

<p>ARTICLE 7: EXISTING CODE LANGUAGE</p>	<p>Bill # S. 1243</p>
<p>Article 7.Part 1. General Provisions and Definitions</p>	<p>Article 7.Part 1.</p>
<p>GENERAL COMMENT</p> <p>The Uniform Trust Code is primarily a default statute. Most of the Code’s provisions can be overridden in the terms of the trust. The provisions not subject to override are scheduled in Section 105(b). These include the duty of a trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.</p> <p>The remainder of the article specifies the scope of the Code (Section 102), provides definitions (Section 103), and collects provisions of importance not amenable to codification elsewhere in the Uniform Trust Code. Sections 106 and 107 focus on the sources of law that will govern a trust. Section 106 clarifies that despite the Code’s comprehensive scope, not all aspects of the law of trusts have been codified. The Uniform Trust Code is supplemented by the common law of trusts and principles of equity. Section 107 addresses selection of the jurisdiction or jurisdictions whose laws will govern the trust. A settlor, absent overriding public policy concerns, is free to select the law that will determine the meaning and effect of a trust’s terms.</p> <p>Changing a trust’s principal place of administration is sometimes desirable, particularly to lower a trust’s state income tax. Such transfers are authorized in Section 108. The trustee, following notice to the “qualified beneficiaries,” defined in Section 103(12), may</p>	<p>GENERAL COMMENT</p> <p>The South Carolina version of the Uniform Trust Code is referred to as the South Carolina Trust Code or sometimes the SCTC or sometimes the Code throughout this Article. The Uniform Trust Code is sometimes referred to as the UTC. The South Carolina Probate Code, South Carolina Code Ann. Section 62-1-100 et seq., is sometimes referred to as the SCPC. The sections of the South Carolina Trust Code are codified at Title 62, Article 7 and consequently are a part of the comprehensive South Carolina Probate Code. Depending on context, general references to “Article” in the UTC Comments may correlate to “Part” in the SCTC.</p> <p>As with the UTC, the SCTC is primarily a default statute. Most of the Code’s provisions can be overridden in the terms of the trust. The provisions not subject to override are scheduled in Section 62-7-105(b). These include the duty of a trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.</p> <p>The remainder of the article specifies the scope of the Code (Section 62-7-102), provides definitions (Section 62-7-103), and collects provisions of importance not amenable to codification elsewhere in the SCTC. Sections 62-7-106 and 62-7-107 focus on the sources of law that will govern a trust. Section 62-7-106 clarifies that despite the Code’s comprehensive scope, not all aspects of the law of trusts have been codified. The SCTC is supplemented by the common law of trusts and principles of equity. Section 62-7 107 addresses</p>

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<p>without approval of court transfer the principal place of administration to another State or country if a qualified beneficiary does not object and if the transfer is consistent with the trustee’s duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. The settlor, if minimum contacts are present, may also designate the trust’s principal place of administration.</p> <p>Sections 104 and 109 through 111 address procedural issues. Section 104 specifies when persons, particularly persons who work in organizations, are deemed to have acquired knowledge of a fact. Section 109 specifies the methods for giving notice and excludes from the Code’s notice requirements persons whose identity or location is unknown and not reasonably ascertainable. Section 110 allows beneficiaries with remote interests to request notice of actions, such as notice of a trustee resignation, which are normally given only to the qualified beneficiaries.</p> <p>Section 111 ratifies the use of nonjudicial settlement agreements. While the judicial settlement procedures may be used in all court proceedings relating to the trust, the nonjudicial settlement procedures will not always be available. The terms of the trust may direct that the procedures not be used, or settlors may negate or modify them by specifying their own methods for obtaining consents. Also, a nonjudicial settlement may include only terms and conditions a court could properly approve. The Uniform Trust Code does not prescribe the rules of construction to be applied to trusts created under the Code. The Code instead recognizes that enacting jurisdictions are likely to take a diversity of approaches, just as they</p>	<p>selection of the jurisdiction or jurisdictions whose laws will govern the trust. A settlor, absent overriding public policy concerns, is free to select the law that will determine the meaning and effect of a trust’s terms.</p> <p>Changing a trust’s principal place of administration is sometimes desirable, particularly to lower a trust’s state income tax. Such transfers are authorized in Section 62-7-108. The trustee, following notice to the “qualified beneficiaries,” defined in Section 62-7-103(12), may without approval of court transfer the principal place of administration to another State or country if a qualified beneficiary does not object and if the transfer is consistent with the trustee’s duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. The settlor, if minimum contacts are present, may also designate the trust’s principal place of administration.</p> <p>Sections 62-7-104 and 62-7-109 through 62-7-111 address procedural issues. Section 62-7-104 specifies when persons, particularly persons who work in organizations, are deemed to have acquired knowledge of a fact. Section 62-7-109 specifies the methods for giving notice and excludes from the Code’s notice requirements persons whose identity or location is unknown and not reasonably ascertainable. Section 62-7-110 allows beneficiaries with remote interests to request notice of actions, such as notice of a trustee resignation, which are normally given only to the qualified beneficiaries.</p> <p>Section 62-7-111 ratifies the use of nonjudicial settlement agreements. While the judicial settlement procedures may be used in all court proceedings relating to the trust, the nonjudicial settlement procedures will not always be available. The terms of the trust may direct that the procedures not be used, or settlors may negate or modify them by</p>

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<p>have with respect to the rules of construction applicable to wills. Section 112 accommodates this variation by providing that the State’s specific rules on construction of wills, whatever they may be, also apply to the construction of trusts.</p> <p>SOUTH CAROLINA COMMENT</p> <p>The South Carolina version of the Uniform Trust Code is referred to as the South Carolina Trust Code or sometimes the SCTC throughout this article. The Uniform Trust Code is sometimes referred to as the UTC. The South Carolina Probate Code, South Carolina Code Ann. Section 62-1-100 et seq., is sometimes referred to as the SCPC. The sections of the South Carolina Trust Code are codified at Title 62, Article 7 and consequently become a part of the comprehensive South Carolina Probate Code.</p> <p>By rule, the Comments to the Uniform Trust Code cannot be changed. However, because the South Carolina Trust Code differs in some respects from the Uniform Trust Code, the Uniform Trust Code Comments, although included, are not always appropriate for South Carolina. Consequently, when appropriate, the South Carolina Comments include guidance to those portions of the Uniform Trust Code Comments not appropriate for South Carolina. However, portions of the UTC Comments not distinguished by the SCTC Comments may nevertheless be inappropriate for the SCTC, especially with respect to cross-references. Depending on context, general references to “article” in the UTC Comments may correlate to “Part” in the SCTC.</p>	<p>specifying their own methods for obtaining consents. Also, a nonjudicial settlement may include only terms and conditions a court could properly approve.</p> <p>Section 62-7-112 provides that South Carolina’s specific rules on construction of wills, whatever they may be, also apply to the construction of trusts.</p>

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<p>SECTION 62-7-101. Short title.</p> <p>This article may be cited as the South Carolina Trust Code. In this article, unless the context clearly indicates otherwise, “Code” shall mean the South Carolina Trust Code.</p> <p>SECTION 62-7-102. Scope.</p> <p>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(44). 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.</p> <p>COMMENT</p> <p>The Uniform Trust Code, while comprehensive, applies only to express trusts. Excluded from the Code’s coverage are resulting and constructive trusts, which are not express trusts but remedial devices imposed by law. For the requirements for creating an express trust and</p>	<p>SECTION 62-7-101.</p> <p>This article may be cited as the South Carolina Trust Code. In this article, unless the context clearly indicates otherwise, ‘Code’ shall mean <u>means</u> the South Carolina Trust Code.</p> <p>SECTION 62-7-102.</p> <p>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.</p> <p>REPORTER’S COMMENT</p> <p>This section provides a concise statement of the positive inclusion of express trusts within the scope of the SCTC.</p> <p>South Carolina has another comprehensive statement of the scope of applicable South Carolina trust law, contained in the definition paragraph of the South Carolina Probate Code Section 62-1-201(49), which contains an expanded statement</p>

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<p>the methods by which express trusts are created, see Sections 401-402. The Code does not attempt to distinguish express trusts from other legal relationships with respect to property, such as agencies and contracts for the benefit of third parties. For the distinctions, see Restatement (Third) of Trusts Sections 2, 5 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 2, 5-16C (1959).</p> <p>The Uniform Trust Code is directed primarily at trusts that arise in an estate planning or other donative context, but express trusts can arise in other contexts. For example, a trust created pursuant to a divorce action would be included, even though such a trust is not donative but is created pursuant to a bargained-for exchange. Commercial trusts come in numerous forms, including trusts created pursuant to a state business trust act and trusts created to administer specified funds, such as to pay a pension or to manage pooled investments. Commercial trusts are often subject to special-purpose legislation and case law, which in some respects displace the usual rules stated in this Code. See John H. Langbein, <i>The Secret Life of the Trust: The Trust as an Instrument of Commerce</i>, 107 Yale L.J. 165 (1997).</p> <p>Express trusts also may be created by means of court judgment or decree. Examples include trusts created to hold the proceeds of personal injury recoveries and trusts created to hold the assets of a protected person in a conservatorship proceeding. See, e.g., Uniform Probate Code Section 5-411(a) (4).</p>	<p>of the inclusion of express trusts and further contains detailed statements of the trusts and trust type arrangements that are excluded from the scope. This statement is now included in Section 62-7-102 with reference to Section 62-1-201(49). Former Section 62-7-702(1), in the South Carolina Uniform Trustee’s Powers Act, which was repealed by the SCTC, also contained a comprehensive statement of applicable South Carolina trust law.</p> <p>Excluded from the Code’s coverage are resulting and constructive trusts, which are not express trusts but remedial devices imposed by law. For the requirements for creating an express trust and the methods by which express trusts are created, see Sections 62-7-401 and 62-7-402. The Code does not attempt to distinguish express trusts from other legal relationships with respect to property, such as agencies and contracts for the benefit of third parties. For the distinctions, see Restatement (Third) of Trusts Sections 2, 5 (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Sections 2, 5-16C (1959).</p> <p>The SCTC is directed primarily at trusts that arise in an estate planning or other donative context, but express trusts can arise in other contexts. For example, a trust created pursuant to a divorce action would be included, even though such a trust is not donative but is created pursuant to a bargained-for exchange. Commercial trusts come in numerous forms, including trusts created pursuant to a state business trust act and trusts created to administer specified funds, such as to pay a pension or to manage pooled investments. Commercial trusts are often subject to special-purpose legislation and case law, which in some respects displace the usual rules stated in this Code. See John H. Langbein, <i>The Secret Life of the Trust: The Trust as an Instrument of Commerce</i>, 107 Yale L.J. 165 (1997).</p>
<p>SOUTH CAROLINA COMMENT</p> <p>This section provides a concise statement of the positive inclusion of express trusts within the</p>	<p>Express trusts also may be created by means of</p>

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<p>scope of the SCTC.</p> <p>South Carolina has another comprehensive statement of the scope of applicable South Carolina trust law, contained in the definition paragraph of the South Carolina Probate Code Section 62-1-201(44), which contains an expanded statement of the inclusion of express trusts and further contains detailed statements of the trusts and trust type arrangements that are excluded from the scope. This statement is now included in Section 62-7-102 with reference to Section 62-1-201(44). Former Section 62-7-702(1), in the South Carolina Uniform Trustee’s Powers Act, which is repealed by the SCTC, also contained a comprehensive statement of applicable South Carolina trust law.</p> <p>SECTION 62-7-103. Definitions. In this article:</p> <p>(1) “Action,” with respect to an act of a trustee, includes a failure to act.</p> <p>(2) “Beneficiary” means a person that:</p> <p>(A) has a present or future beneficial interest in a trust, vested or contingent; or</p> <p>(B) in a capacity other than that of trustee, holds a power of appointment over trust property; or</p> <p>(C) In the case of a charitable trust, has the authority to enforce the terms of the Trust.</p> <p>(3) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in Section 62-7-405(a).</p> <p>(4) “Conservator” means a person appointed by the court to administer the estate of a protected person.</p> <p>(5) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.</p> <p>(6) “Guardian” means a person appointed by the</p>	<p>court judgment or decree. Examples include trusts created to hold the proceeds of personal injury recoveries and trusts created to hold the assets of a protected person in a conservatorship proceeding.</p> <p>SECTION 62-7-103. In this article:</p> <p>(1) ‘Action,’ with respect to an act of a trustee, includes a failure to act.</p> <p>(2) ‘Beneficiary’ means a person that:</p> <p>(A) has a present or future beneficial interest in a trust, vested or contingent; or</p> <p>(B) in a capacity other than that of trustee, holds a power of appointment over trust property; or</p> <p>(C) In the case of a charitable trust, has the authority to enforce the terms of the Trust.</p> <p>(3) ‘Charitable trust’ means a trust, or portion of a trust, created for a charitable purpose described in Section 62-7-405(a).</p> <p>(4) ‘Conservator’ means a person appointed by the court to administer the estate of a protected person.</p> <p>(5) ‘Environmental law’ means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.</p> <p>(6) ‘Guardian’ means a person appointed by the</p>

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<p>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.</p> <p>(7) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.</p> <p>(8) “Jurisdiction”, with respect to a geographic area, includes a State or country.</p> <p>(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.</p> <p>(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.</p> <p>(11) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.</p> <p>(12) “Qualified beneficiary” means a living beneficiary who, on the date the beneficiary’s qualification is determined:</p> <p>(A) is a distributee or permissible distributee of trust income or principal;</p> <p>(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</p> <p>(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.</p>	<p>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.</p> <p>(7) ‘Interests of the beneficiaries’ means the beneficial interests provided in the terms of the trust.</p> <p>(8) ‘Jurisdiction’, with respect to a geographic area, includes a State or country.</p> <p>(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.</p> <p>(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.</p> <p>(11) ‘Property’ means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.</p> <p>(12) ‘Qualified beneficiary’ means a living beneficiary who, on the date the beneficiary’s qualification is determined:</p> <p>(A) is a distributee or permissible distributee of trust income or principal;</p> <p>(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</p> <p>(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.</p> <p>(13) ‘Revocable’, as applied to a trust, means revocable by the settlor without the consent of the</p>

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<p>(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.</p> <p>(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.</p> <p>(15) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.</p> <p>(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.</p> <p>(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.</p> <p>(18) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.</p> <p>(19) “Trustee” includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.</p> <p>(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.</p>	<p>trustee or a person holding an adverse interest.</p> <p>(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. <u>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.</u></p> <p>(15) ‘Spendthrift provision’ means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.</p> <p>(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.</p> <p>(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.</p> <p>(18) ‘Trust instrument’ means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.</p> <p>(19) ‘Trustee’ includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.</p> <p>(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.</p>

