ARTICLE 7

South Carolina Trust Code

Editor's Note

2013 Act No. 100, Section 4, provides as follows:

"SECTION 4. (A) This act [amending Articles 1, 2, 3, 4, 6, and 7] takes effect on January 1, 2014.

"(B) Except as otherwise provided in this act, on the effective date of this act:

"(1) this act applies to any estates of decedents dying thereafter and to all trusts created before, on, or after its effective date;

"(2) the act applies to all judicial proceedings concerning estates of decedents and trusts commenced on or after its effective date;

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or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

"(4) subject to item (5) and subsection (C) of this section, any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date of the act unless there is a clear indication of a contrary intent in the terms of the governing instrument; and

"(5) an act done and any right acquired or accrued before the effective date of the act is not affected by this act. Unless otherwise provided in this act, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust and a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death.

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other statute before the effective date of the act, that statute continues to apply to the right even if it has been repealed or superseded."

Part 1

General Provisions and Definitions

**SECTION 62‑7‑101.** Short title.

 This article may be cited as the South Carolina Trust Code. In this article, unless the context clearly indicates otherwise, "Code" means the South Carolina Trust Code.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment substituted "means" for "shall mean".

**SECTION 62‑7‑102.** Scope.

 This article applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. The term 'express trust' includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the probate court, and includes, but is not limited to, all trusts defined in Section 62‑1‑201(49). This article does not apply to constructive trusts, resulting trusts, conservatorships administered by conservators as defined in Section 62‑1‑201(6), administration of decedent's estates, all multiple party accounts referred to in Section 62‑6‑101 et seq., custodial arrangements, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑103.** Definitions.

 In this article:

 (1) "Action," with respect to an act of a trustee, includes a failure to act.

 (2) "Beneficiary" means a person that:

 (A) has a present or future beneficial interest in a trust, vested or contingent; or

 (B) in a capacity other than that of trustee, holds a power of appointment over trust property; or

 (C) In the case of a charitable trust, has the authority to enforce the terms of the Trust.

 (3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Section 62‑7‑405(a).

 (4) "Conservator" means a person appointed by the court to administer the estate of a protected person.

 (5) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

 (6) "Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem or a statutory guardian.

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

 (8) "Jurisdiction", with respect to a geographic area, includes a State or country.

 (9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

 (10) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee which is limited by an ascertainable standard, or which is exercisable by another person only upon consent of the trustee or the person holding an adverse interest.

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

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

 (A) is a distributee or permissible distributee of trust income or principal;

 (B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date, but the termination of those interests would not cause the trust to terminate; or

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

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

 (14) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion. Neither the possession of, nor the lapse, release, or waiver of a power of withdrawal shall cause a holder of the power to be deemed to be a settlor of the trust, and property subject to such power is not susceptible to the power holder's creditors.

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

 (16) "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.

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

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

 (19) "Trustee" includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.

 (20) "Ascertainable standard" means an ascertainable standard relating to a trustee's individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, as amended.

 (21) "Distributee" means any person who receives property of a trust from a trustee, other than as creditor or purchaser.

 (22) "Interested person" or "interested party" means any person or party deemed to be a necessary or proper party under Rule 19 of the South Carolina Rules of Civil Procedure.

 (23) "Internal Revenue Code" means the Internal Revenue Code, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor or amendment thereto.

 (24) "Serious breach of trust" means either: a single act that causes significant harm or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together.

 (25) "Permissible distributee" means any person who or which on the date of qualification as a beneficiary is eligible to receive current distributions of property of a trust from a trustee, other than as a creditor or purchaser.

 (26) "Trust investment advisor" is a person, committee of persons, or entity who is or who are given authority by the terms of a trust instrument to direct, consent to or disapprove a trustee's actual or proposed investment decisions.

 (27) "Trust protector" is a person, committee of persons or entity who is or who are designated as a trust protector whose appointment is provided for in the trust instrument.

 The terms and definitions contained in the South Carolina Probate Code that do not conflict with the terms defined in this section shall remain in effect for the South Carolina Trust Code.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment added the last sentence in subsection (14), the definition of "Settlor"; added subsection (25), the definition of "Permissible distributee"; added subsection (26), the definition of "Trust investment advisor"; and added subsection (27), the definition of "Trust protector".

**SECTION 62‑7‑104.** Knowledge.

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

 (1) has actual knowledge of it;

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

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

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑105.** Default and mandatory rules.

 (a) Except as otherwise provided in the terms of the trust, this article 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 article except:

 (1) the requirements for creating a trust;

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

 (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve;

 (4) the power of the court to modify or terminate a trust under Sections 62‑7‑410 through 62‑7‑416;

 (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Part 5;

 (6) the limitations on the ability of a settlor's agent under a power of attorney to revoke, amend, or make distributions from a revocable trust pursuant to Section 62‑7‑602A;

 (7) the power of the court under Section 62‑7‑708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

 (8) the effect of an exculpatory term under Section 62‑7‑1008;

 (9) the rights under Sections 62‑7‑1010 through 62‑7‑1013 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 such action and exercise such 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 62‑7‑201 and 62‑7‑204.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 45, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment in subsection (b)(6) substituted "62‑7‑602A" for "62‑7‑602(e)".

**SECTION 62‑7‑106.** Common law of trusts; principles of equity.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑107.** Governing law.

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

 (1) the law of the jurisdiction designated in the terms of the trust; or

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑108.** Principal place of administration.

 (a) Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

 (1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or

 (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise

 (3) the usual place of business or residence of any of the cotrustees as agreed upon by them.

 (b) 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.

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

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

 (e) Unless otherwise designated in the trust, the trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than ninety days before initiating the transfer. The notice of proposed transfer must include:

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

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

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

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

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

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

 (g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 62‑7‑704.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment in subsection (e) and subsection (e)(5) substituted "ninety days" for "60 days".

**SECTION 62‑7‑109.** Methods and waiver of notice.

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

 (d) If notice of a hearing on any petition is required and, except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

 (1) by mailing a copy thereof at least twenty days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post office address given in his request for notice, if any, or at his office or place of residence, if known;

 (2) by delivering a copy thereof to the person being notified personally at least twenty days before the time set for the hearing; or

 (3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence by publishing a copy thereof in the same manner as required by law in the case of the publication of a summons for an absent defendant in the court of common pleas.

 (e) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

 (f) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑110.** Requirement of notice to others.

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

 (b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this article if the charitable organization, on the date the charitable organization's qualification is being determined:

 (A) is a distributee or permissible distributee of trust income or principal;

 (B) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

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

 (c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 62‑7‑408 or 62‑7‑409 has the rights of a qualified beneficiary under this article.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑111.** 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) Interested persons may enter into a binding nonjudicial settlement agreement with respect to only the following trust matters:

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

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

 (3) the resignation or appointment of a trustee and the determination of a trustee's compensation;

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

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

 (c) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Part 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑112.** Rules of construction.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Part 2

Judicial Proceedings

**SECTION 62‑7‑201.** Role of court in administration of trust.

 (a) Subject to the provisions of Section 62‑1‑302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. These proceedings must be formal as defined by Section 62‑1‑201(17) but consent petitions are not subject to the requirements of formal proceedings. Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

 (1) ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

 (2) review and settle interim or final accounts;

 (3) review the propriety of employment of a person by a trustee including an attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed, and the reasonableness of the compensation determined by the trustee for his own services. A person who has received excessive compensation from a trust may be ordered to make appropriate refunds. The provisions of this section do not apply to the extent there is a contract providing for the compensation to be paid for the trustee's services or if the trust directs otherwise; and

 (4) appoint or remove a trustee.

 (b) A proceeding under this section does not result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law or by the terms of the trust.

 (c) The probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings:

 (1) determine the existence or nonexistence of trusts created other than by will;

 (2) actions by or against creditors or debtors of trusts; and

 (3) other actions and proceedings involving trustees and third parties.

 (d) The probate court has concurrent jurisdiction with the circuit courts of this State over attorney's fees. Attorney's fees may be set at a fixed or hourly rate or by contingency fee.

 (e) The court will not, over the objection of a party, entertain proceedings under this section involving a trust registered or having its principal place of administration in another state, unless:

 (1) when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or

 (2) when the interests of justice otherwise would seriously be impaired.

The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 46, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsection (a) substituted "(d)" for "(c)" following "62‑1‑302" in the first sentence; and made other nonsubstantive changes.

The 2013 amendment added the second sentence in subsection (a), relating to Section 62‑1‑201, and made other nonsubstantive changes.

**SECTION 62‑7‑202.** Jurisdiction over trustee and beneficiary.

 (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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑203.** RESERVED.

**SECTION 62‑7‑204.** Venue.

 (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

 (b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county in which any trust property is located or the county where the last trustee had its principal place of administration, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

 (c) If proceedings concerning the same trust could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

 (d) If proceedings concerning the same trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

 (e) If a court transfers venue of a proceeding concerning a trust to a court in another county, venue for that proceeding, and any subsequent matters concerning that proceeding, including appeals, shall be retained by the county to which the venue has been transferred.

 (f) If a probate court judge is disqualified from matters concerning a trust proceeding, and venue has not been transferred to another county, a special probate court judge appointed for that proceeding has all of the powers and duties appertaining to the probate court judge of the county where the proceeding commenced, and venue for any subsequent matters concerning that proceeding, including appeals, remains with the county where that proceeding or file commenced.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Part 3

Representation

**SECTION 62‑7‑301.** When parties bound by others.

 (a) For purposes of this part, "beneficiary representative" refers to a person who may represent and bind another person concerning the affairs of trusts.

 (b) Notice to a beneficiary representative has the same effect as if notice were given directly to the represented person. Notice of a hearing on any petition in a judicial proceeding must be given pursuant to Section 62‑7‑109(d).

 (c) The consent of a beneficiary representative is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

 (d) Except as otherwise provided in Sections 62‑7‑411 and 62‑7‑602, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

 (e) In judicial proceedings, orders binding a beneficiary representative under this part bind the person(s) represented by that beneficiary representative.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑302.** Representation by holder of general testamentary power of appointment.

 To the extent there is no conflict of interest between the holder of a presently exercisable general 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. The term "presently exercisable general power of appointment" includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last Will and Testament, and the inclusion of a provision in the Will sufficient to exercise this power.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑303.** Representation by fiduciaries and parents.

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

 (1) a conservator may represent and bind the estate that the conservator controls to the extent of the powers and authority conferred upon conservators generally or by court order;

 (2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed to the extent of the powers and authority conferred upon guardians generally or by court order;

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

 (4) a trustee may represent and bind the beneficiaries of the trust with respect to questions or disputes involving the trust;

 (5) a personal representative of a decedent's estate may represent and bind persons interested in the estate with respect to questions or disputes involving the decedent's estate; and

 (6) a person may represent and bind the person's minor or unborn issue if a conservator or guardian for the issue has not been appointed.

