(2) The trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for child support of the beneficiary’s child; and

(2) The court shall direct the trustee to pay to the child, spouse or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.
(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(e) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee or otherwise compel a distribution, if the trustee’s discretion to make distributions for the trustee’s own benefit is limited by an ascertainable standard.

§44D-5-505. Creditor’s claim against grantor.

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

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

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

(3) After the death of a grantor, and subject to the grantor’s right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the grantor’s death is subject to claims of, to the extent the grantor’s probate estate is inadequate to satisfy them:

(A) The costs and expenses of administration of the grantor’s estate;
(B) Reasonable funeral expenses;

20 (C) Debts and taxes with preference under federal law;

21 (D) Unpaid child support which is due and owing at the
time of the decedent's death;

23 (E) Debts and taxes with preference under other laws of
the State of West Virginia;

25 (F) Reasonable and necessary medical and hospital
expenses of the last illness of the decedent, including
compensation for persons attending the decedent during his
or her last illness; and

29 (G) All other claims.

(b) For purposes of this section:

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

35 (2) Upon the lapse, release or waiver of the power, the
holder is treated as the grantor of the trust only to the extent
the value of the property affected by the lapse, release or
waiver exceeds the greater of the amount specified in Section
2041(b)(2), Section 2503(b) or Section 2514(e) of the
Internal Revenue Code.

§44D-5-506. Overdue distribution.

1 (a) In this section, “mandatory distribution” means a
distribution of income or principal which the trustee is
required to make to a beneficiary under the terms of the trust
Enr. H.B. 2551]

instrument, including a distribution upon termination of the
trust. The term does not include a distribution subject to the
exercise of the trustee's discretion even if:

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

(2) The terms of the trust instrument authorizing a
distribution couple language of discretion with language of
direction.

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

§44D-5-507. Personal obligations of trustee.

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

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-601. Capacity of grantor 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.

§44D-6-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the
trust is irrevocable, the grantor 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 chapter.

(b) Unless the terms of a trust provide otherwise, if a revocable trust is created or funded by more than one grantor:

(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;

(2) To the extent the trust consists of property other than community property, each grantor may revoke or amend the trust with regard the portion of the trust property attributable to that grantor’s contribution; and

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

(c) The grantor may revoke or amend a revocable trust:

(1) By substantially complying with a method provided in the terms of the trust instrument; or

(2) If the terms of the trust instrument do not provide a method, by any other method manifesting clear and convincing evidence of the grantor’s intent.

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

(e) A grantor’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
(f) A conservator of the grantor or, if no conservator has been appointed, a guardian of the grantor may exercise a grantor’s powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

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

(h) No trust which is otherwise irrevocable because the trust instrument expressly provides or states that the trust is irrevocable is or becomes revocable by the grantor because the grantor is the sole beneficiary of the trust.

§44D-6-603. Grantor’s powers; powers of withdrawal.

(a) While a trust is revocable and the grantor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the grantor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a grantor of a revocable trust under this section to the extent of the property subject to the power.

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.
(a) (1) An interested person may commence a judicial proceeding to contest the validity of a trust that was revocable at the grantor’s death within the earlier of:

(A) Two years after the grantor’s death; or

(B) Six months after the trustee has sent the beneficiary a copy of the trust instrument and a notice informing the beneficiary of the trust’s existence, of the trustee’s name and address, and of the time allowed for commencing a proceeding.

(2) Notwithstanding subdivision (1) of this subsection:

(A) If the beneficiary is under the age of eighteen years or is a convict or mentally incapacitated person, the beneficiary has one year after he or she becomes of age or the disability ceases to commence a judicial proceeding; and

(B) If the beneficiary resided out of the state at the time the beneficiary received the trust instrument and notice, the beneficiary has one year after receipt thereof to commence the judicial proceeding.

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

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

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

(c) A beneficiary of a trust that was revocable at the grantor’s death that is determined to have been invalid is liable to return any distribution received.

ARTICLE 7. OFFICE OF THE TRUSTEE.

§44D-7-701. Accepting or declining trusteeship.

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

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

(2) If the terms of the trust instrument do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship including by signing a written instrument so stating.

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

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

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of
§44D-7-702. Trustee's bond.

(a) A trustee shall give bond to secure performance of the trustee's duties only if a bond is required by the terms of the trust instrument or if the court having jurisdiction of the trust finds that a bond is needed to protect the interests of the beneficiaries and the court has not dispensed with the requirement of a bond.

(b) The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time upon petition by the grantor, if living, a qualified beneficiary, or cotrustee.