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<p>(21) “Distributee” means any person who receives property of a Trust from a Trustee, other than as creditor or purchaser.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>COMMENT</p> <p>A definition of “action” (paragraph (1)) is included for drafting convenience, to avoid having to clarify in the numerous places in the Uniform Trust Code where reference is made to an “action” by the trustee that the term includes a failure to act.</p> <p>“Beneficiary” (paragraph (2)) refers only to a beneficiary of a trust as defined in the Uniform Trust Code. In addition to living and ascertained individuals, beneficiaries may be unborn or unascertained. Pursuant to Section 402(b), a trust is valid only if a beneficiary can be ascertained now or in the future. The term “beneficiary” includes not only beneficiaries</p>	<p>(21) ‘Distributee’ means any person who receives property of a trust from a trustee, other than as creditor or purchaser.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p>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.</p> <p>REPORTER’S COMMENT</p> <p>There are a number of definitions in Section 62-7-103 referred to throughout the South Carolina</p>

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<p>who received their interests under the terms of the trust but also beneficiaries who received their interests by other means, including by assignment, exercise of a power of appointment, resulting trust upon the failure of an interest, gap in a disposition, operation of an antilapse statute upon the predecease of a named beneficiary, or upon termination of the trust. The fact that a person incidentally benefits from the trust does not mean that the person is a beneficiary. For example, neither a trustee nor persons hired by the trustee become beneficiaries merely because they receive compensation from the trust. See Restatement (Third) of Trusts Section 48 cmt. c (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 126 cmt. c (1959). While the holder of a power of appointment is not considered a trust beneficiary under the common law of trusts, holders of powers are classified as beneficiaries under the Uniform Trust Code. Holders of powers are included on the assumption that their interests are significant enough that they should be afforded the rights of beneficiaries. A power of appointment as used in state trust law and this Code is as defined in state property law and not federal tax law although there is considerable overlap between the two definitions.</p> <p>A power of appointment is authority to designate the recipients of beneficial interests in property. See Restatement (Second) of Property: Donative Transfers Section 11.1 (1986). A power is either general or nongeneral and either presently exercisable or not presently exercisable. A general power of appointment is a power exercisable in favor of the holder of the power, the power holder's creditors, the power holder's estate, or the creditors of the power</p>	<p>Trust Code that have no equivalent in other portions of the South Carolina Code. These include "Action," "Charitable trust," "Environmental law," "Interests of the beneficiaries," "Jurisdiction," "Power of withdrawal," "Qualified beneficiary," "Revocable," "Settlor," "Spendthrift provision," "Terms of a trust," and "Trust instrument." In the interest of uniformity, such terms are included in the South Carolina Trust Code except as noted below.</p> <p>A definition of "action" (paragraph (1)) is included for drafting convenience, to avoid having to clarify in the numerous places in the SCTC where reference is made to an "action" by the trustee that the term includes a failure to act.</p> <p>"Beneficiary" (paragraph (2)) refers only to a beneficiary of a trust as defined in the SCTC. In addition to living and ascertained individuals, beneficiaries may be unborn or unascertained. Pursuant to Section 62-7-402(c), a trust is valid only if a beneficiary can be ascertained now or in the future. The term "beneficiary" includes not only beneficiaries who received their interests under the terms of the trust but also beneficiaries who received their interests by other means, including by assignment, exercise of a power of appointment, resulting trust upon the failure of an interest, gap in a disposition, operation of an antilapse statute upon the predecease of a named beneficiary, or upon termination of the trust. The fact that a person incidentally benefits from the trust does not mean that the person is a beneficiary. For example, neither a trustee nor persons hired by the trustee become beneficiaries merely because they receive compensation from the trust. See Restatement (Third) of Trusts Section 48 cmt. c (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 126 cmt. c (1959).</p> <p>While the holder of a power of appointment is not necessarily considered a trust beneficiary under the</p>

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<p>holder's estate. See Restatement (Second) of Property: Donative Transfers Section 11.4 (1986). All other powers are nongeneral. A power is presently exercisable if the power holder can currently create an interest, present or future, in an object of the power. A power of appointment is not presently exercisable if exercisable only by the power holder's will or if its exercise is not effective for a specified period of time or until occurrence of some event. See Restatement (Second) of Property: Donative Transfers Section 11.5 (1986). Powers of appointment may be held in either a fiduciary or nonfiduciary capacity. The definition of "beneficiary" excludes powers held by a trustee but not powers held by others in a fiduciary capacity.</p> <p>While all categories of powers of appointment are included within the definition of "beneficiary," the Uniform Trust Code elsewhere makes distinctions among types of powers. A "power of withdrawal" (paragraph (10)) is defined as a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest. Under Section 302, the holder of a testamentary general power of appointment may represent and bind persons whose interests are subject to the power.</p> <p>The definition of "beneficiary" includes only those who hold beneficial interests in the trust. Because a charitable trust is not created to benefit ascertainable beneficiaries but to benefit the community at large (see Section 405(a)), persons receiving distributions from a charitable trust are not beneficiaries as that term is defined in this Code. However, pursuant to Section 110(b), charitable organizations expressly</p>	<p>common law of trusts, holders of powers are classified as beneficiaries under the SCTC. Holders of powers are included on the assumption that their interests are significant enough that they should be afforded the rights of beneficiaries. A power of appointment as used in state trust law and this Code is as defined in state property law and not federal tax law although there is considerable overlap between the two definitions.</p> <p>A power of appointment is authority to designate the recipients of beneficial interests in property. See Restatement (Second) of Property: Donative Transfers Section 11.1 (1986). A power is either general or nongeneral and either presently exercisable or not presently exercisable. A general power of appointment is a power exercisable in favor of the holder of the power, the power holder's creditors, the power holder's estate, or the creditors of the power holder's estate. See Restatement (Second) of Property: Donative Transfers Section 11.4 (1986). All other powers are nongeneral. A power is presently exercisable if the power holder can currently create an interest, present or future, in an object of the power. A power of appointment is not presently exercisable if exercisable only by the power holder's will or if its exercise is not effective for a specified period of time or until occurrence of some event. See Restatement (Second) of Property: Donative Transfers Section 11.5 (1986). Powers of appointment may be held in either a fiduciary or nonfiduciary capacity. The definition of "beneficiary" excludes powers held by a trustee but not powers held by others in a fiduciary capacity.</p> <p>Under Section 62-7-302, the holder of a testamentary general power of appointment may represent and bind persons whose interests are subject to the power.</p> <p>The definition of "beneficiary" includes only those who hold beneficial interests in the trust.</p>

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<p>designated to receive distributions under the terms of a charitable trust, even though not beneficiaries as defined, are granted the rights of qualified beneficiaries under the Code.</p> <p>The Uniform Trust Code leaves certain issues concerning beneficiaries to the common law. Any person with capacity to take and hold legal title to intended trust property has capacity to be a beneficiary. See Restatement (Third) of Trusts Section 43 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 116-119 (1959). Except as limited by public policy, the extent of a beneficiary’s interest is determined solely by the settlor’s intent. See Restatement (Third) of Trusts Section 49 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 127-128 (1959). While most beneficial interests terminate upon a beneficiary’s death, the interest of a beneficiary may devolve by will or intestate succession the same as a corresponding legal interest. See Restatement (Third) of Trusts Section 55(1) (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 140, 142 (1959).</p> <p>Under the Uniform Trust Code, when a trust has both charitable and noncharitable beneficiaries only the charitable portion qualifies as a “charitable trust” (paragraph (3)). The great majority of the Code’s provisions apply to both charitable and noncharitable trusts without distinction. The distinctions between the two types of trusts are found in the requirements relating to trust creation and modification. Pursuant to Sections 405 and 413, a charitable trust must have a charitable purpose and charitable trusts may be modified or terminated under the doctrine of cy pres. Also, Section 411</p>	<p>Because a charitable trust is not created to benefit ascertainable beneficiaries but to benefit the community at large (<i>see</i> Section 62-7-405(a)), persons receiving distributions from a charitable trust are not beneficiaries as that term is defined in this Code. However, pursuant to Section 62-7-110(b), charitable organizations expressly designated to receive distributions under the terms of a charitable trust, even though not beneficiaries as defined, are granted the rights of qualified beneficiaries under the Code.</p> <p>The SCTC leaves certain issues concerning beneficiaries to the common law. Any person with capacity to take and hold legal title to intended trust property has capacity to be a beneficiary. <i>See</i> Restatement (Third) of Trusts Section 43 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 116-119 (1959). Except as limited by public policy, the extent of a beneficiary’s interest is determined solely by the settlor’s intent. <i>See</i> Restatement (Third) of Trusts Section 49 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 127-128 (1959). While most beneficial interests terminate upon a beneficiary’s death, the interest of a beneficiary may devolve by will or intestate succession the same as a corresponding legal interest. <i>See</i> Restatement (Third) of Trusts Section 55(1) (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Sections 140, 142 (1959).</p> <p>Under the SCTC, when a trust has both charitable and noncharitable beneficiaries only the charitable portion qualifies as a “charitable trust” (paragraph (3)). The great majority of the Code’s provisions apply to both charitable and noncharitable trusts without distinction. The distinctions between the two types of trusts are found in the requirements relating to trust creation and modification. Pursuant to Sections 62-7-405 and 62-7-413 of the SCTC, a</p>

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<p>allows a noncharitable trust to in certain instances be terminated by its beneficiaries while charitable trusts do not have beneficiaries in the usual sense. To the extent of these distinctions, a split-interest trust is subject to two sets of provisions, one applicable to the charitable interests, the other the noncharitable. For discussion of the definition of “conservator” (paragraph (4)), see the definition of “guardian” (paragraph (6)).</p> <p>To encourage trustees to accept and administer trusts containing real property, the Uniform Trust Code contains several provisions designed to limit exposure to possible liability for violation of “environmental law” (paragraph (5)). Section 701(c)(2) authorizes a nominated trustee to investigate trust property to determine potential liability for violation of environmental law or other law without accepting the trusteeship. Section 816(13) grants a trustee comprehensive and detailed powers to deal with property involving environmental risks. Section 1010(b) immunizes a trustee from personal liability for violation of environmental law arising from the ownership and control of trust property.</p> <p>Under the Uniform Trust Code, a “guardian” (paragraph (6)) makes decisions with respect to personal care; a “conservator” (paragraph (4)) manages property. The terminology used is that employed in Article V of the Uniform Probate Code, and in its free-standing Uniform Guardianship and Protective Proceedings Act. Enacting jurisdictions not using these terms in the defined sense should substitute their own terminology. For this reason, both terms have been placed in brackets. The definition of “guardian” accommodates those jurisdictions which allow appointment of a guardian by a</p>	<p>charitable trust must have a charitable purpose and charitable trusts may be modified or terminated under the doctrine of equitable deviation. Although South Carolina courts have previously refused to recognize the doctrine of cy pres (see Section 62-7-413 comment), a charitable trust in South Carolina could be modified or terminated under the doctrine of equitable deviation. Also, Section 62-7-411 allows a noncharitable trust to in certain instances be terminated by its beneficiaries while charitable trusts do not have beneficiaries in the usual sense. To the extent of these distinctions, a split-interest trust is subject to two sets of provisions, one applicable to the charitable interests, the other the noncharitable.</p> <p>Subsection (4) reflects the definition of “conservator” contained in South Carolina Probate Code Section 62-1-201(6). See the definition of “guardian” (paragraph (6)).</p> <p>To encourage trustees to accept and administer trusts containing real property, the SCTC contains several provisions designed to limit exposure to possible liability for violation of “environmental law” (paragraph (5)). Section 62-7-701(c)(2) authorizes a nominated trustee to investigate trust property to determine potential liability for violation of environmental law or other law without accepting the trusteeship. Section 62-7-816(13) grants a trustee comprehensive and detailed powers to deal with property involving environmental risks. Section 62-7-1010(b) immunizes a trustee from personal liability for violation of environmental law arising from the ownership and control of trust property.</p> <p>Under the SCTC, a “guardian” (paragraph (6)) makes decisions with respect to personal care; a “conservator” (paragraph (4)) manages property. The terminology used in the SCTC is that employed in Article V of the South Carolina Probate Code.</p>

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<p>parent or spouse in addition to appointment by a court. Enacting jurisdictions which allow appointment of a guardian solely by a court should delete the bracketed language “a parent, or a spouse.”</p> <p>The phrase “interests of the beneficiaries” (paragraph (7)) is used with some frequency in the Uniform Trust Code. The definition clarifies that the interests are as provided in the terms of the trust and not as determined by the beneficiaries. Absent authority to do so in the terms of the trust, Section 108 prohibits a trustee from changing a trust’s principal place of administration if the transfer would violate the trustee’s duty to administer the trust at a place appropriate to the interests of the beneficiaries. Section 706(b) conditions certain of the grounds for removing a trustee on the court’s finding that removal of the trustee will best serve the interests of the beneficiaries. Section 801 requires the trustee to administer the trust in the interests of the beneficiaries, and Section 802 makes clear that a trustee may not place its own interests above those of the beneficiaries. Section 808(d) requires the holder of a power to direct who is subject to a fiduciary obligation to act with regard to the interests of the beneficiaries. Section 1002(b) may impose greater liability on a cotrustee who commits a breach of trust with reckless indifference to the interests of the beneficiaries. Section 1008 invalidates an exculpatory term to the extent it relieves a trustee of liability for breach of trust committed with reckless indifference to the interests of the beneficiaries. “Jurisdiction” (paragraph (8)), when used with reference to a geographic area, includes a state or country but is not necessarily so limited. Its precise scope will depend on the context in</p>	<p>Further, the South Carolina Probate Code (Section 62-1-201(18)) specifically excludes “a statutory guardian” and this modification was incorporated into the SCTC definition.</p> <p>The phrase “interests of the beneficiaries” (paragraph (7)) is used with some frequency in the SCTC. The definition clarifies that the interests are as provided in the terms of the trust and not as determined by the beneficiaries. Section 62-7-108 dictates that a trustee is under a continuing duty to administer the trust at a place appropriate to the interests of the beneficiaries. Section 62-7-706(b) conditions certain of the grounds for removing a trustee on the court’s finding that removal of the trustee will best serve the interests of the beneficiaries. Section 62-7-801 requires the trustee to administer the trust in the interests of the beneficiaries, and Section 62-7-802 makes clear that a trustee may not place its own interests above those of the beneficiaries. Section 62-7-808(d) requires the holder of a power to direct who is subject to a fiduciary obligation to act with regard to the interests of the beneficiaries. Section 62-7-1002(b) may impose greater liability on a cotrustee who commits a breach of trust with reckless indifference to the interests of the beneficiaries. Section 62-7-1008 invalidates an exculpatory term to the extent it relieves a trustee of liability for breach of trust committed with reckless indifference to the interests of the beneficiaries.</p> <p>“Jurisdiction” (paragraph (8)), when used with reference to a geographic area, includes a state or country but is not necessarily so limited. Its precise scope will depend on the context in which it is used. “Jurisdiction” is used in Sections 62-7-107 and 62-7-403 to refer to the place whose law will govern the trust. The term is used in Section 62-7-108 to refer to the trust’s principal place of administration. The term is used in Section 62-7-816 to refer to the</p>