 (b) The order in which the beneficiary representatives are listed above sets forth the priority each such beneficiary representative has relative to the others. In any judicial proceeding or upon petition to the court, the court for good cause may appoint a beneficiary representative having lower priority or a person having no priority.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 47, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment rewrote subsection (a)(6).

**SECTION 62‑7‑304.** 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 having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the beneficiary representative and the person represented and provided the interest of the person represented is adequately represented by the beneficiary representative.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑305.** Appointment of representative.

 At any point in a judicial proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 48, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment substituted "unascertained" for "ascertained" following "incapacitated, unborn, or" in the first sentence.

Part 4

Creation, Validity, Modification, and Termination of Trusts

**SECTION 62‑7‑401.** Methods of creating trust.

 (a)(1) A trust described in Section 62‑7‑102 may be created by:

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

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

 (iii) exercise of a power of appointment in favor of a trustee.

 (2) To be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust. A transfer in trust of personal property does not require written evidence, but must be proven by clear and convincing evidence, pursuant to Section 62‑7‑407.

 (b) A trust that arises by act or operation of law does not require the existence of a writing.

 (c) A revocable inter vivos trust may be created either by declaration of trust or by a transfer of property and is not rendered invalid because the settler retains substantial control over the trust including, but not limited to, (i) a right of revocation, (ii) substantial beneficial interests in the trust, or (iii) the power to control investments or reinvestments. This subsection does not prevent a finding that a revocable inter vivos trust, enforceable for other purposes, is illusory for purposes of determining a spouse's elective share rights pursuant to Article 2, Title 62. A finding that a revocable inter vivos trust is illusory and thus invalid for purposes of determining a spouse's elective share rights pursuant to Article 2, Title 62 does not render that revocable inter vivos trust invalid, but allows inclusion of the trust assets as part of the probate estate of the settlor only for the purpose of calculating the elective share. In that event, the trust property that passes or has passed to the surviving spouse, including a beneficial interest of the surviving spouse in that trust property, must be applied first to satisfy the elective share and to reduce contributions due from other recipient of transfers including the probate estate, and the trust assets are available for satisfaction of the elective share only to any remaining extent necessary pursuant to Section 62‑2‑207.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 181, Section 2, eff May 28, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment rewrote subsection (c) to include a surviving spouse's beneficial interests in trust property in calculating the elective share.

The 2013 amendment rewrote subsections (a) and (b).

**SECTION 62‑7‑402.** Requirements for creation; merger of title.

 (a) A trust is created only if:

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

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

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

 (A) a charitable trust;

 (B) a trust for the care of an animal, as provided in Section 62‑7‑408; or

 (C) a trust for a noncharitable purpose, as provided in Section 62‑7‑409;

 (4) the trustee has duties to perform; and

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

 (b) If the trust agreement is in writing, the trust instrument may be signed by the settlor or in the settlor's name by some other person in the settlor's presence and by the settlor's direction.

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

 (d) 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.

 (e) For purposes of Section 62‑7‑402(a)(5), if a person holds legal title to property in a fiduciary capacity and also has an equitable or beneficial title in the same property, either by transfer, by declaration, or by operation of law, no merger of the legal and equitable titles shall occur unless:

 (1) the fiduciary is the sole fiduciary and is also the sole current and future beneficiary; and

 (2) the legal title and the equitable title are of the same quality and duration.

 If either one of these conditions is not met, no merger may occur and the fiduciary relationship does not terminate.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment added subsection (b), relating to written trust agreements, and redesignated subsections accordingly.

**SECTION 62‑7‑403.** 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 settlor 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑404.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment inserted ", not contrary to public policy,".

**SECTION 62‑7‑405.** Charitable purposes; enforcement.

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

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

 (c) The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.

 (d) Unless otherwise required by statute or by rule or regulation of the Attorney General, the trustees of charitable trusts shall not be required to file with the Attorney General any copies of trusts instruments or reports concerning the activities of charitable trusts.

 (e) The Attorney General may make such rules and regulations relating to the information to be contained with the filing of a trust as may be required.

 (f) All trustees of any trust governed by the laws of this State whose governing instrument does not expressly provide that this section shall not apply to such trust are required to act or to refrain from acting so as not to subject the trust to the taxes imposed by Sections 4941, 4942, 4943, 4944, or 4945 of the Internal Revenue Code, or corresponding provisions of any subsequent United States internal revenue law.

 (g) Nothing contained in Sections 33‑31‑150 and 33‑31‑151 may be construed to cause a forfeiture or reversion of any of the property of a trust which is subject to such Sections, or to make the purposes of the trust impossible of accomplishment.

HISTORY: 2005 Act No. 66, Section 1; 2006 Act No. 330, Section 1; 2006 Act No. 365, Section 2; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑406.** Creation of trust induced by fraud, duress, or undue influence.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑407.** Evidence of oral trust.

 Except as otherwise required by statute, a trust need not be evidenced by a trust instrument. The creation of an oral trust and its terms may be established only by clear and convincing evidence.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑408.** Trust for care of animal.

 (a) A trust may be created to provide for the care of an animal or animals alive or in gestation during the settlor's lifetime, whether or not alive at the time the trust is created. The trust terminates upon the death of the last surviving animal.

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

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑409.** Noncharitable trust without ascertainable beneficiary.

 Except as otherwise provided in this section 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 allowed under any rule against perpetuities applicable under South Carolina law, except for the care and maintenance of a cemetery or cemetery plots, graves, mausoleums, columbaria, grave markers, or monuments.

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

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment in subsection (1) substituted "any rule against perpetuities applicable under South Carolina law" for "the South Carolina Uniform Statutory Rule Against Perpetuities (S.C. Code Section 27‑6‑10 et. seq.)".

**SECTION 62‑7‑410.** Modification or termination of trust; proceedings for approval or disapproval.

 (a) In addition to the methods of termination prescribed by Sections 62‑7‑411 through 62‑7‑414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms.

 (b) A proceeding to approve or disapprove a proposed modification or termination under Sections 62‑7‑411 through 62‑7‑416, or trust combination or division under Section 62‑7‑417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 62‑7‑411 may be commenced by the settlor. The settlor of a charitable trust as well as the Attorney General, among others, may maintain a proceeding to modify the trust under Section 62‑7‑413.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑411.** Modification or termination of noncharitable irrevocable trust by consent with court approval.

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

 (b) A noncharitable irrevocable trust may be terminated upon consent of all 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) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as ordered by the court.

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

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

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑412.** Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑413.** Equitable deviation.

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

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

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

 (3) the court may deviate from the terms of the trust to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable intent.

 (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) to modify or terminate the trust only if, when the provision takes effect:

 (1) the trust property is to revert to the settlor and the settlor is still living; or

 (2) fewer than the number of years allowed under any rule against perpetuities applicable under South Carolina law, have elapsed since the date of the trust's creation.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment in subsection (b)(2) substituted "any rule against perpetuities applicable under South Carolina law" for "the South Carolina Uniform Statutory Rule Against Perpetuities, (S.C. Code Section 27‑6‑10 et seq.)".

**SECTION 62‑7‑414.** Modification or termination of uneconomic trust.

 (a) After notice to the qualified beneficiaries, and without court approval, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

 (c) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court or, if the court does not specify the manner of distribution, or if no court approval is required, in a manner consistent with the purposes of the trust.

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

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 49, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsection (a) added "and without court approval," following "After notice to the qualified beneficiaries,"; and in subsection (c) added "or if no court approval is required," following "the manner of distribution,".

**SECTION 62‑7‑415.** Reformation to correct mistakes.

 The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑416.** Modification to achieve settlor's tax objectives.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑417.** Combination and division of trusts.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑418.** Estate and possession of trust estates shall be in beneficiaries thereof.

 (a) When any person shall be seized of any lands, tenements, rents, reversions, remainders, or other hereditaments to the use, confidence, or trust of any other person or of any body politic by reason of any bargain, sale, feoffment, covenant, contract, agreement, will, or otherwise, the person or body politic that shall have such use, confidence, or trust, in fee simple, fee tail, for term of life or for years or otherwise or any use, confidence, or trust in remainder or reversion, shall be deemed and adjudged in lawful seizing, estate and possession of and in such lands, tenements, rents, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions, and purposes in law of and in such like estates as they shall have in use, trust, or confidence of or in them.

 (b) When several persons shall be jointly seized of any lands, tenements, rents, reversions, remainders, or other hereditaments to the use, confidence, or trust of any of them that be so jointly seized, such person or persons who shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments shall have such estate, possession, and seizing of and in such lands, tenements, rents, reversions, remainders, and other hereditaments only to him or them that shall have any such use, confidence, or trust, in like nature, manner, form, condition, and course as he or they had before in the use, confidence, or trust of such lands, tenements, or hereditaments, saving and reserving to all and singular persons and bodies politic, their heirs and successors, other than such person or persons who are seized of such lands, tenements, or hereditaments to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action as they or any of them had or might have had without this section and also saving to all and singular those persons and their heirs who are seized to any use all such former right, title, entry, interest, possession, rents, customs, services, and action as they or any of them might have had to his or their own proper use in or to any lands, tenements, rents, or hereditaments whereof they are seized to any other use, anything contained in this chapter to the contrary notwithstanding.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Part 5

Creditors' Claims; Spendthrift and Discretionary Trusts

**SECTION 62‑7‑501.** Rights of beneficiary's creditor or assignee.

 (a) Except as provided in subsection (b), the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

 (b) This section shall not apply and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary to the extent a beneficiary's interest:

 (1) is protected by a spendthrift provision, or

 (2) is a discretionary trust interest as referred to in S.C. Code Section 62‑7‑504.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑502.** Spendthrift provision.

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

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

 (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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑503.** 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) Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

 (c) The exception in subsection (b) is unenforceable against a special needs trust, supplemental needs trust, or similar trust established for a disabled person if the applicability of such a provision could invalidate such a trust's exemption from consideration as a countable resource for Medicaid or Supplemental Security Income (SSI) purposes or if the applicability of such a provision has the effect or potential effect of rendering such disabled person ineligible for any program of public benefit, including, but not limited to, Medicaid and SSI.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑504.** 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), a creditor of a beneficiary may not compel a distribution from a trust in which the beneficiary has a discretionary trust interest, 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 support or maintenance of the beneficiary's child; and

 (2) the court shall direct the trustee to pay to the child 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; provided, however, this right may not be exercised by a creditor of the beneficiary.

 (e) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution from insurance proceeds payable to the trustee as beneficiary to the extent state law exempts such insurance proceeds from creditors' claims.

 (f) A creditor of a beneficiary who is also a trustee or cotrustee may not reach the trustee's beneficial interest 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑505.** Creditors' claims against settlor.

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

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

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

 (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property held in a revocable trust at the time of the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62‑3‑801 et seq.