(c) In accordance with the provisions of section eighteen, article four, chapter thirty-one-a of this code, a regulated financial-service institution authorized to exercise trust powers in this state need not give bond, even if required by the terms of the trust instrument.

§44D-7-703. Cotrustees.

(a) Unless otherwise provided in the terms of the trust instrument, cotrustees who are unable to reach a unanimous decision may act by majority decision. Unless otherwise provided by the trust instrument, when a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them, the court in its discretion upon petition filed by any of the
trustees, the grantor, if living, a qualified beneficiary, or any interested person, may direct the exercise or nonexercise of the power as it considers necessary for the best interest of the trust.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust, unless otherwise provided in the terms of the trust instrument.

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

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

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation of a function previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:
(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§44D-7-704. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled, unless otherwise provided in the terms of the trust instrument. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.
c) Unless otherwise provided in the terms of the trust instrument, a vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

1. By a person designated in the terms of the trust instrument to act as successor trustee;
2. By a person appointed by unanimous written agreement of the qualified beneficiaries; or
3. By a person appointed by the court having jurisdiction of the trust.

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

1. By a person designated in the terms of the trust to act as successor trustee;
2. By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust instrument if the Attorney General of West Virginia either concurs in writing to the selection or fails to make a written objection to the selection within ninety days after receiving by certified or registered mail a notice of the selection by the charitable organizations; or
3. By a person appointed by the court having jurisdiction over the trust.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may upon petition of the grantor, a qualified beneficiary, or a cotrustee appoint an additional trustee or special fiduciary whenever the court
§44D-7-705. Resignation of trustee.

(a) Unless otherwise provided in the terms of the trust instrument, a trustee may resign without court approval by giving at least thirty days' notice in writing to the grantor, if living, all of the qualified beneficiaries, and all cotrustees, if any.

(b) A trustee may resign with the approval of the court having jurisdiction of the trust upon the filing of a petition for such purpose which joins as respondents the grantor, if living, all of the qualified beneficiaries, and all cotrustees, if any. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Unless otherwise provided by order of the court, any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee’s resignation.

§44D-7-706. Removal of trustee.

(a) The grantor, a cotrustee or a beneficiary may upon petition request the court to remove a trustee, or a trustee may be removed by the court on its own initiative. In the case of a charitable trust, the Attorney General of West Virginia shall also have standing to petition the court to remove a trustee.

(b) The court may remove a trustee if the court finds by a preponderance of the evidence that:

(1) The trustee has committed a serious breach of trust;
(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

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

(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, removal of the trustee best serves the interests of all of the beneficiaries, removal is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under subsection (b), section one thousand one, article ten of this chapter as may be necessary to protect the trust property or the interests of the beneficiaries.

§44D-7-707. Delivery of property by former trustee.

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

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee’s possession to the cotrustee, successor trustee or other person entitled to it.
(c) Title to all trust property shall be owned and vested in any successor trustee, upon acceptance of the trusteeship, without any conveyance, transfer or assignment by the prior trustee.

§44D-7-708. Compensation of trustee.

(a) If the terms of the trust instrument do not specify the trustee’s compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of the trust instrument specify the trustee’s compensation, the trustee is entitled to be compensated as specified, but the court may upon petition of the grantor, qualified beneficiary, the trustee or cotrustee, if any, may allow more or less compensation if:

(1) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust instrument would be unreasonably low or high.

§44D-7-709. Reimbursement of expenses.

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

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

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§44D-8-801. Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust and invest the trust assets in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter. In administering, managing and investing trust assets, the trustee shall comply with the provisions of the Uniform Prudent Investor Act in article six-c, chapter forty-four of this code, and the Uniform Principal and Income Act in chapter forty-four-b of this code.

§44D-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section one thousand twelve, article ten of this chapter, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) The transaction was authorized by the terms of the trust instrument;
(2) The transaction was approved by the court having jurisdiction over the trust;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section one thousand five, article ten of this chapter;

(4) The beneficiary consented to the trustee’s conduct, ratified the transaction or released the trustee in compliance with section one thousand nine, article ten of this chapter; or

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

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

(1) The trustee’s spouse;

(2) The trustee’s descendants, siblings, parents or their spouses;

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

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee
obtains an advantage beyond the normal commercial
advantage from such transaction is voidable by the
beneficiary unless the trustee establishes that the transaction
was fair to the beneficiary.

(e) A transaction not concerning trust property in which
the trustee engages in the trustee’s individual capacity
involves a conflict between personal and fiduciary interests
if the transaction concerns an opportunity properly belonging
to the trust.