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<p>which it is used. “Jurisdiction” is used in Sections 107 and 403 to refer to the place whose law will govern the trust. The term is used in Section 108 to refer to the trust’s principal place of administration. The term is used in Section 816 to refer to the place where the trustee may appoint an ancillary trustee and to the place in whose courts the trustee can bring and defend legal proceedings.</p> <p>The definition of “property” (paragraph (11)) is intended to be as expansive as possible and to encompass anything that may be the subject of ownership. Included are choses in action, claims, and interests created by beneficiary designations under policies of insurance, financial instruments, and deferred compensation and other retirement arrangements, whether revocable or irrevocable. Any such property interest is sufficient to support creation of a trust. See Section 401 comment.</p> <p>Due to the difficulty of identifying beneficiaries whose interests are remote and contingent, and because such beneficiaries are not likely to have much interest in the day-to-day affairs of the trust, the Uniform Trust Code uses the concept of “qualified beneficiary” (paragraph (12)) to limit the class of beneficiaries to whom certain notices must be given or consents received. The definition of qualified beneficiaries is used in Section 705 to define the class to whom notice must be given of a trustee resignation. The term is used in Section 813 to define the class to be kept informed of the trust’s administration. Section 417 requires that notice be given to the qualified beneficiaries before a trust may be combined or divided. Actions which may be accomplished by the consent of the qualified beneficiaries include the</p>	<p>place where the trustee may appoint an ancillary trustee and to the place in whose courts the trustee can bring and defend legal proceedings.</p> <p>The definition of “property” (paragraph (11)) is intended to be as expansive as possible and to encompass anything that may be the subject of ownership. Included are choses in action, claims, and interests created by beneficiary designations under policies of insurance, financial instruments, and deferred compensation and other retirement arrangements, whether revocable or irrevocable. Any such property interest is sufficient to support creation of a trust. <i>See</i> Section 62-7-401 comment.</p> <p>Due to the difficulty of identifying beneficiaries whose interests are remote and contingent, and because such beneficiaries are not likely to have much interest in the day-to-day affairs of the trust, the SCTC uses the concept of “qualified beneficiary” (paragraph (12)) to limit the class of beneficiaries to whom certain notices must be given or consents received. The definition of qualified beneficiaries is used in Section 62-7-705 to define the class to whom notice must be given of a trustee resignation. The term is used in Section 62-7-813 to define the class to be kept informed of the trust’s administration. Section 62-7-417 requires that notice be given to the qualified beneficiaries before a trust may be combined or divided. Actions which may be accomplished by the consent of the qualified beneficiaries include the appointment of a successor trustee as provided in Section 62-7-704. Prior to transferring a trust’s principal place of administration, SCTC Section 62-7-108(e) (UTC Section 108(d)) requires that the trustee give at least 60 days notice to the qualified beneficiaries.</p> <p>The qualified beneficiaries consist of the beneficiaries currently receiving a distribution from the trust together with those who might be termed the first-line remaindermen. These are the</p>

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<p>appointment of a successor trustee as provided in Section 704. Prior to transferring a trust's principal place of administration, Section 108(d) requires that the trustee give at least 60 days notice to the qualified beneficiaries. The qualified beneficiaries consist of the beneficiaries currently eligible to receive a distribution from the trust together with those who might be termed the first-line remaindermen. These are the beneficiaries who would become eligible to receive distributions were the event triggering the termination of a beneficiary's interest or of the trust itself to occur on the date in question. Such a terminating event will typically be the death or deaths of the beneficiaries currently eligible to receive the income. Should a qualified beneficiary be a minor, incapacitated, or unknown, or a beneficiary whose identity or location is not reasonably ascertainable, the representation and virtual representation principles of Article 3 may be employed, including the possible appointment by the court of a representative to represent the beneficiary's interest.</p> <p>The qualified beneficiaries who take upon termination of the beneficiary's interest or of the trust can include takers in default of the exercise of a power of appointment. The term can also include the persons entitled to receive the trust property pursuant to the exercise of a power of appointment. Because the exercise of a testamentary power of appointment is not effective until the testator's death and probate of the will, the qualified beneficiaries do not include appointees under the will of a living person. Nor would the term include the objects of an unexercised inter vivos power.</p> <p>Charitable trusts and trusts for a valid</p>	<p>beneficiaries who would receive distributions were the event triggering the termination of a beneficiary's interest or of the trust itself to occur on the date in question. Such a terminating event will typically be the death or deaths of the beneficiaries currently eligible to receive the income. Should a qualified beneficiary be a minor, incapacitated, or unknown, or a beneficiary whose identity or location is not reasonably ascertainable, the representation and virtual representation principles of Part 3 may be employed, including the possible appointment by the court of a representative to represent the beneficiary's interest.</p> <p>The qualified beneficiaries who take upon termination of the beneficiary's interest or of the trust can include takers in default of the exercise of a power of appointment. The term can also include the persons entitled to receive the trust property pursuant to the exercise of a power of appointment. Because the exercise of a testamentary power of appointment is not effective until the testator's death and probate of the will, the qualified beneficiaries do not include appointees under the will of a living person. Nor would the term include the objects of an unexercised inter vivos power.</p> <p>Charitable trusts and trusts for a valid noncharitable purpose do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. Section 62-7-110 expands the definition of qualified beneficiaries to encompass this wider group. UTC Section 110 grants the rights of qualified beneficiaries to the attorney general of the state and charitable organizations expressly designated to receive distributions under the terms of a charitable trust; SCTC Section 62-7-110 grants the rights of qualified beneficiaries only to charitable organizations expressly designated to receive distributions under</p>

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<p>noncharitable purpose do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. Section 110 expands the definition of qualified beneficiaries to encompass this wider group. It grants the rights of qualified beneficiaries to the attorney general of the state and charitable organizations expressly designated to receive distributions under the terms of a charitable trust. It also grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a trust created for an animal or other noncharitable purpose.</p> <p>The definition of “revocable” (paragraph (13)) clarifies that revocable trusts include only trusts whose revocation is substantially within the settlor’s control. The consequences of classifying a trust as revocable are many. The Uniform Trust Code contains provisions relating to liability of a revocable trust for payment of the settlor’s debts (Section 505), the standard of capacity for creating a revocable trust (Section 601), the procedure for revocation (Section 602), the subjecting of the beneficiaries’ rights to the settlor’s control (Section 603), the period for contesting a revocable trust (Section 604), the power of the settlor of a revocable trust to direct the actions of a trustee (Section 808(a)), notice to the qualified beneficiaries upon the settlor’s death (Section 813(b)), and the liability of a trustee of a revocable trust for the obligations of a partnership of which the trustee is a general partner (Section 1011(d)).</p> <p>Because under Section 603(c) the holder of a power of withdrawal has the rights of a settlor of a revocable trust, the definition of “power of</p>	<p>the terms of a charitable trust. Section 62-7-110 also grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a trust created for an animal or other noncharitable purpose.</p> <p>The definition of “revocable” (paragraph (13)) clarifies that revocable trusts include only trusts whose revocation is substantially within the settlor’s control. The consequences of classifying a trust as revocable are many. The SCTC contains provisions relating to liability of a revocable trust for payment of the settlor’s debts (Section 62-7-505), the standard of capacity for creating a revocable trust (Section 62-7-601), the procedure for revocation (Section 62-7-602), the subjecting of the beneficiaries’ rights to the settlor’s control (Section 62-7-603), the period for contesting a revocable trust (Section 62-7-604), the power of the settlor of a revocable trust to direct the actions of a trustee (Section 62-7-808(a)), notice to the qualified beneficiaries upon the settlor’s death (Section 62-7-813(b)), and the liability of a trustee of a revocable trust for the obligations of a partnership of which the trustee is a general partner (Section 62-7-1011(d)).</p> <p>The definition of “settlor” (paragraph (14)) refers to the person who creates, or contributes property to, a trust, whether by will, self-declaration, transfer of property to another person as trustee, or exercise of a power of appointment. For the requirements for creating a trust, see Section 62-7-401. Determining the identity of the “settlor” is usually not an issue. The same person will both sign the trust instrument and fund the trust. Ascertaining the identity of the settlor becomes more difficult when more than one person signs the trust instrument or funds the trust. The fact that a person is designated as the “settlor” by the terms of the trust is not necessarily determinative. For example, the person who</p>

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<p>withdrawal” (paragraph (10)), and “revocable” (paragraph (13)) are similar. Both exclude individuals who can exercise their power only with the consent of the trustee or person having an adverse interest.</p> <p>The definition of “settlor” (paragraph (14)) refers to the person who creates, or contributes property to, a trust, whether by will, self-declaration, transfer of property to another person as trustee, or exercise of a power of appointment. For the requirements for creating a trust, see Section 401. Determining the identity of the “ settlor” is usually not an issue. The same person will both sign the trust instrument and fund the trust. Ascertaining the identity of the settlor becomes more difficult when more than one person signs the trust instrument or funds the trust. The fact that a person is designated as the “ settlor” by the terms of the trust is not necessarily determinative. For example, the person who executes the trust instrument may be acting as the agent for the person who will be funding the trust. In that case, the person funding the trust, and not the person signing the trust instrument, will be the settlor. Should more than one person contribute to a trust, all of the contributors will ordinarily be treated as settlors in proportion to their respective contributions, regardless of which one signed the trust instrument. See Section 602(b).</p> <p>In the case of a revocable trust employed as a will substitute, gifts to the trust’s creator are sometimes made by placing the gifted property directly into the trust. To recognize that such a donor is not intended to be treated as a settlor, the definition of “settlor” excludes a contributor to a trust that is revocable by another person or over which another person has a power of</p>	<p>executes the trust instrument may be acting as the agent for the person who will be funding the trust. In that case, the person funding the trust, and not the person signing the trust instrument, will be the settlor. Should more than one person contribute to a trust, all of the contributors will ordinarily be treated as settlors in proportion to their respective contributions, regardless of which one signed the trust instrument. <i>See</i> Section 62-7-602(b).</p> <p>In the case of a revocable trust employed as a will substitute, gifts to the trust’s creator are sometimes made by placing the gifted property directly into the trust. To recognize that such a donor is not intended to be treated as a settlor, the definition of “settlor” excludes a contributor to a trust that is revocable by another person or over which another person has a power of withdrawal. Thus, a parent who contributes to a child’s revocable trust would not be treated as one of the trust’s settlors. The definition of settlor would treat the child as the sole settlor of the trust to the extent of the child’s proportionate contribution</p> <p>Ascertaining the identity of the settlor is important for a variety of reasons. It is important for determining rights in revocable trusts. <i>See</i> Sections 62-7-505(a)(1), (3) (creditor claims against settlor of revocable trust), 62-7-602 (revocation or modification of revocable trust), and 62-7-604 (limitation on contest of revocable trust). It is also important for determining rights of creditors in irrevocable trusts. <i>See</i> Section 62-7-505(a)(2) (creditors of settlor can reach maximum amount trustee can distribute to settlor). While the settlor of an irrevocable trust traditionally has no continuing rights over the trust except for the right under Section 62-7-411 to terminate the trust with the beneficiaries’ consent, the SCTC also authorizes the settlor of an irrevocable trust to petition for removal of the trustee and to enforce or modify a charitable</p>

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<p>withdrawal. Thus, a parent who contributes to a child’s revocable trust would not be treated as one of the trust’s settlors. The definition of settlor would treat the child as the sole settlor of the trust to the extent of the child’s proportionate contribution. Pursuant to Section 603(c), the child’s power of withdrawal over the trust would also result in the child being treated as the settlor with respect to the portion of the trust attributable to the parent’s contribution. Ascertaining the identity of the settlor is important for a variety of reasons. It is important for determining rights in revocable trusts. See Sections 505(a)(1), (3) (creditor claims against settlor of revocable trust), 602 (revocation or modification of revocable trust), and 604 (limitation on contest of revocable trust). It is also important for determining rights of creditors in irrevocable trusts. See Section 505(a)(2) (creditors of settlor can reach maximum amount trustee can distribute to settlor). While the settlor of an irrevocable trust traditionally has no continuing rights over the trust except for the right under Section 411 to terminate the trust with the beneficiaries’ consent, the Uniform Trust Code also authorizes the settlor of an irrevocable trust to petition for removal of the trustee and to enforce or modify a charitable trust. See Sections 405(c) (standing to enforce charitable trust), 413 (doctrine of cy pres), and 706 (removal of trustee).</p> <p>“Spendthrift provision” (paragraph (15)) means a term of a trust which restrains the transfer of a beneficiary’s interest, whether by a voluntary act of the beneficiary or by an action of a beneficiary’s creditor or assignee, which at least as far as the beneficiary is concerned, would be involuntary. A spendthrift provision is valid</p>	<p>trust. See Sections 62-7-405(c) (standing to enforce charitable trust), 62-7-413 (South Carolina, doctrine of equitable deviation), and 62-7-706 (removal of trustee).</p> <p>“Spendthrift provision” (paragraph (15)) means a term of a trust which restrains the transfer of a beneficiary’s interest, whether by a voluntary act of the beneficiary or by an action of a beneficiary’s creditor or assignee, which at least as far as the beneficiary is concerned, would be involuntary. A spendthrift provision is valid under the SCTC only if it restrains both voluntary and involuntary transfer. For a discussion of this requirement and the effect of a spendthrift provision in general, see Section 62-7-502. The insertion of a spendthrift provision in the terms of the trust may also constitute a material purpose sufficient to prevent termination of the trust by agreement of the beneficiaries under Section 62-7-411, although the Code does not presume this result.</p> <p>“Terms of a trust” (paragraph (17)) is a defined term used frequently in the SCTC. While the wording of a written trust instrument is almost always the most important determinant of a trust’s terms, the definition is not so limited. Oral statements, the situation of the beneficiaries, the purposes of the trust, the circumstances under which the trust is to be administered, and, to the extent the settlor was otherwise silent, rules of construction, all may have a bearing on determining a trust’s meaning. See Restatement (Third) of Trusts Section 4 cmt. a (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 4 cmt. a (1959). If a trust established by order of court is to be administered as an express trust, the terms of the trust are determined from the court order as interpreted in light of the general rules governing interpretation of judgments. See Restatement (Third) of Trusts Section 4 cmt. f (Tentative Draft</p>