 (b) For purposes of this section:

 (1) a beneficiary who is a trustee of a trust, but who is not the settlor of the trust, cannot be treated in the same manner as the settlor of a revocable trust if the beneficiary‑trustee's power to make distributions to the beneficiary‑trustee is limited by an ascertainable standard related to the beneficiary‑trustee's health, education, maintenance, and support;

 (2) the assets in a trust that are attributable to a contribution to an inter vivos marital deduction trust described in either Section 2523(e) or (f) of the Internal Revenue Code of 1986, after the death of the spouse of the settlor of the inter vivos marital deduction trust are deemed to have been contributed by the settlor's spouse and not by the settlor.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 50, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsections (a)(3) and (b) made nonsubstantive changes.

The 2013 amendment, in subsection (a)(3), substituted "the property held in a revocable trust at the time of the settlor's death" for "the property of a trust that was revocable at the settlor's death", added subsection identifier (1) to subsection (b), and added subsection (b)(2), relating to Section 2523 of the Internal Revenue Code of 1986.

**SECTION 62‑7‑506.** Overdue distribution.

 Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date. For purposes of this section, a mandatory distribution is a distribution where the trustee has no discretion in determining whether the distribution shall be made or the amount or timing of such distribution.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑507.** Personal obligations of trustee.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Part 6

Revocable Trusts

**SECTION 62‑7‑601.** Capacity of settlor of revocable trust.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑602.** Revocation or amendment of revocable trust.

 (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this article.

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

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

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

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

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

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

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

 (A) a later will or codicil that expressly refers to the trust, manifesting clear and convincing evidence of the settlor's intent; or

 (B) by oral statement to the trustee if the trust was created orally; or

 (C) any other written method, other than a later will or codicil, delivered to the trustee and manifesting clear and convincing evidence of the settlor's intent.

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

 (e) RESERVED

 (f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship and with regard to the requirements of Section 62‑5‑408 (3)(c).

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Editor's Note

ARTICLE 5 of Title 62 was rewritten by 2017 Act No. 87, Section 5.A, effective January 1, 2019. For Section 62‑5‑408, referenced in (f), see now, Sections 62‑5‑107, 62‑5‑108, 62‑5‑404, 62‑5‑405, 62‑5‑414, 62‑5‑422, and 62‑5‑423.

Effect of Amendment

The 2013 amendment deleted and reserved former subsection (e), relating to agents. See, now, Section 62‑7‑602A.

**SECTION 62‑7‑602A.** Powers of agent acting pursuant to power of attorney.

 (a) An agent acting pursuant to a power of attorney may exercise the following powers of the settlor with respect to a revocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

 (1) revocation of the trust;

 (2) amendment of the trust;

 (3) additions to the trust;

 (4) direction to dispose of property of the trust;

 (5) creation of the trust, notwithstanding the provisions of Section 62‑7‑402(a)(1) and (2).

 (b) An agent acting pursuant to a power of attorney may exercise the following powers of the settlor with respect to an irrevocable trust only to the extent expressly authorized by the terms of the trust or the power of attorney:

 (1) additions to the trust;

 (2) creation of the trust, notwithstanding the provisions of Section 62‑7‑402(a)(1) and (2).

 (c) The exercise of the powers described in subsection (a) and (b) shall not alter the amount of property beneficiaries are to receive on the settlor's death under the settlor's existing will or other estate planning documents or in the absence thereof in accordance with the law of intestate succession.

HISTORY: 2005 Act No. 66, Section 1; 1976 Code Section 62‑7‑602(e); 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑603.** Settlor's powers.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑604.** Limitation on action contesting validity of revocable trust; distribution of trust property.

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

 (1) one year after the settlor's death; or

 (2) one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

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

 (1) the trustee knows of a pending judicial proceeding 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 one hundred twenty days after the contestant sent the notification.

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

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 51, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsections (a)(2) and (b)(2) substituted "one hundred twenty" for "60" preceding "days after the".

**SECTION 62‑7‑605.** Effect of penalty clause for contest.

 A provision in a revocable trust purporting to penalize any interested person for contesting the validity of the trust or instituting other proceedings relating to the trust is unenforceable if probable cause exists for instituting proceedings.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑606.** Anti‑lapse provision in trust.

 (A) Unless the trust expressly provides otherwise, if the beneficiary under a revocable trust, who is a great‑grandparent or a lineal descendant of a great‑grandparent of the settlor, is dead at the time of execution of the trust, fails to survive the settlor, or is treated as if he predeceased the settlor, the issue of the deceased beneficiary who survived the settlor take in place of the deceased beneficiary and if they are all of the same degree of kinship to the beneficiary they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a beneficiary under a class gift if he had survived the settlor is treated as a beneficiary for purposes of this section whether his death occurred before or after the execution of the trust.

 (B) Except as provided in subsection (A), if the disposition of any real or personal property under a revocable trust fails for any reason, this property becomes a part of the residue of the trust.

 (C) Except as provided in subsection (A), if the residue under a revocable trust is distributed to two or more persons and the share of one of the residuary beneficiaries fails for any reason, his share passes to the other residuary beneficiary or to other residuary beneficiaries in proportion to their interests in the residue.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑607.** Divorce or annulment as revoking revocable trust.

 If after executing a revocable trust the settlor is divorced or the marriage annulled or the spouse is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses, the divorce or annulment or order revokes any disposition or appointment of property including beneficial interests made by such trust to the spouse, any provision conferring a general or special power of appointment on the spouse, and any nomination of the spouse as trustee, unless the trust expressly provides otherwise. Property prevented from passing to a spouse because of revocation by divorce or annulment or order passes as if the spouse failed to survive the settlor, and other provisions conferring some power or office on this spouse are interpreted as if the spouse failed to survive the settlor. If these provisions for the spouse are revoked solely by this section, they are revived by the settlor's remarriage to the former spouse. For purposes of this section, divorce or annulment or order means any divorce or annulment or order which would exclude the spouse as a surviving spouse within the meaning of subsections (a) and (b) of Section 62‑2‑802. A decree of separate maintenance which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of marital circumstances other than as described in this section revokes a disposition to a spouse in a revocable trust.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment substituted "If these provisions for the spouse" for "If provisions", in the third sentence; in the last sentence, deleted "or parental" before "change of marital" and inserted "a disposition to a spouse in" before "a revocable trust"; and made other nonsubstantive changes.

Part 7

Office of Trustee

**SECTION 62‑7‑701.** Accepting or declining trusteeship.

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

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

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

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

 (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 the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑702.** Trustee's bond.

 (a) A trustee shall provide bond to secure the performance of the trustee's duties if:

 (1) the terms of the governing instrument require the trustee to provide bond;

 (2) a beneficiary requests the trustee to provide bond and the court finds the request to be reasonable; or

 (3) the court finds that it is necessary for the trustee to provide bond in order to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented.

 However, in no event shall bond be required of a trustee, including a trustee appointed by the court, if the governing instrument directs otherwise. On petition of the trustee or other interested person, the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties.

 (b) If bond is required, it shall be filed in the court in the place in which the trust has its principal place of administration in amounts and with sureties and liabilities consistent with the requirements of South Carolina Code Sections 62‑3‑604 relating to bonds of personal representatives.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑703.** Cotrustees.

 (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

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

 (f) Except as otherwise provided in subsection (g), 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 notified 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑704.** 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. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

 (c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must 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 appointed by unanimous agreement of the qualified beneficiaries; or

 (3) by a person appointed by the court.

 (d) A vacancy in a trusteeship of a charitable trust that is required to be filled must 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 if the Attorney General concurs in the selection; or

 (3) by a person appointed by the court.

 (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust. The procedure for such appointment and the notice requirement shall be the same as set forth for special administrators under South Carolina Code Section 62‑3‑614.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑705.** Resignation of trustee.

 (a) A trustee may resign:

 (1) upon at least 30 days notice in writing to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

 (2) with the approval of the court.

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

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑706.** Removal of trustee.

 (a) For the reasons set forth in subsection (b), the settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

 (b) The court may remove a trustee if:

 (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, the court determines that 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, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

 (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 62‑7‑1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑707.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑708.** Compensation of trustee.

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

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

 (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 would be unreasonably low or high.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑709.** Reimbursement of expenses.

 (a) A trustee is entitled to be reimbursed out of the trust property, with interest at the legal rate 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.

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

 (c) A prospective trustee is entitled to be reimbursed from trust property for expenses reasonably incurred by the prospective trustee pursuant to Section 62‑7‑701(c) to protect or investigate the trust assets before deciding whether or not to accept the trusteeship.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 52, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment added subsection (c) relating to reimbursement of prospective trustees for certain expenses.

Part 8

Duties and Powers of Trustee

**SECTION 62‑7‑801.** Duty to administer trust.

 Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this article.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑802.** 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 62‑7‑1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

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

 (2) the transaction was approved by the court;

 (3) the beneficiary did not commence a judicial proceeding within the time allowed by Section 62‑7‑1005;

 (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 62‑7‑1009; 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;

 (4) a corporation or other person or enterprise in which the trustee has such a substantial interest that it might affect the trustee's best judgment; and

 (5) a corporation or other person or enterprise which has such a substantial interest in the trustee that it 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 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 to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Part 9. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under Section 62‑7‑813 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

 (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 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑803.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑804.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑805.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑806.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑807.** 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; 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) 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑808.** Powers to direct.

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

 (b) If the terms of a trust confer upon a person other than the settlor of a revocable trust 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 or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

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

 (d) A person, other than a beneficiary, who holds a power to direct is 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 breach of a fiduciary duty.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑809.** Control and protection of trust property.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑810.** 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), 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑811.** Enforcement and defense of claims.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑812.** Exercise of powers by successor trustees; liability.

 Unless directed otherwise by the court or by the trust instrument, a successor trustee appointed by the court or by the trust instrument succeeds to all the powers, duties, and discretionary authority given to the predecessor trustee. Upon reasonable request, a successor trustee is entitled to a statement of the accounts of the trust from a predecessor trustee. A successor trustee may accept the account rendered and shall be under no duty to examine the acts or omissions of the predecessor trustee and shall not be liable for failure to seek redress for any act or omission of the predecessor trustee. The trustee of a testamentary trust may accept the account rendered by a personal representative and shall be under no duty to examine the acts or omissions of the predecessor personal representative and shall not be liable for failure to seek redress for any act or omission of the predecessor personal representative.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑813.** Duty to inform and report.

 (a) Unless the terms of a trust expressly provide otherwise, while a trust is revocable the trustee's duties under this section are owed exclusively to the settlor.