(f) An investment by a trustee in securities of an
investment company or investment trust, mutual fund or
other investment or financial product to which the trustee, or
its affiliate, provides services in a capacity other than as
trustee is not presumed to be affected by a conflict between
personal and fiduciary interests if the investment otherwise
complies with the Uniform Prudent Investor Act in article
six-c, chapter forty-four of this code. In addition to its
compensation for acting as trustee, the trustee may be
compensated by the investment company, investment trust,
mutual fund or other investment or financial product, or by
the affiliated entity sponsoring, selling or providing the
service, and the compensation may be in addition to the
compensation the trustee is receiving as a trustee if the trustee
notifies the persons entitled to receive a copy of the trustee’s
annual report as provided hereunder of the rate and method
by which that compensation was determined and of any
subsequent changes to the rate or method of compensation.

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

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

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

(2) Payment of reasonable compensation to the trustee;

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

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

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

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

§44D-8-803. Impartiality.

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

§44D-8-804. Prudent administration.
A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

§44D-8-805. Costs of administration.

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

§44D-8-806. Trustee’s skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§44D-8-807. Delegation by trustee.

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

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust instrument; and

(3) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.
(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

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

(e) The delegating trustee is not responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and the trustee’s compliance with the scope and specific terms of the delegation.

§44D-8-808. Powers to direct.

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

(b) If the terms of a trust instrument confer upon a person other than the grantor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust instrument or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the
(e) The terms of a trust instrument may confer upon a trustee or other person a power to direct the modification or termination of the trust.

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

§44D-8-809. Control and protection of trust property.

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

§44D-8-810. Recordkeeping and identification of trust property.

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

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

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

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.
§44D-8-811. Enforcement and defense of claims.

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

§44D-8-812. Collecting trust property.

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

§44D-8-813. Duty to inform and report.

(a) A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall within a reasonable time respond to a beneficiary’s request for information related to the administration of the trust.

(b) A trustee:

(1) Upon request of a beneficiary, shall within a reasonable time furnish to the beneficiary a copy of the trust instrument;

(2) Within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee’s name, address and telephone number;

(3) Within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the grantor
or otherwise, shall notify the qualified beneficiaries of the
trust's existence, of the identity of the grantor or grantors, of
the right to request a copy of the trust instrument, and of the
right to a trustee's report as provided in subsection (c) of this
section; and

(4) Shall notify the qualified beneficiaries within a
reasonable time in advance of any change in the method or
rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible
distributees of trust income or principal, and to other
qualified or nonqualified beneficiaries who request it, at least
annually and at the termination of the trust, a report of the
trust property, liabilities, receipts, and disbursements,
including the source and amount of the trustee's
compensation, a listing of the trust assets and, if feasible,
their respective market values. Upon a vacancy in a
trusteeship, unless a cotrustee remains in office, a report shall
be sent to the qualified beneficiaries by the former trustee. A
personal representative, conservator or guardian is
responsible for sending the qualified beneficiaries a report on
behalf of a deceased or incapacitated trustee.

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

(e) Subdivisions (2) and (3), subsection (b) of this section
do not apply to a trustee who accepts a trusteeship before the
effective date of this chapter, to an irrevocable trust created
before the effective date of this chapter, or to a revocable
trust that becomes irrevocable before the effective date of this
chapter.
§44D-8-814. Discretionary powers; tax savings.

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

(b) Subject to subsection (d) of this section, and unless the terms of the trust instrument expressly indicate that a rule in this subsection does not apply:

(1) A person other than a grantor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court having jurisdiction may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) A power held by the grantor’s spouse who is the trustee of a trust for which a marital deduction, as defined in
§44D-8-815. General powers of trustee.

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

(1) Powers conferred by the terms of the trust instrument; or

(2) Except as limited by the terms of the trust instrument:

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

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

(C) Any other powers conferred by this code.

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

§44D-8-816. Specific powers of trustee.
Without limiting the authority conferred by section eight hundred fifteen of this article, a trustee has the powers enumerated in the provisions of section three, article five-a, chapter forty-four of this code.

§44D-8-817. Distribution upon termination.

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

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

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

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

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

ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT.

The Uniform Prudent Investor Act is contained in article six-c, chapter forty-four of this code.

ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

§44D-10-1001. Remedies for breach of trust.

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

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

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

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

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

(4) Order a trustee to account;

(5) Appoint a special fiduciary to take possession of the trust property and administer the trust in accordance with the limitations and directions as ordered by the court;

(6) Suspend the trustee;

(7) Remove the trustee as provided in section seven hundred six, article seven of this chapter;

(8) Reduce or deny compensation to the trustee;

(9) Subject to section one thousand twelve of this article, void an act of the trustee, impose a lien or a constructive trust
on trust property or trace trust property wrongfully disposed
of and recover the property or its proceeds; or

(10) Order any other appropriate relief.