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<p>under the Uniform Trust Code only if it restrains both voluntary and involuntary transfer. For a discussion of this requirement and the effect of a spendthrift provision in general, see Section 502. The insertion of a spendthrift provision in the terms of the trust may also constitute a material purpose sufficient to prevent termination of the trust by agreement of the beneficiaries under Section 411, although the Code does not presume this result.</p> <p>“Terms of a trust” (paragraph (17)) is a defined term used frequently in the Uniform Trust Code. While the wording of a written trust instrument is almost always the most important determinant of a trust’s terms, the definition is not so limited. Oral statements, the situation of the beneficiaries, the purposes of the trust, the circumstances under which the trust is to be administered, and, to the extent the settlor was otherwise silent, rules of construction, all may have a bearing on determining a trust’s meaning. See Restatement (Third) of Trusts Section 4 cmt. a (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 4 cmt. a (1959). If a trust established by order of court is to be administered as an express trust, the terms of the trust are determined from the court order as interpreted in light of the general rules governing interpretation of judgments. See Restatement (Third) of Trusts Section 4 cmt. f (Tentative Draft No. 1, approved 1996).</p> <p>A manifestation of a settlor’s intention does not constitute evidence of a trust’s terms if it would be inadmissible in a judicial proceeding in which the trust’s terms are in question. See Restatement (Third) of Trusts Section 4 cmt. b (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 4 cmt. b</p>	<p>No. 1, approved 1996).</p> <p>A manifestation of a settlor’s intention does not constitute evidence of a trust’s terms if it would be inadmissible in a judicial proceeding in which the trust’s terms are in question. <i>See</i> Restatement (Third) of Trusts Section 4 cmt. b (Tentative Draft No. 1, approved 1996); Restatement (Second) of Trusts Section 4 cmt. b (1959). <i>See also</i> Restatement (Third) Property: Donative Transfers Sections 10.2, 11.1-11.3 (Tentative Draft No. 1, approved 1995). For example, South Carolina has chosen to recognize the creation of an oral trust, Section 62-7-407. Evidence otherwise relevant to determining the terms of a trust may also be excluded under other principles of law, such as the parol evidence rule.</p> <p>“Trust instrument” (paragraph (18)) is a subset of the definition of “terms of a trust” (paragraph (17)), referring to only such terms as are found in an instrument executed by the settlor. Section 62-7-403 provides that a trust is validly created if created in compliance with the law of the place where the trust instrument was executed. Pursuant to Section 62-7-604(a)(2), the contest period for a revocable trust can be shortened by providing the potential contestant with a copy of the trust instrument plus other information. UTC Section 813(b)(1) and SCTC Sections 62-7-813(b) requires that the trustee upon request furnish a beneficiary with a copy of the trust instrument. To allow a trustee to administer a trust with some dispatch without concern about liability if the terms of a trust instrument are contradicted by evidence outside of the instrument, Section 62-7-1006 protects a trustee from liability to the extent a breach of trust resulted from reasonable reliance on those terms. Section 62-7-1013 allows a trustee to substitute a certification of trust in lieu of providing a third person with a copy of the trust instrument. Section 62-7-1106(a)(4) provides that</p>

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<p>(1959). See also Restatement (Third) Property: Donative Transfers Sections 10.2, 11.1-11.3 (Tentative Draft No. 1, approved 1995). For example, in many states a trust of real property is unenforceable unless evidenced by a writing, although Section 407 of this Code does not so require, leaving this issue to be covered by separate statute if the enacting jurisdiction so elects. Evidence otherwise relevant to determining the terms of a trust may also be excluded under other principles of law, such as the parol evidence rule.</p> <p>“Trust instrument” (paragraph (18)) is a subset of the definition of “terms of a trust” (paragraph (17)), referring to only such terms as are found in an instrument executed by the settlor. Section 403 provides that a trust is validly created if created in compliance with the law of the place where the trust instrument was executed. Pursuant to Section 604(a)(2), the contest period for a revocable trust can be shortened by providing the potential contestant with a copy of the trust instrument plus other information. Section 813(b)(1) requires that the trustee upon request furnish a beneficiary with a copy of the trust instrument. To allow a trustee to administer a trust with some dispatch without concern about liability if the terms of a trust instrument are contradicted by evidence outside of the instrument, Section 1006 protects a trustee from liability to the extent a breach of trust resulted from reasonable reliance on those terms. Section 1013 allows a trustee to substitute a certification of trust in lieu of providing a third person with a copy of the trust instrument. Section 1106(a)(4) provides that unless there is a clear indication of a contrary intent, rules of construction and presumptions provided in the Uniform Trust Code apply to</p>	<p>unless there is a clear indication of a contrary intent, rules of construction and presumptions provided in the SCTC apply to trust instruments executed before the effective date of the Code.</p> <p>The definition of “trustee” (paragraph (19)) includes not only the original trustee but also an additional and successor trustee as well as a cotrustee. Section 62-1-201 of the South Carolina Probate Code contains the language “whether or not appointed or confirmed by court” and the South Carolina Trust Code retains that language. Because the definition of trustee includes trustees of all types, any trustee, whether original or succeeding, single or cotrustee, has the powers of a trustee and is subject to the duties imposed on trustees under the SCTC. Any natural person, including a settlor or beneficiary, has capacity to act as trustee if the person has capacity to hold title to property free of trust. <i>See</i> Restatement (Third) of Trusts Section 32 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 89 (1959). State banking statutes normally impose additional requirements before a corporation can act as trustee.</p> <p>Subsections (21) (defining “distributee”), (25) (defining “permissible distributee”), (26) (defining “Trust Investment Advisor”), and (27) (defining “Trust Protector”) are South Carolina additions to the UTC.</p> <p>The South Carolina version of Section 62-7-103 expresses the intent that the definitions contained in the South Carolina Probate Code that are not otherwise defined within the South Carolina Trust Code and that do not conflict with the definitions contained in the South Carolina Trust Code shall continue to apply to the law governing trusts in South Carolina.</p>

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<p>trust instruments executed before the effective date of the Code.</p> <p>The definition of “trustee” (paragraph (19)) includes not only the original trustee but also an additional and successor trustee as well as a cotrustee. Because the definition of trustee includes trustees of all types, any trustee, whether original or succeeding, single or cotrustee, has the powers of a trustee and is subject to the duties imposed on trustees under the Uniform Trust Code. Any natural person, including a settlor or beneficiary, has capacity to act as trustee if the person has capacity to hold title to property free of trust. See Restatement (Third) of Trusts Section 32 (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 89 (1959). State banking statutes normally impose additional requirements before a corporation can act as trustee.</p> <p>SOUTH CAROLINA COMMENT</p> <p>There are a number of definitions in Section 62-7-103 referred to throughout the South Carolina Trust Code that have no equivalent in other portions of the South Carolina Code. These include “Action,” “Charitable trust,” “Environmental law,” “Interests of the beneficiaries,” “Jurisdiction,” “Power of withdrawal,” “Qualified beneficiary,” “Revocable,” “Settlor,” “Spendthrift provision,” “Terms of a trust,” and “Trust instrument.” In the interest of uniformity, such terms are included in the South Carolina Trust Code except as noted below. Subsection (4) is modified to reflect the definition of “conservator” contained in South Carolina Probate Code Section 62-1-201(6). Subsection (6) defines “guardian.” The South Carolina</p>	

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<p>Probate Code (Section 62-1-201(16)) specifically excludes “a statutory guardian” and this modification was incorporated into the definition. Subsection (19) defines the term “trustee.” Section 62-1-201 of the South Carolina Probate Code contains the additional language “whether or not appointed or confirmed by court” and the South Carolina Trust Code retains that additional language. Subsection (21) defining “distributee” is a South Carolina addition. The South Carolina version of Section 62-7-103 expresses the intent that the definitions contained in the South Carolina Probate Code that are not otherwise defined within the South Carolina Trust Code and that do not conflict with the definitions contained in the South Carolina Trust Code shall continue to apply to the law governing trusts in South Carolina.</p> <p>SECTION 62-7-104. Knowledge.</p> <p>(a) Subject to subsection (b), a person has knowledge of a fact if the person:</p> <ol style="list-style-type: none"> (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. <p>(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</p>	<p>SECTION 62-7-104.</p> <p>(a) Subject to subsection (b), a person has knowledge of a fact if the person:</p> <ol style="list-style-type: none"> (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. <p>(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</p>

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<p>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.</p>	<p>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.</p>
<p>COMMENT</p> <p>This section specifies when a person is deemed to know a fact. Subsection (a) states the general rule. Subsection (b) provides a special rule dealing with notice to organizations. Pursuant to subsection (a), a fact is known to a person if the person had actual knowledge of the fact, received notification of it, or had reason to know of the fact's existence based on all of the circumstances and other facts known to the person at the time. Under subsection (b), notice to an organization is not necessarily achieved by giving notice to a branch office. Nor does the organization necessarily acquire knowledge at the moment the notice arrives in the organization's mailroom. Rather, the organization has notice or knowledge of a fact only when the information is received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention had the organization exercised reasonable diligence.</p> <p>"Know" is used in its defined sense in Sections 109 (methods and waiver of notice), 305 (appointment of representative), 604(b) (limitation on contest of revocable trust), 812 (collecting trust property), 1009 (nonliability of trustee upon beneficiary's consent, release, or</p>	<p>REPORTER'S COMMENT</p> <p>This section specifies when a person is deemed to know a fact. Subsection (a) states the general rule. Subsection (b) provides a special rule dealing with notice to organizations. Pursuant to subsection (a), a fact is known to a person if the person had actual knowledge of the fact, received notification of it, or had reason to know of the fact's existence based on all of the circumstances and other facts known to the person at the time. Under subsection (b), notice to an organization is not necessarily achieved by giving notice to a branch office. Nor does the organization necessarily acquire knowledge at the moment the notice arrives in the organization's mailroom. Rather, the organization has notice or knowledge of a fact only when the information is received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention had the organization exercised reasonable diligence.</p> <p>"Know" is used in its defined sense in Sections 62-7-109 (methods and waiver of notice), 62-7-305 (appointment of representative), 62-7-604(b) (limitation on contest of revocable trust), 62-7-1009 (nonliability of trustee upon beneficiary's consent, release, or ratification), and 62-7-1012 (protection of person dealing with trustee). But as to certain actions, a person is charged with knowledge of facts the person would have discovered upon reasonable inquiry. <i>See</i> Section 62-7-1005 (limitation of action against trustee following report of trustee).</p>

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<p>ratification) , and 1012 (protection of person dealing with trustee). But as to certain actions, a person is charged with knowledge of facts the person would have discovered upon reasonable inquiry. See Section 1005 (limitation of action against trustee following report of trustee). This section is based on Uniform Commercial Code Section 1-202 (2000 Annual Meeting Draft).</p> <p>SOUTH CAROLINA COMMENT The reference to Uniform Trust Code Section 812 in the Uniform Trust Code Comment is inapplicable to the South Carolina Trust Code because the SCTC does not include the UTC version of Section 812.</p> <p>SECTION 62-7-105. Default and mandatory rules.</p> <p>(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.</p> <p>(b) The terms of a trust prevail over any provision of this article except:</p> <ol style="list-style-type: none"> (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 	<p>This section is based on Uniform Commercial Code Section 1-202 (2000 Annual Meeting Draft).</p> <p>SECTION 62-7-105.</p> <p>(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.</p> <p>(b) The terms of a trust prevail over any provision of this article except:</p> <ol style="list-style-type: none"> (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

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<p>a trust as provided in Part 5;</p> <p>(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 62-7-602(e);</p> <p>(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;</p> <p>(8) the effect of an exculpatory term under Section 62-7-1008;</p> <p>(9) the rights under Sections 62-7-1010 through 62-7-1013 of a person other than a trustee or beneficiary;</p> <p>(10) periods of limitation for commencing a judicial proceeding;</p> <p>(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and</p> <p>(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.</p>	<p>trust as provided in Part 5;</p> <p>(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 62-7-602(e) <u>62-7-602.1</u>;</p> <p>(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;</p> <p>(8) the effect of an exculpatory term under Section 62-7-1008;</p> <p>(9) the rights under Sections 62-7-1010 through 62-7-1013 of a person other than a trustee or beneficiary;</p> <p>(10) periods of limitation for commencing a judicial proceeding;</p> <p>(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and</p> <p>(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.</p>
<p>COMMENT</p> <p>Subsection (a) emphasizes that the Uniform Trust Code is primarily a default statute. While this Code provides numerous procedural rules on which a settlor may wish to rely, the settlor is generally free to override these rules and to prescribe the conditions under which the trust is to be administered. With only limited exceptions, the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary are as specified in the terms of the trust.</p> <p>Subsection (b) lists the items not subject to override in the terms of the trust. Because subsection (b) refers specifically to other sections of the Code, enacting jurisdictions</p>	<p>REPORTER’S COMMENT</p> <p>Section 62-7-105(a) begins with the premise that the provisions of the South Carolina Trust Code govern trusts when the terms of a trust do not otherwise direct. While this Code provides numerous procedural rules on which a settlor may wish to rely, the settlor is generally free to override these rules and to prescribe the conditions under which the trust is to be administered. However, subsection (b) lists eleven separate requirements that may not be waived and will be controlled by the terms of the SCTC irrespective of the terms of the trust.</p> <p>With only limited exceptions, the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary are as specified</p>