 (b) Unless the terms of a trust expressly provide otherwise, a trustee who accepts a trusteeship or undertakes the administration of an irrevocable trust created on or after the effective date of this article, or of a revocable trust which becomes irrevocable whether by the death of the settlor or by the terms of the trust on or after the effective date of this article, shall:

 (1) within ninety days after the trustee accepts a trusteeship or undertakes administration of an irrevocable trust or a revocable trust that has become irrevocable whether by the death of the settlor or by the terms of the trust, notify the qualified beneficiaries, as defined in Section 62‑7‑103(12), of:

 (A) the existence of the trust;

 (B) the identity of the settlor or settlors;

 (C) the trustee's name, address and telephone number;

 (D) the right to request in writing a copy of the trust instrument; and

 (E) the right to request in writing a copy of any trustee's report described in (c)(1) below;

 (2) throughout the administration of the trust, keep the distributees and the permissible distributees, as defined in Section 62‑7‑103(21) and (25), reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, provided that the attorney‑client privilege between the trustee and the trustee's attorney is not violated;

 (3) upon the reasonable written request of a beneficiary, other than a qualified beneficiary, unless unreasonable under the circumstances, provide to the beneficiary a copy of the trust instrument redacted to include only those provisions of the trust that are relevant to the beneficiary's interest in the trust, as the trustee determines and, unless unreasonable under the circumstances, respond to a beneficiary's written request for information related to the administration of the trust;

 (4) notify the distributees and permissible distributees in advance of any change in the method or rate of the trustee's compensation; and

 (5) notwithstanding any of the above, not be required to notify any beneficiary in advance of transactions relating to the trust property.

 (c) Unless the terms of a trust expressly provide otherwise, a trustee who accepts a trusteeship or undertakes the administration of an irrevocable trust created on or after the effective date of this article, or of a revocable trust which becomes irrevocable on or after the effective date of this article, shall:

 (1) have a continuing duty to:

 (A) keep the distributees and permissible distributees, or other qualified beneficiaries who request information in writing, reasonably informed as to the administration of the trust; and

 (B) send annually, and upon the termination of the trust, a written report of the trust property which may be in any format which provides the distributees and permissible distributees, or other qualified beneficiaries who have requested in writing, with information necessary to protect their interests. The report may include a copy of the fiduciary income tax return, or copies of bank or brokerage statements, or an informal list of assets and if feasible, the market values of those assets, the liabilities, the receipts and the disbursements, including the source and amount of the trustee's compensation;

 (2) upon resignation of the trustee and unless a cotrustee remains in office, send a written report as described in (c)(1) to the distributees and permissible distributees; and in the case of the death or incapacity of a trustee, the report may be sent by the trustee's personal representative, conservator or guardian.

 (d) To the extent that there is no conflict of interest, the trustee's duties to inform and report under subsections (b) and (c) are deemed satisfied if the information and report are given to the beneficiary's representative as described in Sections 62‑7‑302 through 62‑7‑305.

 (e) Any distributee or permissible distributee may waive the right to a trustee's report and other information described under this section and, with respect to future reports and other information, withdraw a waiver previously given.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑814.** Discretionary powers; tax savings.

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

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

 (c) Subject to subsection (d), and unless the application of this section is clearly and convincingly negated in the will, the trust document, terms of the trust, or a written instrument appointing a fiduciary, expressly indicating that a rule in this subsection does not apply, any power conferred upon the fiduciary, in his capacity as a fiduciary (and not including any power conferred upon him in his capacity as a beneficiary), which would, except for this section, constitute, in whole or in part, a general power of appointment cannot be exercised by him in favor of himself, his estate, his creditors, or the creditors of his estate.

 (1) The fiduciary can, however, exercise the power in favor of someone other than himself, his estate, his creditors and the creditors of his estate.

 (2) If a power comes within subsection (c) and the power is conferred upon two or more fiduciaries, it can be exercised by the fiduciary or the fiduciaries who are not disqualified from exercising the power as if they were the only fiduciary or fiduciaries.

 (3) If all of the serving fiduciaries are disqualified from exercising a power, the court that would have jurisdiction to appoint a fiduciary under the instrument, if there were no fiduciary currently serving, shall exercise, or shall appoint a special fiduciary whose only power is to exercise the power that cannot be exercised by the other fiduciaries by reason of subsection (c).

 (4) 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.

 (d) Subsection (c) does not apply to:

 (1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code, as amended, was previously allowed;

 (2) any trust during any period that the trust may be revoked or amended by its settlor; or

 (3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code as amended.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 53, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment substituted "(c)" for "(d)" following "subsection" in the first sentence.

**SECTION 62‑7‑815.** General powers of trustee.

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

 (1) powers conferred by the terms of the trust; and

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

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

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

 (C) any other powers conferred by this part.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑816.** Specific powers of trustee.

 Without limiting the authority conferred by Section 62‑7‑815, a trustee may:

 (1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

 (2) acquire or sell property, for cash or on credit, at public or private sale;

 (3) exchange, partition, or otherwise change the character of trust property;

 (4) deposit trust money in accounts—all types including margin accounts—in a regulated financial‑service institution;

 (5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

 (6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, create and/or continue a business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

 (7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

 (A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

 (B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

 (C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

 (D) deposit the securities with a depositary or other regulated financial‑service institution;

 (8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, including by way of example qualified conservation and façade easements, and make or vacate plats and adjust boundaries;

 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

 (10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

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

 (12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

 (13) with respect to possible liability for violation of environmental law:

 (A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

 (B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

 (C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

 (D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

 (E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

 (14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

 (15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

 (16) exercise elections with respect to federal, state, and local taxes;

 (17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

 (18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

 (19) pledge trust property to guarantee loans made by others to the beneficiary;

 (20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

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

 (A) paying it to the beneficiary's agent under a Power of Attorney, to the beneficiary's conservator or, if the beneficiary does not have a conservator, to the beneficiary's guardian;

 (B) paying it to the beneficiary's custodian under the Uniform Gifts or Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

 (C) if the trustee does not know of an agent under a Power of Attorney, conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

 (D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

 (22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

 (23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

 (25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

 (26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

 (27) allocate items of income or expense to either trust income or principal, as permitted or provided by the trust instrument and applicable law, but this power shall not be construed as prescribing the method of accounting for principal and income;

 (28) to divide any trust into separate shares or separate trusts or to create separate trusts if the trustee reasonably deems it appropriate and the division or creation is consistent with the settlor's intent and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑816A.** Authority to appoint the property of original trust to second trust.

 (a) Unless the terms of the instrument expressly provide otherwise, a trustee with the discretion to make distributions of principal or income to or for the benefit of one or more beneficiaries of a trust, the original trust, may exercise that discretion by appointing all or part of the property subject to that discretion in favor of another trust for the benefit of one or more of those beneficiaries, the second trust. This power may be exercised without the approval of a court, but court approval is necessary if the terms of the original trust expressly prohibit the exercise of such power or require court approval.

 (b) The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust.

 (c) The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument, and the trustee of the second trust may be either the trustee of the original trust or another trustee.

 (d) The terms of the second trust are subject to the following requirements:

 (1) The beneficiaries of the second trust may include only beneficiaries of the original trust.

 (2) A beneficiary who has only a future beneficial interest, vested or contingent, in the original trust cannot have the future beneficial interest accelerated to a present interest in the second trust.

 (3) The terms of the second trust may not contain any provision nor reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of an original trust document if the inclusion of the provision or reduction in the original trust document would have disqualified any assets of the original trust for any federal or state income, estate, or gift tax deduction received on account of any assets of the original trust, or if the inclusion of the provision or reduction in the original trust would have reduced the amount of any federal or state income, estate, or gift tax deduction received. In addition, the terms of the second trust may not reduce any retained interest of a beneficiary of the original trust if the interest is a qualified interest under Internal Revenue Code Section 2702.

 (4) If contributions to the original trust have been excluded from the gift tax by the application of Internal Revenue Code Section 2503(b) and Section 2503(c), then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the original trust.

 (5) If a beneficiary of the original trust has a power of withdrawal over trust property, then either:

 (A) the terms of the second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the original trust; or

 (B) sufficient trust property must remain in the original trust to satisfy the outstanding power of withdrawal.

 (6) If the power to distribute principal or income in the original trust is subject to an ascertainable standard, then the power to distribute income or principal in the second trust must be subject to the same ascertainable standard as in the original trust and must be exercisable in favor of the same beneficiaries as in the original trust.

 (7) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust.

 (e) A trustee may not exercise the power to appoint principal or income under subsection (a) of this section if the trustee is a beneficiary of the original trust, but the remaining cotrustee or a majority of the remaining cotrustees may act for the trust. If all the trustees are beneficiaries of the original trust, then the court may appoint a special fiduciary with authority to exercise the power to appoint principal or income under subsection (a) of this section.

 (f) The exercise of the power to appoint principal or income under subsection (a) of this section:

 (1) is considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate or the creditors of the trustee's estate;

 (2) does not result in the trustee or cotrustees of the original trust being considered the settlor of the second trust;

 (3) is not prohibited by a spendthrift provision or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

 (g) To effect the exercise of the power to appoint principal or income under subsection (a) of this section, all of the following apply:

 (1) The exercise of the power to appoint must be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust, and the effective date of the exercise of the power. The instrument must be filed with the records of the original trust.

 (2) The trustee shall give written notice to all qualified beneficiaries of the original trust, at least ninety days prior to the effective date of the exercise of the power to appoint, of the trustee's intention to exercise the power. The notice must include a copy of the instrument described in item (1) of this subsection.

 (3) If all qualified beneficiaries waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income is exercisable after notice is waived by all qualified beneficiaries, notwithstanding the effective date of the exercise of the power.

 (h) The provisions of this section shall not be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, or to create an inference of impropriety made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (a) of this section. The provisions of this section shall not be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the original trust or under any other section of this article or under another provision of law or under common law. The terms of an original trust may modify or waive the notice requirements under subsection (g), reduce or increase restrictions on altering the interests of beneficiaries under subsection (d), and may otherwise contain provisions that are inconsistent with the requirements of this section.

 (i) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed exercise of the trustee's special power to appoint to another trust pursuant to subsection (a) of this section.

 (j) The provisions of Section 62‑7‑109 regarding notices and the sending of documents to persons under this article apply for the purposes of notices and the sending of documents under this section.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑817.** 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 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

 (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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑818.** Powers and discretions of a trust protector.

 The powers and discretions of a trust protector are as provided in the governing instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the trust protector and are binding on all other persons. These powers and discretion may include, but are not limited to, the following:

 (1) modify or amend the trust instrument to achieve favorable tax status or respond to changes in the Internal Revenue Code, state law, or the rulings and regulations thereunder;

 (2) increase or decrease the interests of any beneficiaries to the trust;

 (3) modify the terms of any power of appointment granted by the trust. However, a modification or amendment may not grant a beneficial interest to any individual or class of individuals not specifically provided for under the trust instrument;

 (4) remove and appoint a trustee, trust advisor, investment committee member, or distribution committee member;

 (5) terminate the trust;

 (6) veto or direct trust distributions;

 (7) change situs or governing law of the trust, or both;

 (8) appoint a successor trust protector;

 (9) interpret terms of the trust instrument at the request of the trustee;

 (10) advise the trustee on matters concerning a beneficiary; and

 (11) amend or modify the trust instrument to take advantage of laws governing restraints on alienation, distribution of trust property, or the administration of the trust.