§44D-10-1002. Damages for breach of trust.

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

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

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

(b) Except as otherwise provided in this subsection, if
more than one trustee is liable to the beneficiaries for a
breach of trust, a trustee is entitled to contribution from the
other trustee or trustees. A trustee is not entitled to
contribution if the trustee was substantially more at fault than
another trustee or if the trustee committed the breach of trust
in bad faith or with reckless indifference to the purposes of
the trust or the interests of the beneficiaries. A trustee who
received a benefit from the breach of trust is not entitled to
contribution from another trustee to the extent of the benefit
received.

§44D-10-1003. Damages in absence of breach.

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

§44D-10-1004. Attorney’s fees and costs.
In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§44D-10-1005. Limitation of action against trustee.

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

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

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

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

(2) The termination of the beneficiary’s interest in the trust;

(3) The termination of the trust; or

(4) The time when the beneficiary knew or should have known of the breach of trust.
§44D-10-1006. Reliance on trust instrument.

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

§44D-10-1007. Event affecting administration or distribution.

1 If the happening of an event, including, but not limited to,
2 marriage, divorce, performance of educational requirements,
3 attaining a specific age or death, affects the administration or
4 distribution of a trust, a trustee who has exercised reasonable
5 care to ascertain the happening of the event is not liable for
6 a loss resulting from the trustee’s lack of knowledge.

§44D-10-1008. Exculpation of trustee.

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

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

7 (2) Was inserted as the result of an abuse by the trustee
8 of a fiduciary or confidential relationship to the grantor.

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

12 (1) The trustee proves that the exculpatory term is fair
13 under the circumstances and that its existence and contents
14 were adequately communicated to the grantor; or
(2) The grantor was represented by an attorney not employed by the trustee with respect to the trust and the attorney provided independent legal advice.

§44D-10-1009. Beneficiary's consent, release or ratification.

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

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

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

(b) A beneficiary is also bound to the extent an approval is given by a person authorized to represent the beneficiary as provided in article three of this chapter.

§44D-10-1010. Limitation on personal liability of trustee.

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

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.
(c) A claim based on a contract entered into by a trustee in the trustee’s fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee’s fiduciary capacity, whether or not the trustee is personally liable for the claim.

§44D-10-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust’s acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract is satisfied if the trustee signs the contract, or signs another writing which is contemporaneously delivered to the other parties to the contract, in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

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

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee’s spouse or one or more of the trustee’s descendants, siblings or parents or the spouse of any of them.
(d) If the trustee of a revocable trust holds an interest as a general partner, the grantor is personally liable for contracts and other obligations of the partnership as if the grantor were a general partner.

§ 44D-10-1012. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee’s powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee’s powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

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

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§ 44D-10-1013. Certification of trust.

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

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

(2) The identity of the grantor;

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

(4) The powers of the trustee;

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

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

(7) The trust’s taxpayer identification number; and

(8) The manner of taking title to trust property.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

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

(d) A certification of trust need not contain the dispositive terms of a trust.
(e) A recipient of a certification of trust may require the
trustee to furnish copies of those excerpts from the original
trust instrument and later amendments which designate the
trustee and confer upon the trustee the power to act in the
pending transaction.

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

(g) A person who in good faith enters into a transaction
in reliance upon a certification of trust may enforce the
transaction against the trust property as if the representations
contained in the certification were correct.

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

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

(j) Nothing in this section expands, limits or otherwise
affects the provisions contained in section four-a, article one,
chapter thirty-six of this code pertaining to memoranda of
trust.

ARTICLE 11. MISCELLANEOUS PROVISIONS.
§44D-11-1101. Uniformity of application and construction.

1 In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§44D-11-1102. Electronic records and signatures.

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

§44D-11-1103. Severability clause.

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

§44D-11-1104. Effective date.

1 This chapter takes effect on July 1, 2011.

§44D-11-1105. Application to existing relationships.

1 (a) Except as otherwise provided in this chapter:

2 (1) This chapter applies to all trusts created before, on, or after July 1, 2011;
(2) This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2011;

(3) This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2011, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2011, unless there is a clear indication of a contrary intent in the terms of the trust instrument; and

(5) An act done before July 1, 2011 is not affected by this chapter.

(b) If a right is acquired or vested before July 1, 2011, or if a right is extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2011, that right or statute continues to apply even if the statute has been repealed or superseded.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within bill approved this the ___ day of ______, 2011.

Governor
PRESENTED TO THE GOVERNOR

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