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<p>modifying these other sections may also need to modify subsection (b).</p> <p>Subsection (b)(1) confirms that the requirements for a trust's creation, such as the necessary level of capacity and the requirement that a trust have a legal purpose, are controlled by statute and common law, not by the settlor. For the requirements for creating a trust, see Sections 401-409. Subsection (b)(12) makes clear that the settlor may not reduce any otherwise applicable period of limitations for commencing a judicial proceeding. See Sections 604 (period of limitations for contesting validity of revocable trust), and 1005 (period of limitation on action for breach of trust). Similarly, a settlor may not so negate the responsibilities of a trustee that the trustee would no longer be acting in a fiduciary capacity. Subsection (b)(2) provides that the terms may not eliminate a trustee's duty to act in good faith and in accordance with the purposes of the trust. Subsection (b)(3) provides that the terms may not eliminate the requirement that a trust and its terms must be for the benefit of the beneficiaries. Subsection (b)(3) also provides that the terms may not eliminate the requirement that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve. Subsection (b)(2)-(3) are echoed in Sections 404 (trust and its terms must be for benefit of beneficiaries; trust must have a purpose that is lawful, not contrary to public policy, and possible to achieve), 801 (trustee must administer trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries), 802(a) (trustee must administer trust solely in interests of the beneficiaries), 814 (trustee must exercise discretionary power in good faith and</p>	<p>in the terms of the trust.</p> <p>Subsection (b) lists the items not subject to override in the terms of the trust.</p> <p>Subsection (b)(1) confirms that the requirements for a trust's creation, such as the necessary level of capacity and the requirement that a trust have a legal purpose, are controlled by statute and common law, not by the settlor. For the requirements for creating a trust, see Sections 62-7-401 through 409. Subsection (b)(10) makes clear that the settlor may not reduce any otherwise applicable period of limitations for commencing a judicial proceeding. See Sections 62-7-604 (period of limitations for contesting validity of revocable trust), and 62-7-1005 (period of limitation on action for breach of trust). Similarly, a settlor may not so negate the responsibilities of a trustee that the trustee would no longer be acting in a fiduciary capacity. Subsection (b)(2) provides that the terms may not eliminate a trustee's duty to act in good faith and in accordance with the purposes of the trust. Subsection (b)(3) provides that the terms may not eliminate the requirement that a trust and its terms must be for the benefit of the beneficiaries. Subsection (b)(3) also provides that the terms may not eliminate the requirement that the trust have a purpose that is lawful and possible to achieve. Subsection (b)(2)-(3) are echoed in Sections 62-7-404 (trust and its terms must be for benefit of beneficiaries; trust must have a purpose that is lawful and possible to achieve), 62-7-801 (trustee must administer trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries), 62-7-802(a) (trustee must administer trust solely in interests of the beneficiaries), 62-7-814 (trustee must exercise discretionary power in good faith and in accordance with its terms and purposes and the interests of the beneficiaries), and 62-7-1008 (exculpatory term unenforceable to extent it relieves</p>

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<p>in accordance with its terms and purposes and the interests of the beneficiaries), and 1008 (exculpatory term unenforceable to extent it relieves trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust and the interests of the beneficiaries).</p> <p>The terms of a trust may not deny a court authority to take such action as necessary in the interests of justice, including requiring that a trustee furnish bond. Subsection (b)(6), (13). Additionally, should the jurisdiction adopting this Code enact the optional provisions on subject-matter jurisdiction and venue, subsection (b)(14) similarly provides that such provisions cannot be altered in the terms of the trust. The power of the court to modify or terminate a trust under Sections 410 through 416 is not subject to variation in the terms of the trust. Subsection (b)(4). However, all of these Code sections involve situations which the settlor could have addressed had the settlor had sufficient foresight. These include situations where the purpose of the trust has been achieved, a mistake was made in the trust’s creation, or circumstances have arisen that were not anticipated by the settlor.</p> <p>Section 813 imposes a general obligation to keep the beneficiaries informed as well as several specific notice requirements. Subsections (b)(8) and (b)(9) specify limits on the settlor’s ability to waive these information requirements. With respect to beneficiaries age 25 or older, a settlor may dispense with all of the requirements of Section 813 except for the duties to inform the beneficiaries of the existence of the trust, of the identity of the trustee, and to provide a beneficiary upon request with such reports as the trustee may</p>	<p>trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust and the interests of the beneficiaries). SCTC Section 62-7-404 does not include the words “not contrary to public policy,” found in UTC Section 404, recognizing that existing South Carolina law would invalidate trusts that are contrary to public policy.</p> <p>The UTC provides that the terms of a trust may not deny a court authority to take such action as necessary in the interests of justice, including requiring that a trustee furnish bond. UTC Subsections (b)(6), (13). The SCTC does not include the UTC version of subsection 105(b)(6). Section 62-7-702 of the South Carolina Trust Code provides the situations for which the trustee must provide bond.</p> <p>UTC subsection (b)(14) and SCTC subsection (b)(12) similarly provides that such provisions cannot be altered in the terms of the trust. The power of the court to modify or terminate a trust under Sections 62-7-410 through 62-7-416 is not subject to variation in the terms of the trust. Subsection (b)(4). However, all of these Code sections involve situations which the settlor could have addressed had the settlor had sufficient foresight. These include situations where the purpose of the trust has been achieved, a mistake was made in the trust’s creation, or circumstances have arisen that were not anticipated by the settlor.</p> <p>Section 62-7-813 imposes a general obligation to keep the beneficiaries informed as well as several specific notice requirements. UTC Subsections (b)(8) and (b)(9) specify limits on the settlor’s ability to waive these information requirements. The South Carolina Trust Code does not include the UTC version of subsections 105(b)(8)-(9).</p> <p>In conformity with traditional doctrine, the SCTC limits the ability of a settlor to exculpate a trustee</p>

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<p>have prepared. Among the specific requirements that a settlor may waive include the duty to provide a beneficiary upon request with a copy of the trust instrument (Section 813(b)(1)), and the requirement that the trustee provide annual reports to the qualified beneficiaries (Section 813(c)). The furnishing of a copy of the entire trust instrument and preparation of annual reports may be required in a particular case, however, if such information is requested by a beneficiary and is reasonably related to the trust’s administration.</p> <p>Responding to the desire of some settlors that younger beneficiaries not know of the trust’s bounty until they have reached an age of maturity and self-sufficiency, subsection (b)(8) allows a settlor to provide that the trustee need not even inform beneficiaries under age 25 of the existence of the trust. However, pursuant to subsection (b)(9), if the younger beneficiary learns of the trust and requests information, the trustee must respond. More generally, subsection (b)(9) prohibits a settlor from overriding the right provided to a beneficiary in Section 813(a) to request from the trustee of an irrevocable trust copies of trustee reports and other information reasonably related to the trust’s administration.</p> <p>During the drafting of the Uniform Trust Code, the drafting committee discussed and rejected a proposal that the ability of the settlor to waive required notice be based on the nature of the beneficiaries’ interest and not on the beneficiaries’ age. Advocates of this alternative approach concluded that a settlor should be able to waive required notices to the remainder beneficiaries, regardless of their age. Enacting jurisdictions preferring this alternative should substitute the language “adult and current or</p>	<p>from liability for breach of trust. The limits are specified in Section 62-7-1008. UTC Subsection (b)(10) and SCTC Subsection (b)(8) of this section provide a cross-reference. Similarly, subsection (b)(7) provides a cross-reference to Section 708(b), which limits the binding effect of a provision specifying the trustee’s compensation.</p> <p>Finally, UTC subsection (b)(11) and SCTC subsection (b)(9) clarify that a settlor is not free to limit the rights of third persons, such as purchasers of trust property. Subsection (b)(5) clarifies that a settlor may not restrict the rights of a beneficiary’s creditors except to the extent a spendthrift restriction is allowed as provided in Article 5.</p> <p>2001 Amendment. By amendment in 2001, subsection (b)(3), (8) and (9) were revised to read as above. The language in subsection (b)(3) “that the trust have a purpose that is lawful and possible to achieve” is new. This addition clarifies that the settlor may not waive this common law requirement, which is codified in the Code at Section 62-7-404. SCTC Section 62-7-404 does not include the words “not contrary to public policy,” found in UTC Section 404, recognizing that existing South Carolina law would invalidate trusts that are contrary to public policy. As a result, SCTC subsection (b)(3) does not include the words “not contrary to public policy.”</p> <p>The SCTC does not include the UTC version of Subsections 105 (b)(8) - (9) thus the 2001 Amendment which applies to Subsections 105 (b)(8)-(9) is not applicable.</p> <p>2010 Amendment to the SCTC. The 2010 amendment added subsection (b)(6) relating to limitations on a settlor’s agent; and redesignated former subsections (b)(6) through (b)(11) as subsections (b)(7) through (b)(12), respectively.</p>

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<p>permissible distributees of trust income or principal” for the reference to “qualified beneficiaries” in subsection (b)(8). They should also delete the reference to beneficiaries “who have attained the age of 25 years.”</p> <p>Waiver by a settlor of the trustee’s duty to keep the beneficiaries informed of the trust’s administration does not otherwise affect the trustee’s duties. The trustee remains accountable to the beneficiaries for the trustee’s actions.</p> <p>Neither subsection (b)(8) nor (b)(9) apply to revocable trusts. The settlor of a revocable trust may waive all reporting to the beneficiaries, even in the event the settlor loses capacity. If the settlor is silent about the subject, reporting to the beneficiaries will be required upon the settlor’s loss of capacity. See Section 603.</p> <p>In conformity with traditional doctrine, the Uniform Trust Code limits the ability of a settlor to exculpate a trustee from liability for breach of trust. The limits are specified in Section 1008. Subsection (b)(10) of this section provides a cross-reference. Similarly, subsection (b)(7) provides a cross-reference to Section 708(b), which limits the binding effect of a provision specifying the trustee’s compensation.</p> <p>Finally, subsection (b)(11) clarifies that a settlor is not free to limit the rights of third persons, such as purchasers of trust property. Subsection (b)(5) clarifies that a settlor may not restrict the rights of a beneficiary’s creditors except to the extent a spendthrift restriction is allowed as provided in Article 5.</p> <p>2001 Amendment. By amendment in 2001, subsection (b)(3), (8) and (9) were revised to read as above. The language in subsection (b)(3) “that the trust have a purpose that is</p>	

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<p>lawful, not contrary to public policy, and possible to achieve” is new. This addition clarifies that the settlor may not waive this common law requirement, which is codified in the Code at Section 404.</p> <p>Subsection (b)(8) and (9) formerly provided:</p> <p>(8) the duty to notify the qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, and of their right to request trustee’s reports and other information reasonably related to the administration of the trust;</p> <p>(9) the duty to respond to the request of a beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust.</p> <p>The amendment clarifies that the information requirements not subject to waiver are requirements specified in Section 813 of the Code.</p> <p>SOUTH CAROLINA COMMENT</p> <p>Section 62-7-105(a) begins with the premise that the provisions of the South Carolina Trust Code govern trusts when the terms of a trust do not otherwise direct. However, subsection (b) lists eleven separate requirements that may not be waived and will be controlled by the terms of the SCTC irrespective of the terms of the trust. Subsection 105(b)(6) of the UTC prohibits a Settlor from forgoing a bond requirement of their Trustee. The reference to Uniform Trust Code subsection 105(b)(6) in the Uniform Trust Code Comment is inapplicable to the South Carolina Trust Code because the SCTC does not include the UTC version of subsection 105(b)(6). Section 62-7-702 of the South Carolina Trust Code provides the situations for which the Trustee must provide bond. The</p>	

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<p>references to Uniform Trust Code subsection 105(b)(8)-(9) in the Uniform Trust Code Comment are inapplicable to the South Carolina Trust Code because the SCTC does not include the UTC versions of subsection 105(b)(8)-(9). The other references to subsection 105(b) in the Uniform Trust Code Comment should be read to accommodate the SCTC's failure to include UTC subsection 105(b)(6), (8), and (9). For example, the reference to UTC subsection 105(b) (10) in the UTC Comment should be read to apply to SCTC Section 62-7-105(b)(7).</p> <p>EFFECT OF AMENDMENT</p> <p>The 2010 amendment added subsection (b)(6) relating to limitations on a settlor's agent; and redesignated former subsections (b)(6) through (b)(11) as subsections (b)(7) through (b)(12), respectively.</p> <p>LIBRARY REFERENCES</p> <p>Trusts 7. Westlaw Topic No. 390. C.J.S. Trusts Section 143.</p> <p>RESEARCH REFERENCES</p> <p>Forms South Carolina Legal and Business Forms Section 16:2, Legal Principles--Types of Trusts.</p> <p>Treatises and Practice Aids Bogert - The Law of Trusts and Trustees Section 222, Spendthrift Trusts in the United States. Bogert - The Law of Trusts and Trustees Section 323, The Creation of a Charitable Trust. Bogert - The Law of Trusts and Trustees Section 342, The Rule Against Remoteness of Vesting. Bogert - The Law of Trusts and Trustees Section 362, Charitable Trust Purposes--Requisite Benefits to Flow from</p>	

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<p>Charitable Trust. Bogert - The Law of Trusts and Trustees Section 369, Definitions of Charity.</p> <p>SECTION 62-7-106. Common law of trusts; principles of equity.</p> <p>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.</p> <p>COMMENT The Uniform Trust Code codifies those portions of the law of express trusts that are most amenable to codification. The Code is supplemented by the common law of trusts, including principles of equity, particularly as articulated in the Restatement of Trusts, Restatement (Third) of Property: Wills and Other Donative Transfers, and the Restatement of Restitution. The common law of trusts is not static but includes the contemporary and evolving rules of decision developed by the courts in exercise of their power to adapt the law to new situations and changing conditions. It also includes the traditional and broad equitable jurisdiction of the court, which the Code in no way restricts.</p> <p>The statutory text of the Uniform Trust Code is also supplemented by these Comments, which, like the Comments to any Uniform Act, may be relied on as a guide for interpretation. See <i>Acierno v. Worthy Bros. Pipeline Corp.</i>, 656 A.2d 1085, 1090 (Del. 1995) (interpreting Uniform Commercial Code); <i>Yale University v. Blumenthal</i>, 621 A.2d 1304, 1307 (Conn. 1993) (interpreting Uniform Management of Institutional Funds Act); 2 Norman Singer,</p>	<p>SECTION 62-7-106.</p> <p>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.</p> <p>REPORTER’S COMMENT The SCTC codifies those portions of the law of express trusts that are most amenable to codification. The Code is supplemented by the common law of trusts, including principles of equity, particularly as articulated in the Restatement of Trusts, Restatement (Third) of Property: Wills and Other Donative Transfers, and the Restatement of Restitution. The common law of trusts is not static but includes the contemporary and evolving rules of decision developed by the courts in exercise of their power to adapt the law to new situations and changing conditions. It also includes the traditional and broad equitable jurisdiction of the court, which the Code in no way restricts.</p> <p>The statutory text of the SCTC is also supplemented by these Comments, which, like the Comments to any Uniform Act, may be relied on as a guide for interpretation. See <i>Acierno v. Worthy Bros. Pipeline Corp.</i>, 656 A.2d 1085, 1090 (Del. 1995) (interpreting Uniform Commercial Code); <i>Yale University v. Blumenthal</i>, 621 A.2d 1304, 1307 (Conn. 1993) (interpreting Uniform Management of Institutional Funds Act); 2 Norman Singer, <i>Statutory Construction</i> Section 52.05 (6th ed. 2000); Jack Davies, <i>Legislative Law and Process in a Nutshell</i> Section 55-4 (2d ed. 1986). See also South Carolina Probate Code Section 62-1-103.</p>