 The powers referenced in items (5), (6) and (11) may be granted notwithstanding the provisions of Sections 62‑7‑410 through 62‑7‑412, inclusive.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑819.** Powers of a trust investment advisor.

 (a) Whenever a trust instrument provides that a trustee is to follow the direction of a trust investment advisor with respect to investment decisions or distribution decisions, then, except to the extent that the trust instrument provides otherwise, the trustee has no duty to:

 (1) monitor the conduct of the trust investment advisor;

 (2) provide advice to the trust investment advisor; or

 (3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the advisor.

 (b) Absent clear and convincing evidence to the contrary, the actions of the trustee pertaining to matters within the scope of the trust investment advisor's authority, such as confirming that the trust investment advisor's directions have been carried out and recording and reporting actions taken at the trust investment advisor's direction, are presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the governing instrument and these administrative actions are not deemed to constitute an undertaking by the trustee to monitor the trust investment advisor or otherwise participate in actions within the scope of the trust investment advisor's authority.

 (c) For purposes of this section, "investment decision" means, with respect to any investment, the retention, purchase, sale, exchange, tender or other transaction affecting the ownership thereof, or rights therein.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

Part 9

South Carolina Uniform Principal and Income Act

**SECTION 62‑7‑901.** Short title.

 This part may be cited as the South Carolina Uniform Principal and Income Act.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2013 amendment substituted "This part" for "Sections 62‑7‑901 through 62‑7‑932 of".

**SECTION 62‑7‑902.** Definitions.

 As used in the South Carolina Uniform Principal and Income Act:

 (1) "Accounting period" means a calendar year unless another twelve‑month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve‑month period that begins when an income interest begins or ends when an income interest ends.

 (2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

 (3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

 (4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Section 62‑7‑910 through Section 62‑7‑924.

 (5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

 (6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

 (7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

 (8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under the South Carolina Uniform Principal and Income Act to or from income during the period.

 (9) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government, governmental subdivision, agency, or instrumentality; or public corporation, or other legal or commercial entity.

 (10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

 (11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

 (12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

 (13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 54, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment made nonsubstantive changes to the definition of "Person".

The 2013 amendment, in the introductory paragraph and in subsection (8), the definition of "Net income", substituted "the South Carolina Uniform Principal and Income Act" for "this part".

**SECTION 62‑7‑903.** Allocation of receipts and disbursements.

 (A) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Sections 62‑7‑905 through 62‑7‑909, a fiduciary:

 (1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in the South Carolina Uniform Principal and Income Act;

 (2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by the South Carolina Uniform Principal and Income Act;

 (3) shall administer a trust or estate in accordance with the South Carolina Uniform Principal and Income Act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

 (4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and the South Carolina Uniform Principal and Income Act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

 (B) In exercising:

 (1) the power to adjust pursuant to Section 62‑7‑904(A);

 (2) a discretionary power in connection with the conversion or administration of a unitrust under Sections 62‑7‑904B through Section 62‑7‑904P; or

 (3) a discretionary power of administration regarding a matter within the scope of the South Carolina Uniform Principal and Income Act, whether granted by the terms of a trust, a will, or the South Carolina Uniform Principal and Income Act,

a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with the South Carolina Uniform Principal and Income Act is presumed to be fair and reasonable to all of the beneficiaries.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 55, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsection (A) substituted "through" for "and" following "62‑7‑905".

The 2013 amendment substituted "the South Carolina Uniform Principal and Income Act" for "this part" throughout; and rewrote subsection (B).

**SECTION 62‑7‑904.** Adjustments between principal and income.

 (A) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the provisions in Section 62‑7‑903(A), that the trustee is unable to comply with Section 62‑7‑903(B). In lieu of exercising the power to adjust, the trustee may convert the trust to a unitrust as permitted under Sections 62‑7‑904A through 62‑7‑904P, in which case the unitrust amount becomes the net income of the trust.

 (B) In deciding whether and to what extent to exercise the power to adjust in subsection (A), a trustee shall consider all factors relevant to the trust and its beneficiaries, including, but not limited to:

 (1) the nature, purpose, and expected duration of the trust;

 (2) the intent of the settlor;

 (3) the identity and circumstances of the beneficiaries;

 (4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

 (5) the assets held in the trust and the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property and the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the settlor;

 (6) the net amount otherwise allocated to income under other sections of the South Carolina Uniform Principal and Income Act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

 (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

 (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

 (9) the anticipated tax consequences of an adjustment.

 (C) A trustee may not make an adjustment:

 (1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction is allowed, in whole or in part, if the trustee did not have the power to make the adjustment, but only to the extent that making such an adjustment would cause adverse tax consequences under applicable tax laws and regulations;

 (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

 (3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

 (4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside, but only to the extent that making such an adjustment would cause adverse tax consequences under applicable tax laws and regulations;

 (5) if possessing or exercising the power to make an adjustment is determinative in causing an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

 (6) if possessing or exercising the power to make an adjustment is determinative in causing all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

 (7) if the trustee is a beneficiary of the trust;

 (8) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly, except that a trustee may make an adjustment that also benefits a beneficiary even if the terms of the trust provide for trustee compensation as a percentage of the trust's income; or

 (9) if the trust has been converted to, and is then operating as a unitrust under Sections 62‑7‑904B through 62‑7‑904P.

 (D) If subsection (C)(5), (6), (7), or (8) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

 (E) A trustee may release the entire power of adjustment in subsection (A) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power causes a result described in subsections (C)(1) through (6) or subsection (C)(8) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not contemplated in subsection (C). The release may be permanent or for a specified period, including a period measured by the life of an individual.

 (F) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power to adjust in subsection (A).

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 56, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsection (B)(7) deleted ", or prohibit him from," following "give the trustee the power to".

The 2013 amendment rewrote subsections (A), (B), and (C), and made nonsubstantive changes in subsections (E) and (F).

**SECTION 62‑7‑904A.** Judicial Control of Discretionary Power.

 (A) A court may not change a fiduciary's decision, or order a fiduciary to change its decision, to exercise or not to exercise a discretionary power conferred by the South Carolina Uniform Principal and Income Act unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

 (B) The decisions subject to subsection (A) include, but are not limited to, a determination:

 (1) pursuant to Section 62‑7‑904(A) of whether and to what extent an amount should be transferred from principal to income or from income to principal; and

 (2) of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if any, to be given to the relevant factors, in deciding whether and to what extent to exercise the power in Section 62‑7‑904(A).

 (C) If a court determines that a fiduciary has abused its discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the fiduciary had not abused its discretion, according to the following rules:

 (1) to the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court must order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;

 (2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court must place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust;

 (3) to the extent that the court is unable, after applying items (1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the fiduciary had not abused its discretion, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust, or both.

 (D) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate must determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power in the South Carolina Uniform Principal and Income Act would result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries would be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904B.** Definitions for Sections 62‑7‑904C through 62‑7‑904P.

 The definitions in this section apply to Sections 62‑7‑904C through 62‑7‑904P.

 (1) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any statutory enactment successor to the Code; reference to a specific section of the code in Sections 62‑7‑904B through 62‑7‑904P are considered a reference also to any successor provision dealing with the subject matter of that section of the Code.

 (2) "Disinterested person" means a person who is not a related or subordinate party with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

 (3) "Express total return unitrust" means a trust created by the terms of a governing instrument requiring the distribution at least annually of a unitrust amount equal to a fixed percentage of not less than three percent nor more than five percent a year of the net fair market value of the amounts of the trust, valued at least annually.

 (4) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute principal of the trust to one or more of those persons.

 (5) "Interested distributee" means a living beneficiary who is a distributee or permissible distributee of trust income or principal who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party with respect to that distributee.

 (6) "Interested trustee" means any of the following:

 (a) an individual trustee who is a qualified beneficiary;

 (b) a trustee who may be removed and replaced by an interested distributee;

 (c) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

 (7) "Legal disability" means a person under a legal disability who is a minor, an incompetent or incapacitated person, or an unborn individual, or whose identity or location is unknown.

 (8) "Qualified beneficiary" means a qualified beneficiary as defined in Section 62‑7‑103(12).

 (9) "Related or subordinate party" means a related or subordinate party as defined in Section 672(c) of the Code.

 (10) "Representative" means a person who may represent and bind another as provided in Part 3 of this article, the provisions of which apply for purposes of this section and Sections 62‑7‑904C through 62‑7‑904P.

 (11) "Settlor" means an individual, including a testator, who creates a trust.

 (12) "Total return unitrust" means an income trust that has been converted under and meets the provisions of this section and Section 62‑7‑904C through 62‑7‑904P.

 (13) "Treasury regulations" means the regulations, rulings, procedures, notices, or other administrative pronouncements issued by the Internal Revenue Service, as amended from time to time.

 (14) "Trustee" means a person acting as trustee of the trust, except as otherwise expressly provided in this section and Sections 62‑7‑904C through 62‑7‑904P whether acting in that person's discretion or on the direction of one or more persons acting in a fiduciary capacity.

 (15) "Unitrust amount" means an amount computed as a percentage of the fair market value of the assets of the trust.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904C.** Trustee's power to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount.

 (A) A trustee, other than an interested trustee, or, where two or more persons are acting as trustees, a majority of the trustees who are not interested trustees (in either case hereafter "trustee") in the trustee's sole discretion and without court approval, may:

 (1) convert an income trust to a total return unitrust;

 (2) reconvert a total return unitrust to an income trust; or

 (3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

 (a) The trustee adopts a written policy for the trust providing:

 (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined pursuant to the South Carolina Uniform Principal and Income Act;

 (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

 (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

 (b) The trustee gives written notice of its intention to take the action, including copies of the written policy and Sections 62‑7‑904B through 62‑7‑904P, to:

 (i) the settlor of the trust, if living; and

 (ii) all persons who are the qualified beneficiaries of the trust at the time the notice is given. If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the qualified beneficiary if a representative is available without court order.

 (c) There is at least:

 (i) one qualified beneficiary described in Section 62‑7‑103(12)(A) or (B) who is not under a legal disability or a representative of a qualified beneficiary so described; or

 (ii) one qualified beneficiary described in Section 62‑7‑103(12)(C) who is not under a legal disability or a representative of a qualified beneficiary so described.

 (d) No person receiving notice of the trustee's intention to take the proposed action objects to the action within ninety days after notice has been given. The objection must be by written notice to the trustee.

 (B) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of the interested trustees may, in its sole discretion and without court approval:

 (1) convert an income trust to a total return unitrust;

 (2) reconvert a total return unitrust to an income trust; or

 (3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if all of the following apply:

 (a) The trustee adopts a written policy for the trust providing:

 (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income as determined pursuant to the South Carolina Uniform Principal and Income Act;

 (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income as determined pursuant to the South Carolina Uniform Principal and Income Act rather than unitrust amounts, or

 (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

 (b) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

 (i) the percentage to be used to calculate the unitrust amount;

 (ii) the method to be used in determining the fair market value of the trust; and

 (iii) which assets, if any, are to be excluded in determining the unitrust amount.