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<p>Statutory Construction Section 52.05 (6th ed. 2000); Jack Davies, Legislative Law and Process in a Nutshell Section 55-4 (2d ed. 1986).</p> <p>SECTION 62-7-107. Governing law.</p> <p>The meaning and effect of the terms of a trust are determined by:</p> <p>(1) the law of the jurisdiction designated in the terms of the trust; or</p> <p>(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.</p> <p>COMMENT</p> <p>This section provides rules for determining the law that will govern the meaning and effect of particular trust terms. The law to apply to determine whether a trust has been validly created is determined under Section 403.</p> <p>Paragraph (1) allows a settlor to select the law that will govern the meaning and effect of the terms of the trust. The jurisdiction selected need not have any other connection to the trust. The settlor is free to select the governing law regardless of where the trust property may be physically located, whether it consists of real or personal property, and whether the trust was created by will or during the settlor’s lifetime. This section does not attempt to specify the strong public policies sufficient to invalidate a settlor’s choice of governing law. These public policies will vary depending upon the locale and may change over time.</p> <p>Paragraph (2) provides a rule for trusts without governing law provisions-the meaning and</p>	<p>SECTION 62-7-107.</p> <p>The meaning and effect of the terms of a trust are determined by:</p> <p>(1) the law of the jurisdiction designated in the terms of the trust; or</p> <p>(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.</p> <p>REPORTER’S COMMENT</p> <p>This section provides rules for determining the law that will govern the meaning and effect of particular trust terms. The law to apply to determine whether a trust has been validly created is determined under Section 62-7-403.</p> <p>Under prior South Carolina law, there was no statutory counterpart to this section; common law principles controlled.</p> <p>Paragraph (1) allows a settlor to select the law that will govern the meaning and effect of the terms of the trust. The jurisdiction selected need not have any other connection to the trust. The settlor is free to select the governing law regardless of where the trust property may be physically located, whether it consists of real or personal property, and whether the trust was created by will or during the settlor’s lifetime. This section does not attempt to specify the strong public policies sufficient to invalidate a settlor’s choice of governing law. These public policies will vary depending upon the locale and may change over time. See, however, <i>Russell v.</i></p>

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<p>effect of the trust’s terms are to be determined by the law of the jurisdiction having the most significant relationship to the matter at issue. Factors to consider in determining the governing law include the place of the trust’s creation, the location of the trust property, and the domicile of the settlor, the trustee, and the beneficiaries. See Restatement (Second) of Conflict of Laws Sections 270 cmt. c and 272 cmt. d (1971). Other more general factors that may be pertinent in particular cases include the relevant policies of the forum, the relevant policies of other interested jurisdictions and degree of their interest, the protection of justified expectations and certainty, and predictability and uniformity of result. See Restatement (Second) of Conflict of Laws Section 6 (1971). Usually, the law of the trust’s principal place of administration will govern administrative matters and the law of the place having the most significant relationship to the trust’s creation will govern the dispositive provisions.</p> <p>This section is consistent with and was partially patterned on the Hague Convention on the Law Applicable to Trusts and on their Recognition, signed on July 1, 1985. Like this section, the Hague Convention allows the settlor to designate the governing law. Hague Convention art. 6. Absent a designation, the Convention provides that the trust is to be governed by the law of the place having the closest connection to the trust. Hague Convention art. 7. The Convention also lists particular public policies for which the forum may decide to override the choice of law that would otherwise apply. These policies are protection of minors and incapable parties, personal and proprietary effects of marriage,</p>	<p><i>Wachovia Bank</i>, 353 S.C. 208, 578 S.E.2d 329 (2003), in which the South Carolina Supreme Court cited language from the <i>Restatement (Second) of Conflict of Laws</i> Sections 268-270 (1971) in adopting a rule similar to that of SCTC Section 107.</p> <p>Paragraph (2) provides a rule for trusts without governing law provisions - the meaning and effect of the trust’s terms are to be determined by the law of the jurisdiction having the most significant relationship to the matter at issue. Factors to consider in determining the governing law include the place of the trust’s creation, the location of the trust property, and the domicile of the settlor, the trustee, and the beneficiaries. See Restatement (Second) of Conflict of Laws Sections 270 cmt. c and 272 cmt. d (1971). Other more general factors that may be pertinent in particular cases include the relevant policies of the forum, the relevant policies of other interested jurisdictions and degree of their interest, the protection of justified expectations and certainty, and predictability and uniformity of result. See Restatement (Second) of Conflict of Laws Section 6 (1971). Usually, the law of the trust’s principal place of administration will govern administrative matters and the law of the place having the most significant relationship to the trust’s creation will govern the dispositive provisions.</p> <p>This section is consistent with and was partially patterned on the Hague Convention on the Law Applicable to Trusts and on their Recognition, signed on July 1, 1985. Like this section, the Hague Convention allows the settlor to designate the governing law. Hague Convention art. 6. Absent a designation, the Convention provides that the trust is to be governed by the law of the place having the closest connection to the trust. Hague Convention art. 7. The Convention also lists particular public policies for which the forum may decide to override the choice of law that would otherwise apply. These</p>

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<p>succession rights, transfer of title and security interests in property, protection of creditors in matters of insolvency, and, more generally, protection of third parties acting in good faith. Hague Convention art. 15.</p> <p>For the authority of a settlor to designate a trust's principal place of administration, see Section 108(a).</p> <p>SOUTH CAROLINA COMMENT</p> <p>Under prior South Carolina law, there was no statutory counterpart to this section; common law principles controlled.</p> <p>Subsection (1) of UTC Section 107 was revised to give a settlor the ability to dictate applicable state law without restriction. See, however, <i>Russell v. Wachovia Bank</i>, 353 S.C. 208, 578 S.E.2d 329 (2003), in which the South Carolina Supreme Court cited language from the Restatement (Second) of Conflict of Laws Sections 268-270 (1971) in adopting a rule similar to that of UTC Section 107. Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC Section 62-7-108(a), the reference to UTC Section 108(a) in the UTC Comment is appropriate for SCTC Section 62-7-108(b).</p> <p>SECTION 62-7-108. Principal place of administration.</p> <p>(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</p>	<p>policies are protection of minors and incapable parties, personal and proprietary effects of marriage, succession rights, transfer of title and security interests in property, protection of creditors in matters of insolvency, and, more generally, protection of third parties acting in good faith. Hague Convention art. 15.</p> <p>For the authority of a settlor to designate a trust's principal place of administration, see UTC Section 108(a) or SCTC Section 62-7-108(b). Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC Section 62-7-108(a), the reference to UTC Section 108(a) in the UTC Comment is appropriate for SCTC Section 62-7-108(b).</p> <p>SECTION 62-7-108.</p> <p>(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:</p>

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<p>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.</p> <p>(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:</p> <p>(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or</p> <p>(2) all or part of the administration occurs in the designated jurisdiction.</p> <p>(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.</p> <p>(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.</p> <p>(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 60 days before initiating the transfer. The notice of proposed transfer must include:</p> <p>(1) the name of the jurisdiction to which the principal place of administration is to be transferred;</p> <p>(2) the address and telephone number at the new</p>	<p>(1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or</p> <p>(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</p> <p>(3) the usual place of business or residence of any of the cotrustees as agreed upon by them.</p> <p>(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:</p> <p>(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or</p> <p>(2) all or part of the administration occurs in the designated jurisdiction.</p> <p>(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.</p> <p>(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.</p> <p>(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 60 <u>sixty</u> days before initiating the transfer. The notice of proposed transfer must include:</p> <p>(1) the name of the jurisdiction to which the principal place of administration is to be transferred;</p> <p>(2) the address and telephone number at the new location at which the trustee can be contacted;</p> <p>(3) an explanation of the reasons for the</p>

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<p>location at which the trustee can be contacted;</p> <p>(3) an explanation of the reasons for the proposed transfer;</p> <p>(4) the date on which the proposed transfer is anticipated to occur; and</p> <p>(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.</p> <p>(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.</p> <p>(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.</p> <p>COMMENT</p> <p>This section prescribes rules relating to a trust's principal place of administration. Locating a trust's principal place of administration will ordinarily determine which court has primary if not exclusive jurisdiction over the trust. It may also be important for other matters, such as payment of state income tax or determining the jurisdiction whose laws will govern the trust. See Section 107 comment.</p> <p>Because of the difficult and variable situations sometimes involved, the Uniform Trust Code does not attempt to further define principal place of administration. A trust's principal place of administration ordinarily will be the place where the trustee is located. Determining the principal place of administration becomes</p>	<p>proposed transfer;</p> <p>(4) the date on which the proposed transfer is anticipated to occur; and</p> <p>(5) the date, not less than 60 <u>sixty</u> days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.</p> <p>(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.</p> <p>(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.</p> <p>REPORTER'S COMMENT</p> <p>This section prescribes rules relating to a trust's principal place of administration. Locating a trust's principal place of administration will ordinarily determine which court has primary if not exclusive jurisdiction over the trust. It may also be important for other matters, such as payment of state income tax or determining the jurisdiction whose laws will govern the trust. <i>See</i> Section 62-7-107 comment.</p> <p>Because of the difficult and variable situations sometimes involved, the SCTC does not attempt to further define principal place of administration. A trust's principal place of administration ordinarily will be the place where the trustee is located. Determining the principal place of administration becomes more difficult, however, when cotrustees are located in different states or when a single institutional trustee has trust operations in more than one state. In such cases, other factors may become relevant, including the place where the trust records are kept or trust assets held, or in the case of an</p>

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<p>more difficult, however, when cotrustees are located in different states or when a single institutional trustee has trust operations in more than one state. In such cases, other factors may become relevant, including the place where the trust records are kept or trust assets held, or in the case of an institutional trustee, the place where the trust officer responsible for supervising the account is located.</p> <p>A concept akin to principal place of administration is used by the Office of the Comptroller of the Currency. Reserves that national banks are required to deposit with state authorities is based on the location of the office where trust assets are primarily administered. See 12 C.F.R. Section 9.14(b).</p> <p>Under the Uniform Trust Code, the fixing of a trust's principal place of administration will determine where the trustee and beneficiaries have consented to suit (Section 202), and the rules for locating venue within a particular state (Section 204). It may also be considered by a court in another jurisdiction in determining whether it has jurisdiction, and if so, whether it is a convenient forum.</p> <p>A settlor expecting to name a trustee or cotrustees with significant contacts in more than one state may eliminate possible uncertainty about the location of the trust's principal place of administration by specifying the jurisdiction in the terms of the trust. Under subsection (a), a designation in the terms of the trust is controlling if (1) a trustee is a resident of or has its principal place of business in the designated jurisdiction, or (2) all or part of the administration occurs in the designated jurisdiction. Designating the principal place of administration should be distinguished from designating the law to determine the meaning</p>	<p>institutional trustee, the place where the trust officer responsible for supervising the account is located.</p> <p>Under the SCTC, the fixing of a trust's principal place of administration will determine where the trustee and beneficiaries have consented to suit (Section 62-7-202), and the rules for locating venue within a particular state (Section 62-7-204). It may also be considered by a court in another jurisdiction in determining whether it has jurisdiction, and if so, whether it is a convenient forum.</p> <p>Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC Section 62-7-108(a), the references to the subsections of UTC Section 108 in the UTC Comment have been adjusted correspondingly for SCTC Section 62-7-108.</p> <p>SCTC Section 62-7-108(a) incorporates the provisions of former SCPC Section 62-7-202 (which dealt with venue), except SCTC subsection 108(a) is not limited to matters of venue.</p> <p>A settlor expecting to name a trustee or cotrustees with significant contacts in more than one state may eliminate possible uncertainty about the location of the trust's principal place of administration by specifying the jurisdiction in the terms of the trust. Under UTC subsection (a) and SCTC subsection (b), a designation in the terms of the trust is controlling if (1) a trustee is a resident of or has its principal place of business in the designated jurisdiction, or (2) all or part of the administration occurs in the designated jurisdiction. Designating the principal place of administration should be distinguished from designating the law to determine the meaning and effect of the trust's terms, as authorized by Section 62-7-107. A settlor is free to designate one jurisdiction as the principal place of administration and another to govern the meaning and effect of the trust's provisions.</p> <p>UTC Subsection (b) and SCTC subsection (c)</p>

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<p>and effect of the trust’s terms, as authorized by Section 107. A settlor is free to designate one jurisdiction as the principal place of administration and another to govern the meaning and effect of the trust’s provisions. Subsection (b) provides that 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. “Interests of the beneficiaries,” defined in Section 103(7), means the beneficial interests provided n the terms of the trust. Ordinarily, absent a substantial change or circumstances, the trustee may assume that the original place of administration is also the appropriate place of administration. The duty to administer the trust at an appropriate place may also dictate that the trustee not move the trust.</p> <p>Subsections (c)-(f) provide a procedure for changing the principal place of administration to another state or country. Such changes are often beneficial. A change may be desirable to secure a lower state income tax rate, or because of relocation of the trustee or beneficiaries, the appointment of a new trustee, or a change in the location of the trust investments. The procedure for transfer specified in this section applies only in the absence of a contrary provision in the terms of the trust. See Section 105. To facilitate transfer in the typical case, where all concur that a transfer is either desirable or is at least not harmful, a transfer can be accomplished without court approval unless a qualified beneficiary objects. To allow the qualified beneficiaries sufficient time to review a proposed transfer, the trustee must give the qualified beneficiaries at least 60 days prior notice of the transfer. Notice must be given not only to qualified beneficiaries as defined in</p>	<p>provide that 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. “Interests of the beneficiaries,” defined in Section 62-7-103(7), means the beneficial interests provided n the terms of the trust. Ordinarily, absent a substantial change or circumstances, the trustee may assume that the original place of administration is also the appropriate place of administration. The duty to administer the trust at an appropriate place may also dictate that the trustee not move the trust.</p> <p>UTC Subsections (c)-(f) and SCTC subsections (d)-(g) provide a procedure for changing the principal place of administration to another state or country. Such changes are often beneficial. A change may be desirable to secure a lower state income tax rate, or because of relocation of the trustee or beneficiaries, the appointment of a new trustee, or a change in the location of the trust investments. The procedure for transfer specified in this section applies only in the absence of a contrary provision in the terms of the trust. <i>See</i> Section 62-7-105. To facilitate transfer in the typical case, where all concur that a transfer is either desirable or is at least not harmful, a transfer can be accomplished without court approval unless a qualified beneficiary objects. To allow the qualified beneficiaries sufficient time to review a proposed transfer, the trustee must give the qualified beneficiaries at least 60 days prior notice of the transfer. Notice must be given not only to qualified beneficiaries as defined in Section 62-7-103(12) but also to those granted the rights of qualified beneficiaries under Section 62-7-110. To assure that those receiving notice have sufficient information upon which to make a decision, minimum contents of the notice are specified. If a qualified beneficiary objects, a trustee wishing to proceed with the</p>

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<p>Section 103(12) but also to those granted the rights of qualified beneficiaries under Section 110. To assure that those receiving notice have sufficient information upon which to make a decision, minimum contents of the notice are specified. If a qualified beneficiary objects, a trustee wishing to proceed with the transfer must seek court approval.</p> <p>In connection with a transfer of the principal place of administration, the trustee may transfer some or all of the trust property to a new trustee located outside of the state. The appointment of a new trustee may also be essential if the current trustee is ineligible to administer the trust in the new place. Subsection (f) clarifies that the appointment of the new trustee must comply with the provisions on appointment of successor trustees as provided in the terms of the trust or under Section 704. Absent an order of succession in the terms of the trust, Section 704(c) provides the procedure for appointment of a successor trustee of a noncharitable trust, and Section 704(d) the procedure for appointment of a successor trustee of a charitable trust.</p> <p>While transfer of the principal place of administration will normally change the governing law with respect to administrative matters, a transfer does not normally alter the controlling law with respect to the validity of the trust and the construction of its dispositive provisions. See 5A Austin W. Scott & William F. Fratcher, <i>The Law of Trusts</i> Section 615 (4th ed. 1989).</p> <p>SOUTH CAROLINA COMMENT</p> <p>Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC Section 62-7-108(a), the references to the</p>	<p>transfer must seek court approval.</p> <p>SCTC Section 62-7-108(e), which corresponds to UTC subsection 108(d), adds to the UTC version the introductory phrase “unless otherwise designated in the trust.”</p> <p>In connection with a transfer of the principal place of administration, the trustee may transfer some or all of the trust property to a new trustee located outside of the state. The appointment of a new trustee may also be essential if the current trustee is ineligible to administer the trust in the new place. UTC Subsection (f) and SCTC subsection (g) clarifies that the appointment of the new trustee must comply with the provisions on appointment of successor trustees as provided in the terms of the trust or under Section 62-7-704. Absent an order of succession in the terms of the trust, Section 62-7-704(c) provides the procedure for appointment of a successor trustee of a noncharitable trust, and Section 62-7-704(d) the procedure for appointment of a successor trustee of a charitable trust.</p> <p>While transfer of the principal place of administration will normally change the governing law with respect to administrative matters, a transfer does not normally alter the controlling law with respect to the validity of the trust and the construction of its dispositive provisions. See 5A Austin W. Scott & William F. Fratcher, <i>The Law of Trusts</i> Section 615 (4th ed. 1989).</p>

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<p>subsections of UTC Section 108 in the UTC Comment should be adjusted correspondingly for SCTC Section 62-7-108.</p> <p>SCTC Section 62-7-108(a) incorporates the provisions of former SCPC Section 62-7-202 (which dealt with venue), except SCTC subsection 108(a) is not limited to matters of venue.</p> <p>SCTC Section 62-7-108(e), which corresponds to UTC subsection 108(d), adds to the UTC version the introductory phrase “unless otherwise designated in the trust.”</p> <p>SECTION 62-7-109. Methods and waiver of notice.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>	<p>SECTION 62-7-109.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>

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<p>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:</p> <p>(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:</p> <p>(2) by delivering a copy thereof to the person being notified personally at least twenty days before the time set for the hearing; or</p> <p>(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.</p> <p>(e) The court for good cause shown may provide for a different method or time of giving notice for any hearing.</p> <p>(f) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.</p> <p>COMMENT</p> <p>Subsection (a) clarifies that notices under the Uniform Trust Code may be given by any method likely to result in its receipt by the person to be notified. The specific methods listed in the subsection are illustrative, not exhaustive. Subsection (b) relieves a trustee of responsibility for what would otherwise be an impossible task, the giving of notice to a person whose identity or location is unknown and not reasonably ascertainable by the trustee. The section does not define when a notice is deemed</p>	<p>that notice be sent to his attorney. Notice shall be given:</p> <p>(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:</p> <p>(2) by delivering a copy thereof to the person being notified personally at least twenty days before the time set for the hearing; or</p> <p>(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.</p> <p>(e) The court for good cause shown may provide for a different method or time of giving notice for any hearing.</p> <p>(f) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.</p> <p>REPORTER'S COMMENT</p> <p>Subsection (a) clarifies that notices under the SCTC may be given by any method likely to result in its receipt by the person to be notified. The specific methods listed in the subsection are illustrative, not exhaustive. Subsection (b) relieves a trustee of responsibility for what would otherwise be an impossible task, the giving of notice to a person whose identity or location is unknown and not reasonably ascertainable by the trustee. The section does not define when a notice is deemed to have been sent or delivered or person deemed to be unknown or not reasonably ascertainable, the drafters preferring to leave this issue to the enacting jurisdiction's rules of civil procedure.</p> <p>Under the SCTC, certain actions can be taken</p>

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<p>to have been sent or delivered or person deemed to be unknown or not reasonably ascertainable, the drafters preferring to leave this issue to the enacting jurisdiction's rules of civil procedure. Under the Uniform Trust Code, certain actions can be taken upon unanimous consent of the beneficiaries or qualified beneficiaries. See Sections 411 (termination of noncharitable irrevocable trust) and 704 (appointment of successor trustee). Subsection (b) of this section only authorizes waiver of notice. A consent required from a beneficiary in order to achieve unanimity is not waived because the beneficiary is missing. But the fact a beneficiary cannot be located may be a sufficient basis for a substitute consent to be given by another person on the beneficiary's behalf under the representation principles of Article 3.</p> <p>To facilitate administration, subsection (c) allows waiver of notice by the person to be notified or sent the document. Among the notices and documents to which this subsection can be applied are notice of a proposed transfer of principal place of administration (Section 108(d)) or of a trustee's report (Section 813(c)). This subsection also applies to notice to qualified beneficiaries of a proposed trust combination or division (Section 417), of a temporary assumption of duties without accepting trusteeship (Section 701(c)(1)), and of a trustee's resignation (Section 705(a)(1)).</p> <p>Notices under the Uniform Trust Code are nonjudicial. Pursuant to subsection (d), notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.</p>	<p>upon unanimous consent of the beneficiaries or qualified beneficiaries. See Sections 62-7-411 (termination of noncharitable irrevocable trust) and 62-7-704 (appointment of successor trustee). UTC Subsection (b) of this section only authorizes waiver of notice. A consent required from a beneficiary in order to achieve unanimity is not waived because the beneficiary is missing. But the fact a beneficiary cannot be located may be a sufficient basis for a substitute consent to be given by another person on the beneficiary's behalf under the representation principles of Part 3.</p> <p>In a nonjudicial context, SCTC Section 62-7-109(b) does not require notification of a person whose identity or location is unknown or cannot be reasonably ascertainable.</p> <p>To facilitate administration, subsection (c) allows waiver of notice by the person to be notified or sent the document. Among the notices and documents to which this subsection can be applied are notice of a proposed transfer of principal place of administration (UTC Section 108(d) and SCTC Section 62-7-108(e)) or of a trustee's report (Section 62-7-813(e)). This subsection also applies to notice to qualified beneficiaries of a proposed trust combination or division (Section 62-7-417), of a temporary assumption of duties without accepting trusteeship (Section 62-7-701(c)(1)), and of a trustee's resignation (Section 62-7-705(a)(1)).</p> <p>Notices under the SCTC are nonjudicial.</p> <p>Previous South Carolina law had no precise counterpart. However, the South Carolina Probate Code contains various provisions respecting notice. The general notice section, SCPC Section 62-1-401 provides that notice of a hearing or other petition shall be delivered at least twenty (20) days before the time set for the hearing by certified, registered, or ordinary first class mail, or by delivering a copy to the person being notified at least twenty (20) days</p>
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<p>Previous South Carolina law had no precise counterpart. However, the South Carolina Probate Code contains various provisions respecting notice. The general notice section, SCPC Section 62-1-401 provides that notice of a hearing or other petition shall be delivered at least twenty (20) days before the time set for the hearing by certified, registered, or ordinary first class mail, or by delivering a copy to the person being notified at least twenty (20) days before the time set for hearing. That section also provides for the service of notice of hearing by publication if the address or identity of the person cannot be ascertained with reasonable diligence. SCTC Section 62-7-109(d) differs from the UTC version and incorporates the substance of SCPC Section 62-1-401. The SCTC adds Subsections 62-7-109(e) and (f), which are not in UTC Section 109. The references in the UTC Comment to the subsections of UTC Section 109 should be adjusted appropriately.</p> <p>In a nonjudicial context, SCTC Section 62-7-109(b) does not require notification of a person whose identity or location is unknown or cannot be reasonably ascertainable.</p>	<p>before the time set for hearing. That section also provides for the service of notice of hearing by publication if the address or identity of the person cannot be ascertained with reasonable diligence. SCTC Section 62-7-109(d) differs from the UTC version and incorporates the substance of SCPC Section 62-1-401.</p> <p>The SCTC adds Subsections 62-7-109(e) and (f), which are not in UTC Section 109.</p>
<p>SECTION 62-7-110. Requirement of notice to others.</p> <p>(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.</p> <p>(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</p>	<p>SECTION 62-7-110.</p> <p>(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.</p> <p>(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</p>

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<p>charitable organization, on the date the charitable organization's qualification is being determined:</p> <p>(A) is a distributee or permissible distributee of trust income or principal;</p> <p>(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</p> <p>(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.</p> <p>(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.</p> <p>COMMENT</p> <p>Under the Uniform Trust Code, certain notices need be given only to the "qualified" beneficiaries. For the definition of "qualified beneficiary," see Section 103(12). Among these notices are notice of a transfer of the trust's principal place of administration (Section 108(d)), notice of a trust division or combination (Section 417), notice of a trustee resignation (Section 705(a)(1)), and notice of a trustee's annual report (Section 813(c)). Subsection (a) of this section authorizes other beneficiaries to receive one or more of these notices by filing a request for notice with the trustee.</p> <p>Under the Code, certain actions, such as the appointment of a successor trustee, can be accomplished by the consent of the qualified beneficiaries. See, e.g., Section 704 (filling vacancy in trusteeship). Subsection (a) only</p>	<p>organization's qualification is being determined:</p> <p>(A) is a distributee or permissible distributee of trust income or principal;</p> <p>(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</p> <p>(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.</p> <p>(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.</p> <p>REPORTER'S COMMENT</p> <p>Former South Carolina law had no statutory counterpart.</p> <p>Under the SCTC, certain notices need be given only to the "qualified" beneficiaries. For the definition of "qualified beneficiary," see Section 62-7-103(12). Among these notices are notice of a transfer of the trust's principal place of administration (UTC Section 108(d) and SCTC Section 62-7-108(e)), notice of a trust division or combination (Section 62-7-417), notice of a trustee resignation (Section 62-7-705(a)(1)), and notice of a trustee's annual report (Section 62-7-813(c)). Subsection (a) of this section authorizes other beneficiaries to receive one or more of these notices by filing a request for notice with the trustee.</p> <p>Under the Code, certain actions, such as the appointment of a successor trustee, can be accomplished by the consent of the qualified beneficiaries. See, e.g., Section 62-7-704 (filling vacancy in trusteeship). Subsection (a) addresses only notice, not required consent. A person who</p>

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<p>addresses notice, not required consent. A person who requests notice under subsection (a) does not thereby acquire a right to participate in actions that can be taken only upon consent of the qualified beneficiaries.</p> <p>Charitable trusts do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. In the case of a charitable trust, this includes the state’s attorney general and charitable organizations expressly designated to receive distributions under the terms of the trust, who under subsections (b)-(c) are granted the rights of qualified beneficiaries. Because the charitable organization must be named in the terms of the trust and must be designated to receive distributions, excluded are organizations who may receive distributions only in the trustee’s discretion and organizations holding remainder interests subject to a contingency.</p> <p>Subsection (b) similarly grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a trust created for an animal or other trust with a valid purpose but no ascertainable beneficiary. For the requirements for creating such trusts, see Sections 408 and 409.</p> <p>“Attorney general” is placed in brackets in subsection (c) to accommodate jurisdictions which grant enforcement authority over charitable trusts to another designated official. This section does not limit other means by which the attorney general or other designated official can enforce a charitable trust.</p> <p>2001 Amendment. By amendment in 2001, “charitable organization expressly designated to receive distributions” was substituted for “charitable organization expressly entitled to</p>	<p>requests notice under subsection (a) does not thereby acquire a right to participate in actions that can be taken only upon consent of the qualified beneficiaries.</p> <p>Charitable trusts do not have beneficiaries in the usual sense. However, certain persons, while not technically beneficiaries, do have an interest in seeing that the trust is enforced. In the case of a charitable trust, this includes the state’s attorney general and charitable organizations expressly designated to receive distributions under the terms of the trust. Under subsection (b), charitable organizations expressly designated in the terms of the trust to receive distributions and who would qualify as a qualified beneficiary were the trust noncharitable, are granted the rights of qualified beneficiaries. Because the charitable organization must be expressly named in the terms of the trust and must be designated to receive distributions, excluded are organizations that might receive distributions in the trustee’s discretion but that are not named in the trust’s terms. Requiring that the organization have an interest similar to that of a beneficiary of a private trust also denies the rights of a qualified beneficiary to organizations holding remote interests. For further discussion of the definition of “qualified beneficiary,” see Section 62-7-103 comment.</p> <p>Subsection (c) similarly grants the rights of qualified beneficiaries to persons appointed by the terms of the trust or by the court to enforce a trust created for an animal or other trust with a valid purpose but no ascertainable beneficiary. For the requirements for creating such trusts, see Sections 62-7-408 and 62-7-409.</p> <p>Section 62-7-110 does not include a counterpart to UTC subsection 110(d), in the 2004 UTC Amendments, which gives the state Attorney General the rights of a qualified beneficiary in</p>