 (c) The trustee gives written notice of its intention to take the action, including copies of the written policy and Sections 62‑7‑904B through 62‑7‑904P and the determinations of the disinterested person to:

 (i) the settlor of the trust, if living; and

 (ii) all persons who are the qualified beneficiaries of the trust at the time of the giving of the notice. If a qualified beneficiary is under a legal disability, notice must be given to the representative of the qualified beneficiary if a representative is available without court order.

 (d) There is at least:

 (i) one qualified beneficiary described in Section 62‑7‑103(12)(A) or (B) or a representative of a beneficiary so described; or

 (ii) one qualified beneficiary described in Section 62‑7‑103(12)(C) or a representative of a qualified beneficiary so described.

 (e) No person receiving notice of the trustee's intention to take the proposed action of the trustee objects to the action or to the determination of the disinterested person within ninety days after notice has been given. The objection must be by written instrument delivered to the trustee.

 (C) A trustee may act under subsection (A) or (B) of this section with respect to a trust for which both income and principal have been set aside permanently for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, if all of the following apply:

 (1) Instead of sending written notice to the persons described in subsection (A)(3)(b) or subsection (B)(3)(b), as the case may be, the trustee shall send written notice to each charitable organization expressly designated to receive the income of the trust under the governing instrument and, if no charitable organization is expressly designated to receive all of the income of the trust under the governing instrument, to the Attorney General of this State.

 (2) Subsection (A)(3)(d) or subsection (B)(3)(d) of this subsection, as the case may be, does not apply to this action.

 (3) In each taxable year, the trustee shall distribute the greater of the unitrust amount or the amount required by Section 4942 of the Code.

 (D) The provisions of Section 62‑7‑109 regarding notices and the sending of documents to persons under this article shall apply for purposes of notices and the sending of documents under this section.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904D.** Petition by trustee or qualified beneficiary to convert an income trust, reconvert a total return unitrust, or change the percentage used to calculate the unitrust amount.

 (A) If a trustee desires to:

 (1) convert an income trust to a total return unitrust;

 (2) reconvert a total return unitrust to an income trust; or

 (3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust assets but does not have the ability to or elects not to do it under Section 62‑7‑904C, the trustee may petition the court for an order as the trustee considers appropriate. If there is only one trustee of the trust and the trustee is an interested trustee or if there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of the trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present information to the court as necessary to enable the court to make its determinations under Sections 62‑7‑904B through 62‑7‑904P.

 (B) A qualified beneficiary or a representative of a qualified beneficiary may request the trustee to:

 (1) convert an income trust to a total return unitrust;

 (2) reconvert a total return unitrust to an income trust; or

 (3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust. If the trustee does not take the action requested, the qualified beneficiary or a representative of the qualified beneficiary may petition the court to order the trustee to take the action.

 (C) All proceedings under this section must be conducted as provided in Part 2 of this article.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904E.** Fair market value of trust assets.

 (A) The fair market value of the trust assets must be determined at least annually, using a valuation date selected by the trustee in its discretion. The trustee, in its discretion, may use an average of the fair market value on the same valuation date for the current fiscal year and not more than three preceding fiscal years, if the use of this average appears desirable to the trustee to reduce the impact of fluctuations in market value on the unitrust amount. Assets for which a fair market value cannot be readily ascertained must be valued using valuation methods as are considered reasonable and appropriate by the trustee. Assets, such as a residence or tangible personal property, used by the trust beneficiary may be excluded by the trustee from the fair market value for computing the unitrust amount.

 (B) The percentage to be used by the trustee in determining the unitrust amount must be a reasonable current return from the trust, but not less than three percent nor more than five percent, taking into account the intentions of the settlor of the trust as expressed in the terms of the trust, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust assets, and projected inflation and its impact on the trust.

 (C) Following the conversion of an income trust to a total return unitrust, the trustee:

 (1) shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

 (2) shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

 (3) may, in the trustee's discretion, consider the unitrust amount as paid from net short‑term gain described in Section 1222(5) of the Code and then from net long‑term capital gain described in Section 1222(7) of the Code so long as the discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in Section 643(a) of the Code without regard to Section 1.643(a)‑3(b) of the Treasury Regulations, as amended from time to time; and

 (4) shall then consider the unitrust amount as coming from the principal of the trust.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904F.** Administration of a total return unitrust.

 In administering a total return unitrust, the trustee may, in its sole discretion but subject to the terms of the trust, determine:

 (1) the effective date of the conversion;

 (2) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

 (3) whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

 (4) if the trust is reconverted to an income trust, the effective date of the reconversion; and

 (5) any other administrative issues as may be necessary or appropriate to carry out the purposes of Sections 62‑7‑904B through 62‑7‑904P.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904G.** Distribution of unitrust amount considered distribution of income and not of principal.

 Conversion to a total return unitrust under Sections 62‑7‑904B through 62‑7‑904P does not affect any other provision of the terms of the trust, if any, regarding distributions of principal. For purposes of Sections 62‑7‑904B through 62‑7‑904P, the distribution of a unitrust amount is considered a distribution of income and not of principal.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904H.** Limitation of liability.

 No trustee or disinterested person who in good faith takes or fails to take any action under Sections 62‑7‑904B through 62‑7‑904P is liable to any person affected by the action or inaction, regardless of whether the person received written notice as provided in Sections 62‑7‑904B through 62‑7‑904P and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The exclusive remedy for any person affected by such action or inaction is to obtain an order of the court directing the trustee to:

 (1) convert an income trust to a total return unitrust;

 (2) reconvert from a total return unitrust to an income trust; or

 (3) change the percentage used to calculate the unitrust amount.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904I.** Applicability of Sections 62‑7‑904B through 62‑7‑904P.

 Sections 62‑7‑904B through 62‑7‑904P apply to all trusts in existence on, or created after the effective date of Sections 62‑7‑904A through 62‑7‑904P unless:

 (1) the governing instrument contains a provision clearly expressing the settlor's intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

 (2) the trust is a trust described in Section 170(f)(2)(B), Section 664(d), Section 2702(a)(3), or Section 2702(b) of the Code;

 (3) the trust is a trust under which any amount is, or has been in the past, set aside permanently for charitable purposes unless the income from the trust also is devoted permanently to charitable purposes; or

 (4) the governing instrument expressly prohibits use of Sections 62‑7‑904B through 62‑7‑904P by specific reference to Sections 62‑7‑904B through 62‑7‑904P or expressly states the settlor's intent that net income not be calculated as a unitrust amount.

 A provision in the terms of the trust that "the provisions of Sections 62‑7‑904B through 62‑7‑904P of this part or any corresponding provision of future law, must not be used in the administration of this trust," or "the trustee shall not determine the distributions to the income beneficiary as a unitrust amount," or similar words reflecting that intent is sufficient to preclude the use of Sections 62‑7‑904B through 62‑7‑904P.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904J.** RESERVED.

**SECTION 62‑7‑904K.** RESERVED.

**SECTION 62‑7‑904L.** RESERVED.

**SECTION 62‑7‑904M.** Unitrust amount to be distributed by the express total return unitrust.

 (A) The unitrust amount to be distributed by the express total return unitrust may be determined by the terms of the unitrust governing instrument by reference to the net fair market value of the trust's assets determined annually or averaged on a multiple‑year basis.

 (B) The terms of an express total return unitrust governing instrument may provide that:

 (1) any assets of such a unitrust for which a fair market value cannot be readily ascertained must be valued using valuation methods that the trustee considers reasonable and appropriate;

 (2) any assets of such a unitrust, such as a residence property or tangible personal property, used by the trust beneficiary entitled to the unitrust amount may be excluded by the trustee from the net fair market value for computing the unitrust amount.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904N.** Distribution from an express total return unitrust.

 The distribution from an express total return unitrust of a unitrust amount equal to a fixed percentage of not less than three percent nor more than five percent reasonably apportions between the income beneficiaries and the remainder of the total return of an express total return unitrust.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904O.** Express total return unitrust governing instrument provision for changing the unitrust percentage, for converting from a unitrust to an income trust, or for a reconversion of an income trust to a unitrust.

 (A) The terms of an express total return unitrust governing instrument may provide the method similar to the method provided under Section 62‑7‑904C for changing the unitrust percentage or for converting from a unitrust to an income trust or for a reconversion of an income trust to a unitrust, or for all of these actions.

 (B) If the terms of an express total return unitrust governing instrument do not specifically or by reference to Section 62‑7‑904C grant a power to the trustee to change the unitrust percentage or change to an income trust, the trustee shall not have that power.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑904P.** Trustee considerations for unitrust amount paid.

 Unless the terms of the express total return unitrust governing instrument specifically provide otherwise, the trustee:

 (A) shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

 (B) shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

 (C) may, in the trustee's discretion, consider the unitrust amount as paid from net short‑term gain described in Section 1222(5) of the Code and then from net long‑term capital gain described in Section 1222(7) of the Code so long as this discretionary power is exercised consistently and in a reasonable and impartial manner, but the amount so paid from net capital gains may not be greater than the excess of the unitrust amount over the amount of distributable net income as defined in Section 643(a) of the Code without regard to Section 1.643(a)‑3(b) of the Treasury Regulations; and

 (D) shall then consider the unitrust amount as coming from the principal of the trust.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑905.** Determinations of income and principal; distributions upon death of decedent or end of an income interest in a trust.

 After a decedent dies, in the case of an estate, or after an income interest in a trust ends, a fiduciary:

 (1) of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary pursuant to Sections 62‑7‑907 through 62‑7‑930 which apply to trustees and the provisions of item (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property;

 (2) shall determine the remaining net income of a decedent's estate or a terminating income interest pursuant to Sections 62‑7‑907 through 62‑7‑930 which apply to trustees and by:

 (a) including in net income all income from property used to discharge liabilities;

 (b) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on death taxes; except that the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income does not cause the reduction or loss of the deduction; and

 (c) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law;

 (3) shall distribute to a beneficiary who receives a pecuniary amount outright the rate of interest or other amount provided by the will or the terms of the trust. If the will or the terms of the trust provide no interest amount, the beneficiary of a pecuniary amount outright shall receive no interest or other income on the bequest for one year after the first appointment of a personal representative. Beginning one year after the first appointment of a personal representative, and notwithstanding any other provision of law to the contrary, the beneficiary of a pecuniary amount outright must be treated as any other beneficiary under item (4). If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust, the fiduciary shall treat the pecuniary amount as if it were required to be paid under a will and as if the payment were being made beginning one year after the first appointment of a personal representative;

 (4) shall distribute the net income remaining after distributions required by item (3) in the manner pursuant to Section 62‑7‑906 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust; and

 (5) may not reduce principal or income receipts from property described in item (1) because of a payment pursuant to Sections 62‑7‑924 and 62‑7‑925 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑906.** Determination and distribution of net income.

 (A) Each beneficiary described in Section 62‑7‑905(4) is entitled to receive a portion of the net income equal to his fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

 (B) In determining a beneficiary's share of net income, the:

 (1) beneficiary is entitled to receive a portion of the net income equal to his fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

 (2) fractional interest of the beneficiary in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

 (3) fractional interest of the beneficiary in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation; and

 (4) distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

 (C) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

 (D) A trustee may apply the provisions of this section, to the extent that the trustee considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑907.** Beginning and end of income interests.

 (A) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

 (B) An asset becomes subject to a trust on the date:

 (1) it is transferred to the trust, in the case of an asset that is transferred to a trust during the transferor's life;

 (2) the testator dies, in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the estate; or

 (3) the individual dies, in the case of an asset that is transferred to a fiduciary by a third party because of the death of the individual.

 (C) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined pursuant to subsection (D), even if there is an intervening period of administration to wind up the preceding income interest.

 (D) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑908.** Allocation of income receipts and disbursements.

 (A) A trustee shall allocate an income receipt or disbursement, other than one subject to Section 62‑7‑905(1), to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

 (B) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

 (C) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this part. Distributions to shareholders or other owners from an entity subject to Section 62‑7‑910 are considered due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑909.** Undistributed income.

 (A) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or must be added to principal under the terms of the trust.

 (B) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In that case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

 (C) When the obligation of a trustee to pay a fixed annuity or a fixed fraction of the value of the trust assets ends, the trustee shall prorate the final payment if, and to the extent, required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑910.** Allocation of receipts from an entity to principal or income.

 (A) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or other organization in which a trustee has an interest other than a trust or estate subject to Section 62‑7‑911, a business or activity to which Section 62‑7‑912 applies, or an asset‑backed security to which Section 62‑7‑924 applies.

 (B) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

 (C) A trustee shall allocate the following receipts from an entity to principal:

 (1) property other than money;

 (2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

 (3) money received in total or partial liquidation of the entity; and

 (4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

 (D) Money is received in partial liquidation:

 (1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

 (2) if the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets of the entity, as shown by the year‑end financial statements immediately preceding the initial receipt.

 (E) Money is not received in partial liquidation, nor may it be taken into account pursuant to subsection (D)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

 (F) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑911.** Allocations of income and principal received from a trust or an estate.

 A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 62‑7‑910 or 62‑7‑924 applies to a receipt from the trust.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑912.** Separate accounting for a business activity.

 (A) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the general accounting records of the trust, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

 (B) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the general accounting records of the trust to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

 (C) Activities for which a trustee may maintain separate accounting records include:

 (1) retail, manufacturing, service, and other traditional business activities;

 (2) farming;

 (3) raising and selling livestock and other animals;

 (4) management of rental properties;

 (5) extraction of minerals and other natural resources;

 (6) timber operations; and

 (7) activities subject to Section 62‑7‑923.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑913.** Allocations to principal.

 A trustee shall allocate to principal:

 (1) to the extent not allocated to income pursuant to this part, assets received from a transferor during his lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

 (2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit;

 (3) amounts recovered from third parties to reimburse the trust because of disbursements described in Section 62‑7‑926(A)(7) or for other reasons to the extent not based on the loss of income;

 (4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

 (5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

 (6) other receipts as provided in Sections 62‑7‑917 through 62‑7‑924.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑914.** Accounting for receipts from rental property.

 To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑915.** Allocation of interest as income; allocation of proceeds from disposition of an obligation as principal; exceptions.

 (A) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without provision for amortization of premium.

 (B) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

 (C) This section does not apply to an obligation subject to Section 62‑7‑918, 62‑7‑919, 62‑7‑920, 62‑7‑921, or 62‑7‑924.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑916.** Allocation of proceeds of insurance contracts; exception.

 (A) Except as otherwise provided in subsection (B), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

 (B) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to Section 62‑7‑912, loss of profits from a business.

 (C) This section does not apply to a contract subject to Section 62‑7‑918.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑917.** Insubstantial allocations.

 If a trustee determines that an allocation between principal and income required by Section 62‑7‑918, 62‑7‑919, 62‑7‑920, 62‑7‑921, or 62‑7‑924 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances provided in Section 62‑7‑904(C) applies to the allocation. This power may be exercised by a cotrustee in the circumstances provided in Section 62‑7‑904(D) and may be released for the reasons and in the manner provided in Section 62‑7‑904(E). An allocation is presumed to be insubstantial if:

 (1) the amount of the allocation increases or decreases net income in an accounting period, as determined before the allocation, by less than ten percent; or

 (2) the value of the asset producing the receipt for which the allocation is made is less than ten percent of the total value of the assets of the trust at the beginning of the accounting period.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑918.** Allocation of payments; interest, dividends, or payments made instead of interest or dividends; allocation of payments made from separate fund; exception.

 (A) In this section:

 (1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (D), (E), (F), and (G), the term also includes a payment from a separate fund, regardless of the reason for the payment.

 (2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit‑sharing, stock‑bonus, or stock‑ownership plan.

 (B) To the extent that a payment is characterized as interest, a dividend, or a payment made instead of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

 (C) If part of a payment is not characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If a part of a payment is not required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

 (D) Except as otherwise provided in subsection (E), subsections (F) and (G) apply, and subsections (B) and (C) do not apply, in determining the allocation of a payment made from a separate fund to:

 (1) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

 (2) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

 (E) Subsections (D), (F), and (G) do not apply if and to the extent that the series of payments would, without the application of subsection (D), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

 (F) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

 (G) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

 (H) This section does not apply to payments subject to Section 62‑7‑919.

HISTORY: 2005 Act No. 66, Section 1; 2012 Act No. 204, Section 1.A, eff June 7, 2012; 2013 Act No. 100, Section 2, eff January 1, 2014.

Editor's Note

2012 Act No. 204, Section 1.B., provides as follows:

"B. Section 62‑7‑918 of the 1976 Code, as amended in subsection (A) of this section, applies to a trust described in Section 62‑7‑918(D) on and after the following dates:

"(1) if the trust is not funded as of the effective date of this act, the date of the decedent's death;

"(2) if the trust is initially funded in the calendar year beginning January 1, 2011, the date of the decedent's death;

"(3) if the trust is not described in subsections (1) or (2) of this section, January 1, 2011."

Effect of Amendment

The 2012 amendment rewrote the section.

**SECTION 62‑7‑919.** Liquidating assets.

 (A) In this section, "liquidating asset" means an asset whose value diminishes or terminates because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to Section 62‑7‑918, resources subject to Section 62‑7‑920, timber subject to Section 62‑7‑921, an activity subject to Section 62‑7‑923, an asset subject to Section 62‑7‑924, or any asset for which the trustee establishes a reserve for depreciation pursuant to Section 62‑7‑927.

 (B) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑920.** Allocation of receipts from interests in minerals or other natural resources.

 (A) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them if:

 (1) received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

 (2) received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

 (3) an amount received as a royalty, shut‑in‑well payment, take‑or‑pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income;

 (4) an amount is received from a working interest or any other interest not otherwise provided for in this subsection, ninety percent of the net amount received must be allocated to principal and the balance to income.

 (B) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

 (C) This part applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

 (D) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this part, the trustee may allocate receipts from the interest as provided in this part or in the manner used by the trustee before the effective date of this part. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this part, the trustee shall allocate receipts from the interest as provided in this part.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑921.** Allocation of receipts from sale of timber and related products.

 (A) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts to:

 (1) income, to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

 (2) principal, to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

 (3) or between income and principal, if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying items (1) and (2); or

 (4) principal, to the extent that advance payments, bonuses, and other payments are not otherwise allocated pursuant to this subsection.

 (B) In determining net receipts to be allocated pursuant to subsection (A), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

 (C) This part applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

 (D) If a trust owns an interest in timberland on the effective date of this part, the trustee may allocate net receipts from the sale of timber and related products as provided in this part or in the manner used by the trustee before the effective date of this part. If the trust acquires an interest in timberland after the effective date of this part, the trustee shall allocate net receipts from the sale of timber and related products as provided in this part.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑922.** Marital deduction adjustments.

 (A) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income pursuant to Section 62‑7‑904 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power in Section 62‑7‑904(A). The trustee may decide which action or combination of actions to take.

 (B) If subsection (A) is inapplicable, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑923.** Allocation of derivatives; options.

 (A) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

 (B) To the extent that a trustee does not account pursuant to Section 62‑7‑912 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

 (C) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑924.** Allocation of payments related to asset‑backed securities.

 (A) In this section, "asset‑backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset subject to Section 62‑7‑909 or 62‑7‑918.

 (B) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

 (C) If a trust receives one or more payments in exchange for the entire interest in an asset‑backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that results in the liquidation of the interest of the trust in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑925.** Disbursements from income.

 A trustee shall make the following disbursements from income to the extent that they are not disbursements subject to Section 62‑7‑905(2)(b) or (c):

 (1) one‑half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

 (2) one‑half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

 (3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

 (4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑926.** Disbursements from principal.

 (A) A trustee shall make the following disbursements from principal:

 (1) the remaining one‑half of the disbursements provided in Section 62‑7‑925(1) and (2);

 (2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

 (3) payments on the principal of a trust debt;

 (4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

 (5) premiums paid on a policy of insurance not provided in Section 62‑7‑925(4) of which the trust is the owner and beneficiary;

 (6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

 (7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

 (B) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑927.** Transfer to principal of cash receipts from asset subject to depreciation.

 (A) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

 (B) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

 (1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

 (2) during the administration of a decedent's estate; or

 (3) under this section if the trustee is accounting pursuant to Section 62‑7‑912 for the business or activity in which the asset is used.

 (C) An amount transferred to principal need not be held as a separate fund.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑928.** Future principal disbursements reserves.

 (A) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

 (B) A principal disbursement for purposes of this section includes the following, but only to the extent that the trustee has not been, and does not expect to be, reimbursed by a third party:

 (1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

 (2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

 (3) a disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

 (4) a periodic payment on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

 (5) a disbursement described in Section 62‑7‑926(A)(7).

 (C) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (A).

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑929.** Payment of taxes from income and principal.

 (A) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

 (B) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

 (C) A tax required to be paid by a trustee on the trust's share of the taxable income of the entity must be paid:

 (1) from income, to the extent that receipts from the entity are allocated to income;

 (2) from principal, to the extent that receipts from the entity are allocated only to principal;

 (3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

 (4) from principal to the extent that the tax exceeds the total receipts from the entity.

 (D) After applying subsections (A) through (C), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

HISTORY: 2005 Act No. 66, Section 1; 2012 Act No. 204, Section 2, eff June 7, 2012; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2012 amendment rewrote subsections (C) and (D).

**SECTION 62‑7‑930.** Certain adjustments between principal and income; reduction of marital deduction or charitable contribution deduction.

 (A) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

 (1) elections and decisions, other than those provided in subsection (B), that the fiduciary makes from time to time regarding tax matters;

 (2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

 (3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

 (B) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑931.** Application and construction of Uniform Principal and Income Act.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑932.** RESERVED.