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<p>receive benefits” in subsection (b). The amendment conforms the language of this section to terminology used elsewhere in the Code.</p> <p>SOUTH CAROLINA COMMENT Former South Carolina had no statutory counterpart. SCTC Section 62-7-110 includes provisions contained in the 2004 Amendments to the UTC, which are not discussed in the Comment to UTC Section 110. SCTC Section 62-7-110 does not include a counterpart to UTC subsection 110(d), in the 2004 UTC Amendments, which gives the state Attorney General the rights of a qualified beneficiary in certain cases. See, however, SCTC Section 62-7-405, which provides certain rights and powers to the South Carolina Attorney General.</p> <p>SECTION 62-7-111. Nonjudicial settlement agreements.</p> <p>(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.</p> <p>(b) Interested persons may enter into a binding nonjudicial settlement agreement with respect to only the following trust matters:</p> <p>(1) the approval of a trustee’s report or accounting;</p> <p>(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;</p> <p>(3) the resignation or appointment of a trustee and the determination of a trustee’s compensation;</p>	<p>certain cases. See, however, SCTC Section 62-7-405, which provides certain rights and powers to the South Carolina Attorney General.</p> <p>Subsection (d) does not limit other means by which the attorney general or other designated official can enforce a charitable trust.</p> <p>SECTION 62-7-111.</p> <p>(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.</p> <p>(b) Interested persons may enter into a binding nonjudicial settlement agreement with respect to only the following trust matters:</p> <p>(1) the approval of a trustee’s report or accounting;</p> <p>(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;</p> <p>(3) the resignation or appointment of a trustee and the determination of a trustee’s compensation;</p> <p>(4) transfer of a trust’s principal place of administration; and</p>

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<p>(4) transfer of a trust’s principal place of administration; and</p> <p>(5) liability of a trustee for an action relating to the trust.</p> <p>(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.</p> <p>COMMENT</p> <p>While the Uniform Trust Code recognizes that a court may intervene in the administration of a trust to the extent its jurisdiction is invoked by interested persons or otherwise provided by law (see Section 201(a)), resolution of disputes by nonjudicial means is encouraged. This section facilitates the making of such agreements by giving them the same effect as if approved by the court. To achieve such certainty, however, subsection (c) requires that the nonjudicial settlement must contain terms and conditions that a court could properly approve. Under this section, a nonjudicial settlement cannot be used to produce a result not authorized by law, such as to terminate a trust in an impermissible manner.</p> <p>Trusts ordinarily have beneficiaries who are minors; incapacitated, unborn or unascertained. Because such beneficiaries cannot signify their consent to an agreement, binding settlements can ordinarily be achieved only through the application of doctrines such as virtual representation or appointment of a guardian ad litem, doctrines traditionally available only in the case of judicial settlements. The effect of this section and the Uniform Trust Code more</p>	<p>(5) liability of a trustee for an action relating to the trust.</p> <p>(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.</p> <p>REPORTER’S COMMENT</p> <p>While the SCTC recognizes that a court may intervene in the administration of a trust to the extent its jurisdiction is invoked by interested persons or otherwise provided by law (<i>see</i> Section 62-7-201(a)), resolution of disputes by nonjudicial means is encouraged. This section facilitates the making of such agreements by giving them the same effect as if approved by the court. To achieve such certainty, however, subsection (c) requires that the nonjudicial settlement must contain terms and conditions that a court could properly approve. Under this section, a nonjudicial settlement cannot be used to produce a result not authorized by law, such as to terminate a trust in an impermissible manner.</p> <p>Trusts ordinarily have beneficiaries who are minors; incapacitated, unborn or unascertained. Because such beneficiaries cannot signify their consent to an agreement, binding settlements can ordinarily be achieved only through the application of doctrines such as virtual representation or appointment of a guardian ad litem, doctrines traditionally available only in the case of judicial settlements. The effect of this section and the SCTC more generally is to allow for such binding representation even if the agreement is not submitted for approval to a court. For the rules on representation, including appointments of representatives by the court to approve particular</p>

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<p>generally is to allow for such binding representation even if the agreement is not submitted for approval to a court. For the rules on representation, including appointments of representatives by the court to approve particular settlements, see Article 3. Subsection (d) is a nonexclusive list of matters to which a nonjudicial settlement may pertain. Other matters which may be made the subject of a nonjudicial settlement are listed in the Article 3 General Comment. The fact that the trustee and beneficiaries may resolve a matter nonjudicially does not mean that beneficiary approval is required. For example, a trustee may resign pursuant to Section 705 solely by giving notice to the qualified beneficiaries, a living settlor, and any cotrustees. But a nonjudicial settlement between the trustee and beneficiaries will frequently prove helpful in working out the terms of the resignation. Because of the great variety of matters to which a nonjudicial settlement may be applied, this section does not attempt to precisely define the “interested persons” whose consent is required to obtain a binding settlement as provided in subsection (a). However, the consent of the trustee would ordinarily be required to obtain a binding settlement with respect to matters involving a trustee’s administration, such as approval of a trustee’s report or resignation.</p> <p>SOUTH CAROLINA COMMENT</p> <p>The South Carolina Probate Code has counterparts to South Carolina Trust Code Section 62-7-111. In the estate context, SCPC Section 62-3-912 provides for private agreements among successors to a decedent, which shall be binding on the personal representative. Such agreements are however,</p>	<p>settlements, see Part 3.</p> <p>The fact that the trustee and beneficiaries may resolve a matter nonjudicially does not mean that beneficiary approval is required. For example, a trustee may resign pursuant to Section 62-7-705 solely by giving notice to the qualified beneficiaries, a living settlor, and any cotrustees. But a nonjudicial settlement between the trustee and beneficiaries will frequently prove helpful in working out the terms of the resignation.</p> <p>Because of the great variety of matters to which a nonjudicial settlement may be applied, this section does not attempt to precisely define the “interested persons” whose consent is required to obtain a binding settlement as provided in subsection (a). However, the consent of the trustee would ordinarily be required to obtain a binding settlement with respect to matters involving a trustee’s administration, such as approval of a trustee’s report or resignation.</p>

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<p>subject to the rights of creditors and taxing authorities. Under SCPC Section 62-3-912, successors include testamentary trusts if the trustees thereof deem it prudent to enter such an agreement. However, “[n]othing herein relieves trustees of any duties owed to the beneficiaries of trust.” Additionally, SCPC Sections 62-3-1101 and 62-3-1102 provide a mechanism for compromise of controversies approved in a formal proceeding in the Probate Court. The terms of the compromise are to be set forth in an agreement that is presented to the Probate Court for approval. Interested persons, including parents of minor children, are to sign the agreement. Joinder is not required in respect to interested persons whose identity cannot be reasonably ascertained. Such compromises are subject to the rights of creditors and to taxing authorities. Trustees of testamentary trusts, to the extent they enter the compromise, are bound by its terms. See also S. Alan Medlin, <i>The Law of Wills and Trusts, Volume I, Estate Planning in South Carolina</i> (2002) at Section 509 (modification and early termination of irrevocable and unamendable trusts).</p> <p>Uniform Trust Code Section 111 allows binding nonjudicial settlements for any trust matter, subject to certain limitations. SCTC Section 62-7-111 is more restrictive, authorizing binding nonjudicial settlements only for the enumerated matters. Consequently, the Comment to UTC Section 111 should be adjusted accordingly.</p>	
<p>SECTION 62-7-112. Rules of construction.</p> <p>The rules of construction that apply in this State to the interpretation of and disposition of</p>	<p>SECTION 62-7-112.</p> <p>The rules of construction that apply in this State to the interpretation of and disposition of property by</p>

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<p>property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.</p> <p>COMMENT</p> <p>This section is patterned after Restatement (Third) of Trusts Section 25(2) and comment e (Tentative Draft No. 1, approved 1996), although this section, unlike the Restatement, also applies to irrevocable trusts. The revocable trust is used primarily as a will substitute, with its key provision being the determination of the persons to receive the trust property upon the settlor's death. Given this functional equivalence between the revocable trust and a will, the rules for interpreting the disposition of property at death should be the same whether the individual has chosen a will or revocable trust as the individual's primary estate planning instrument. Over the years, the legislatures of the States and the courts have developed a series of rules of construction reflecting the legislative or judicial understanding of how the average testator would wish to dispose of property in cases where the will is silent or insufficiently clear. Few legislatures have yet to extend these rules of construction to revocable trusts, and even fewer to irrevocable trusts, although a number of courts have done so as a matter of judicial construction. See Restatement (Third) of Trusts Section 25, Reporter's Notes to cmt. d and e (Tentative Draft No. 1, approved 1996).</p> <p>Because of the wide variation among the States on the rules of construction applicable to wills, this Code does not attempt to prescribe the exact rules to be applied to trusts but instead adopts the philosophy of the Restatement that the rules applicable to trusts ought to be the</p>	<p>will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.</p> <p>REPORTER'S COMMENT</p> <p>This section is patterned after Restatement (Third) of Trusts Section 25(2) and comment e (Tentative Draft No. 1, approved 1996), although this section, unlike the Restatement, also applies to irrevocable trusts. The revocable trust is used primarily as a will substitute, with its key provision being the determination of the persons to receive the trust property upon the settlor's death. Given this functional equivalence between the revocable trust and a will, the rules for interpreting the disposition of property at death should be the same whether the individual has chosen a will or revocable trust as the individual's primary estate planning instrument. Over the years, the legislatures of the States and the courts have developed a series of rules of construction reflecting the legislative or judicial understanding of how the average testator would wish to dispose of property in cases where the will is silent or insufficiently clear. Few legislatures have yet to extend these rules of construction to revocable trusts, and even fewer to irrevocable trusts, although a number of courts have done so as a matter of judicial construction. See Restatement (Third) of Trusts Section 25, Reporter's Notes to cmt. d and e (Tentative Draft No. 1, approved 1996).</p> <p>Because of the wide variation among the States on the rules of construction applicable to wills, this Code does not attempt to prescribe the exact rules to be applied to trusts but instead adopts the philosophy of the Restatement that the rules applicable to trusts ought to be the same, whatever those rules might be.</p> <p>Rules of construction are not the same as constructional preferences. A constructional preference is general in nature, providing general</p>

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<p>same, whatever those rules might be.</p> <p>Rules of construction are not the same as constructional preferences. A constructional preference is general in nature, providing general guidance for resolving a wide variety of ambiguities. An example is a preference for a construction that results in a complete disposition and avoid illegality. Rules of construction, on the other hand, are specific in nature, providing guidance for resolving specific situations or construing specific terms. Unlike a constructional preference, a rule of construction, when applicable, can lead to only one result. See Restatement (Third) of Property: Donative Transfers Section 11.3 and cmt. b (Tentative Draft No. 1, approved 1995). Rules of construction attribute intention to individual donors based on assumptions of common intention. Rules of construction are found both in enacted statutes and in judicial decisions. Rules of construction can involve the meaning to be given to particular language in the document, such as the meaning to be given to “heirs” or “issue.” Rules of construction also address situations the donor failed to anticipate. These include the failure to anticipate the predecease of a beneficiary or to specify the source from which expenses are to be paid. Rules of construction can also concern assumptions as to how a donor would have revised donative documents in light of certain events occurring after execution. These include rules dealing with the effect of a divorce and whether a specific devisee will receive a substitute gift if the subject matter of the devise is disposed of during the testator’s lifetime.</p> <p>Instead of enacting this section, a jurisdiction enacting this Code may wish to enact detailed rules on the construction of trusts, either in</p>	<p>guidance for resolving a wide variety of ambiguities. An example is a preference for a construction that results in a complete disposition and avoids illegality. Rules of construction, on the other hand, are specific in nature, providing guidance for resolving specific situations or construing specific terms. Unlike a constructional preference, a rule of construction, when applicable, can lead to only one result. <i>See</i> Restatement (Third) of Property: Donative Transfers Section 11.3 and cmt. b (Tentative Draft No. 1, approved 1995).</p> <p>Rules of construction attribute intention to individual donors based on assumptions of common intention. Rules of construction are found both in enacted statutes and in judicial decisions. Rules of construction can involve the meaning to be given to particular language in the document, such as the meaning to be given to “heirs” or “issue.” Rules of construction also address situations the donor failed to anticipate. These include the failure to anticipate the predecease of a beneficiary or to specify the source from which expenses are to be paid. Rules of construction can also concern assumptions as to how a donor would have revised donative documents in light of certain events occurring after execution. These include rules dealing with the effect of a divorce and whether a specific devisee will receive a substitute gift if the subject matter of the devise is disposed of during the testator’s lifetime.</p> <p>The most direct counterpart in the law of wills is South Carolina Probate Code Section 62-2-601 (Rules of Construction and Presumption). That section provides that the testator’s intent controls the legal effect of his dispositions, and it refers to succeeding sections, which contain some, but not all, rules of construction with respect to wills. Other will construction rules are left to the common law in South Carolina. As to construction of wills, see S. Alan Medlin, <i>The Law of Wills and Trusts</i>, Volume</p>

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<p>addition to its rules on the construction of wills or as part of one comprehensive statute applicable to both wills and trusts. For this reason and to encourage this alternative, the section has been made optional. For possible models, see Uniform Probate Code, Article 2, Parts 7 and 8, which was added to the UPC in 1990, and California Probate Code Sections 21101-21630, enacted in 1994.</p> <p>SOUTH CAROLINA COMMENT</p> <p>The most direct counterpart in the law of wills is South Carolina Probate Code Section 62-2-601 (Rules of Construction and Intention). That section provides that the testator’s intent controls the legal effect of his dispositions, and it refers to succeeding sections, which contain some, but not all, rules of construction with respect to wills. Other will construction rules are left to the common law in South Carolina. As to construction of wills, see S. Alan Medlin, The Law of Wills and Trusts, Volume 1, Estate Planning in South Carolina (2002) at Section 330 et seq. South Carolina Trust Code Section 62-7-112 is in part analogous to SCPC Sections 62-1-102 and 63-1-103. SCPC Section 62-1-102, entitled “Purposes; Rule of Construction,” provides for a liberal interpretation of the SCPC in furtherance of the policies set forth in that section. SCPC Section 62-1-103 provides that the provisions of the SCPC supplement existing principles of law and equity.</p>	<p>1, Estate Planning in South Carolina (2002) at Section 330 et seq. South Carolina Trust Code Section 62-7-112 is in part analogous to SCPC Sections 62-1-102 and 62-1-103. SCPC Section 62-1-102, entitled “Purposes; Rule of Construction,” provides for a liberal interpretation of the SCPC in furtherance of the policies set forth in that section. SCPC Section 62-1-103 provides that the provisions of the SCPC supplement existing principles of law and equity.</p>

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