Effect of Amendment

The 2013 amendment deleted the prior section and reserved the section number. Prior Section 62‑7‑932 was titled Discretionary power of a fiduciary and had the following history: 2005 Act No. 66, Section 1.

Part 9A

South Carolina Uniform Prudent Investor Act

**SECTION 62‑7‑933.** Uniform Prudent Investor Act.

 (A) This section may be cited as the South Carolina Uniform Prudent Investor Act, or this act.

 (B)(1) Except as otherwise provided in item (2) of this subsection, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule in this act.

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

 (C)(1) 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.

 (2) 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.

 (3) Among other circumstances provided in item (1) of this subsection which a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

 (a) general economic conditions;

 (b) the possible effect of inflation or deflation;

 (c) the expected tax consequences of investment decisions or strategies;

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

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

 (f) other resources of the beneficiaries;

 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

 (h) an asset's special relationship or special value to the purposes of the trust or to one or more of the beneficiaries.

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

 (5)(a) A trustee may invest in any kind of property or type of investment consistent with the standards of this act.

 (b) Nothing in this act prohibits affiliate investments if they otherwise comply with the standards of this act. For these purposes, 'affiliate' means an entity that owns or is owned by the trustee, in whole or in part, or is owned by the same entity that owns the trustee. Affiliate investments include:

 (i) investment and reinvestment in the securities of an open‑end or closed‑end management investment company or of an investment trust registered under the Investment Company Act of 1940, as amended. A bank or trustee, or both of them, may invest in these securities even if the bank or trustee, or an affiliate of the bank or trustee, provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and receives reasonable remuneration for those services;

 (ii) retention of the securities into which corporate securities owned by the trustee may be converted or which may be derived as a result of merger, consolidation, stock dividends, splits, liquidations, and similar procedures, and the exercise by purchase or otherwise any rights, warrants, or conversion features attaching to the securities;

 (iii) purchase or other acquisition and retention of a security underwritten by a syndicate, even if the trustee or its affiliate participates or has participated as a member of the syndicate, provided the trustee does not purchase the security from itself, its affiliate, or from another member of the underwriting syndicate, or its affiliate, pursuant to an implied or express reciprocal agreement between the trustee, or its affiliate, and the other member, or its affiliate, to purchase all or part of each other's underwriting participation commitment within the syndicate.

 (c) Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank, trust company, or private banker holding securities as a custodian or managing agent, and any bank, trust company, or private banker holding securities as custodian for a fiduciary, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation, as defined in Article 8 of the Uniform Commercial Code. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank, trust company, or private banker acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank, trust company, or private banker so depositing securities pursuant to this section shall be subject to such regulations as in the case of state‑chartered institutions, the Board of Financial Institutions, and, in the case of national banking associations, The Comptroller of the Currency may from time to time issue. A bank, trust company, or private banker acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank, trust company, or private banker in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary. This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank, trust company, or private banker holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on April 17, 1973, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

 (6) RESERVED

 (D) A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

 (E) Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this act.

 (F) RESERVED

 (G) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

 (H) RESERVED

 (I) The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorize any investment or strategy permitted pursuant to this act: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

 (J)(1) Notwithstanding provisions of this act to the contrary, the duties of a trustee with respect to acquiring a contract of insurance upon the life of the trustor or upon the lives of the trustor and the trustor's spouse, children, or parents do not include a duty to:

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

 (b) exercise policy options available under the contract; or

 (c) diversify the contract.

 (2) The trustee is not liable to the beneficiaries of the contract of insurance or to another party for loss arising from this subsection.

 (3) Except as specifically provided in the trust instrument, the provisions of this subsection apply to a trust established before or after the effective date of this subsection and to a life insurance policy acquired by the trustee before or after the effective date of this act.

 (K) This act applies to "charitable remainder trusts". "Charitable remainder trust" means a trust that provides for a specified distribution at least annually for either life or a term of years to one or more beneficiaries, at least one of which is not a charity with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity.

 (L) This act must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the States enacting it.

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 57, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsection (C)(3) substituted "Among other circumstances provided in item (1) of this subsection which a" for "A", and substituted "are such" for "those circumstances" following "investing and managing trust assets".

The 2013 amendment made nonsubstantive changes.

Part 10

Liability of Trustees and Rights of Persons Dealing With Trustee

**SECTION 62‑7‑1001.** 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;

 (6) suspend the trustee;

 (7) remove the trustee as provided in Section 62‑7‑706;

 (8) reduce or deny compensation to the trustee;

 (9) subject to Section 62‑7‑1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

 (10) order any other appropriate relief.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1002.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1003.** Damages in absence of breach.

 (a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1004.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1005.** Limitation of action against trustee.

 (a) Unless previously barred by adjudication, consent, or limitation, a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

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

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

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

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

 (3) the termination of the trust.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1005A.** Trust protector.

 (A) If a trust instrument provides that a trustee is to follow the direction of a trust protector and the trustee acts in accordance with such direction, then except in cases of wilful misconduct on the part of the trustee so directed, the trustee is not liable directly or indirectly from any such act.

 (B) If a trust instrument provides that a trustee is to make decisions with the consent of a trust protector, then except in cases of wilful misconduct or gross negligence on the part of the trustee, the trustee is not liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such trust protector's failure to provide such consent after having been requested to do so by the trustee.

 (C) If the trust document provides for a trust protector and the serving trust protector is unwilling or unable to serve or continue to serve and there is no provision for a successor trust protector, the then serving trustee may petition the court having jurisdiction over the trust estate to appoint an individual or a bank or trust company qualified to do business in the state of the settlor's domicile at the time of the settlor's death as successor trust protector.

 (D) A trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust protector. In exercising a power or refraining from exercising any power, a trust protector shall act in good faith and in accordance with the terms and purposes of the trust.

 (E) A trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1005B.** Trust investment advisor.

 (A) If a trust instrument provides that a trustee is to follow the direction of a trust investment advisor, and the trustee acts in accordance with such a direction, then except in cases of wilful misconduct on the part of the trustee so directed, the trustee is not liable directly or indirectly from any such act.

 (B) If a trust instrument provides that a trustee is to make decisions with the consent of a trust investment advisor, then except in cases of wilful misconduct or gross negligence on the part of the trustee, the trustee shall not be liable directly or indirectly from any act taken or omitted as a result of such trust investment advisor's failure to provide such consent after having been requested to do so by the trustee.

 (C) If a trust instrument provides for a trust investment advisor and the serving trust investment advisor is unwilling or unable to serve or continue to serve and there is no provision for a successor trust investment advisor, the then serving trustee may petition the court having jurisdiction over the trust estate to appoint an individual or a bank or trust company qualified to do business in the state of the settlor's domicile at the time of the settlor's death as successor trust investment advisor.

 (D) A trust investment advisor, other than a beneficiary, is a fiduciary with respect to each power granted to such trust investment advisor. In exercising any power or refraining from exercising any power, a trust investment advisor shall act in good faith and in accordance with the terms and purposes of the trust.

 (E) A trust investment advisor is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

HISTORY: 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1006.** Reliance on trust instrument.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1007.** Event affecting administration or distribution.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1008.** Exculpation of trustee.

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

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

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1009.** Beneficiary's consent, release, or ratification.

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

 (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 have knowledge of the beneficiary's rights or of the material facts relating to the breach.

 (b) No consideration is required for the consent, release or ratification to be valid.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1010.** 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.

 (d) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1011.** Interest as general partner.

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

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

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

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1012.** 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.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1013.** 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 settlor;

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

 (4) the powers of the trustee which may make a reference to the powers set forth in the South Carolina Trust Code;

 (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; and

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

 (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 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) In a transaction involving title to real property, the certificate of trust must be executed and acknowledged in a manner that permits its recordation in the Office of the Register of Deeds or Clerk of Court in the county in which the real property is located.

 (k) The Certificate of Trust may be either in the form set forth below or in any other form that satisfies the above requirements.

Settlor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Trust: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Trust: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Current Trustee(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Trust: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The undersigned trustee(s) does hereby confirm the existence of the within described Trust and certify the following:

1. The undersigned is/are all of the currently serving trustee(s).

2. The Trust is in full force and effect and has not been revoked, terminated or otherwise amended in any manner which would cause the representations in this Certification of Trust to be incorrect.

3. The Trust is revocable/irrevocable. (If revocable, define who can revoke the document).

4. The above designated trustee(s) is/are fully empowered to act for said Trust and is/are properly exercising the trustee's authority under this Trust. No other trustee or other individual or entity is required to execute any document for the Trust.

5. The signature(s) of \_\_\_\_\_\_\_ of the trustees is/are required for any action taken on behalf of the Trust. (Define signature requirements)

6. The proper manner for taking title to Trust property is:

[Name(s) of all current trustees], Trustee

[Name of trust], dated [Date of trust]

7. To the undersigned's knowledge, there are no claims, challenges of any kind, or cause of action alleged, which contest or question the validity of the Trust or the trustee's authority to act for the Trust.

8. The trustee is authorized by the Trust Agreement to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (State, synopsize, or describe relevant powers.)

IN WITNESS THEREOF: the undersigned, being all of the trustees, do hereby execute this Certificate of Trust this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

Witnesses: Trustee(s):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
|  |  |  |
| STATE OF SOUTH CAROLINA | ) |   |
|   | ) | ACKNOWLEDGMENT |
| COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |   |

I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby certify that trustee(s) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the day of \_\_\_\_\_\_, 20\_\_

(SEAL)

Notary Public for South Carolina

My Commission Expires:

HISTORY: 2005 Act No. 66, Section 1; 2010 Act No. 244, Section 58, eff June 7, 2010; 2013 Act No. 100, Section 2, eff January 1, 2014.

Effect of Amendment

The 2010 amendment in subsection (a) deleted the language of subdivision (7) and redesignated former subdivision (8) as subdivision (7); added a new subsection (j); redesignated former subsection (j) as subsection (k) and deleted the last line thereof; and made other nonsubstantive changes.

Part 11

Miscellaneous Provisions

**SECTION 62‑7‑1101.** Uniformity of application and construction.

 In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact its provisions.

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1102.** Electronic records and signatures.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1103.** Severability Clause.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.

**SECTION 62‑7‑1106.** Application to existing relationships.

 (a) Except as otherwise provided in this article, on the effective date of this article:

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

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

 (3) this article applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this article 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 article does not apply and the superseded law applies;

 (4) subject to subsections (a)(5) and (b), any rule of construction or presumption provided in this article applies to trust instruments executed before the effective date of the article unless there is a clear indication of a contrary intent in the terms of the trust; and

 (5) an act done and any right acquired or accrued before the effective date of the article is not affected by this article. Unless otherwise provided in this article, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust.

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

HISTORY: 2005 Act No. 66, Section 1; 2013 Act No. 100, Section 2, eff January 1, 2014.